

Using a planning gain supplement for nature conservation purposes
English Nature and the Royal Society for the Protection of Birds
English Nature Research Reports



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English Nature Research Reports

Number 672

**Using a planning gain supplement for nature conservation purposes
English Nature and the Royal Society for the Protection of Birds**

Entec UK Limited

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Cover note

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Executive summary

Alongside farming, land use planning is one of the most significant mechanisms for effecting both positive and negative change in the nature conservation resource of the UK. In the 2003/2004 financial year 675,000 planning applications were processed by local planning authorities in England. Many of these applications will have had the potential to make positive contributions to the nature conservation interest of its surrounding area and it is important that these opportunities are maximised.

Entec was contracted by English Nature in July 2005 to undertake a review of the opportunities for achieving nature conservation gains through proposed changes to the way in which planning obligations are used, and in particular the potential role of a planning gain supplement.

In order to identify the extent to which Section 106 agreements (a form of planning obligation) are used to benefit nature conservation, and how successful their use has been, a short questionnaire was circulated to development control planning officers at 35 local authorities, selected on a stratified random basis to provide a representative spread across the country. In addition, the questionnaire was sent to members of the Association of Local Government Ecologists (ALGE), which represents professional ecologists working in local government in the UK. Of the 28 responses received to the project questionnaire, 4 (14%) of these authorities had a policy of regularly using S106 agreements for nature conservation. A further 12 (43%) used them occasionally, but on an ad-hoc basis. These findings are similar to those obtained from a questionnaire survey run by ALGE in 2004. However, 5 (18%) said that they rarely used S106 agreements specifically for nature conservation purposes and 7 (25%) had never used them.

A discussion session was held on 9 August 2005 with representatives of English Nature, RSPB, the Wildlife Trusts, Countryside Agency and ALGE was used to discuss the key issues that needed to be considered in reviewing the feasibility of using different types of planning obligations to achieve nature conservation gains. Following this meeting, a review was undertaken to determine the feasibility of utilising different approaches to planning obligations in delivering nature conservation gains over and above the mitigation/compensation of effects.

The conclusions of the review were as follows:

- National strategy and policy now requires the planning system not only to mitigate the effects of development on the natural environment, but also to deliver nature conservation enhancements. These gains are best secured through the use of planning obligations.
- The strength of the current system of negotiated S106 agreements is that they provide the flexibility to address the case-specific effects of development on features of nature conservation interest.
- At present, S106 agreements are used by some local planning authorities to secure wider nature conservation enhancements. However, the majority of those questioned during the study used them relatively infrequently and few had a policy of using planning obligations for nature conservation.
- Even where this has been achieved, it is questionable whether such approaches will be facilitated under the new Circular 5/05, which potentially narrows the scope of application to those issues which, if not addressed, would prevent grant of permission.

- The proposals for an Optional Planning Charge (OPC) do not provide sufficient scope or flexibility to ensure that the effects of development can be adequately mitigated. In addition, the proposals do not allow the local planning authority to determine whether an OPC or a negotiated planning obligation should be used. An OPC is therefore not considered to be a suitable mechanism for the delivery of nature conservation gains.
- S106 agreements, tailored to the specific circumstances of a development site remain the most appropriate mechanism for achieving site-specific mitigation of impacts on nature conservation interests. The proposals for a Planning Gain Supplement (PGS), together with a revised form of S106 agreement, provide a promising potential mechanism for achieving wider nature conservation enhancements, which are not confined to the development site.
- The use of a PGS has the potential to create incentives and disincentives for the housing industry. To ensure that the outcomes of these are not detrimental to nature conservation interests (eg the targeting of a larger quantity of development into areas with lower rates of PGS), the development of the detail of the PGS mechanism would need to carefully consider each of the potential incentives/disincentives.
- Local Development Frameworks (LDF) would be important mechanisms for the successful implementation of a PGS. They could be used to publish the rates at which a PGS would be charged, including details of any variations in that rate designed to encourage development on certain types of sites, or to encourage the delivery of best practice in the design of development in relation to nature conservation and other sustainable development issues. They could also be used to publish a list of the sites, projects and initiatives that would be funded through PGS contributions. The use of the LDF for this purpose would allow for public scrutiny of these procedural details at Public Inquiry.
- Any proposed lower rate for brownfield development would need to exclude high value natural sites as defined in PPG3 and PPS9.
- The delivery of PGS contributions for nature conservation could be achieved on a local or national basis. In recognition of the strengths and weaknesses of both approaches, it is suggested that they are run in parallel. The report discusses the Aggregates Levy Sustainability Fund as a potential model.
- The Barker Review did not consider environmental impacts in its considerations, and subsequent analyses have raised serious concerns about the pressures that might be generated by Barker. Designing environmental objectives into the PGS may be one way of helping to develop the environmental sustainability of the Barker agenda.

The secondary objective of this study was to review the feasibility of linking the use of a PGS to Building Regulations or the BREEAM assessment methodology. In order to promote the inclusion of best practice, a discounted rate of PGS could be levied on those developments that incorporate best practice techniques for nature conservation and other sustainable development issues. The assessment of best practice in development should be based on the emerging Code for Sustainable Buildings which is due to be published in April 2006. English Nature should engage with the Sustainable Buildings Task group to ensure that nature conservation is fully incorporated into the Code.

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Research Information Note

1 Introduction

1.1 Background

At present, gains for the natural environment can be secured through either a planning condition, which forms part of a notice of planning permission, or a Section 106 agreement (S106 agreement), which is a legal agreement between the applicant for planning permission, the local planning authority and any third parties who may have an interest in the land that is to be developed.

Two documents, the Barker Review of housing supply¹ and a consultation on planning reform², have put forward different proposals for reforming the use of planning obligations. These are, respectively, the Planning Gain Supplement (PGS), which would be used in combination with a revised form of S106 agreement, and the Optional Planning Charge (OPC), which would be available as an alternative to a S106 agreement. Both approaches involve streamlining the use of planning obligations through the establishment of obligations that do not require negotiation between the applicant and the planning authority.

Entec UK Ltd was contracted by English Nature and the RSPB in July 2005 to undertake a review of the opportunities for achieving nature conservation gains through proposed changes to the way in which planning obligations are used. The brief for this study was to:

- assess the potential risks and opportunities for nature conservation associated with the Barker Review's recommendations concerning a PGS and revised S106 agreement, compared to the current broader use of S106 agreements; and
- consider the feasibility of incorporating nature conservation objectives in the design of a PGS.

A secondary objective was to “consider the feasibility of a PGS complementing building regulations and the Building Research Establishment Environmental Assessment Method (BREEAM) via the provision of incentives and/or grants to encourage sustainable building including sustainable drainage systems.”

While the brief concentrated on the proposals for a PGS, consideration was also given to the Government's proposals for the introduction of an OPC.

To provide background to this study, a review was undertaken of the policy context in which the current system of planning obligations operates and information was sought from local authority officers regarding the existing use of Section 106 agreements for delivering nature conservation gains.

1.2 Approach

1.2.1 Questionnaire

In order to identify to what extent S106 agreements are used to benefit nature conservation and how successful their use has been, a short questionnaire was circulated to development

¹ K Barker (2004). *Review of housing supply: Delivering stability: Securing our future housing needs*. HMSO

² Anon (2003). *Contributing to sustainable communities - a new approach to planning obligations*. Office of the Deputy Prime Minister

control planning officers at 35 local authorities. To provide a representative spread across the country, these authorities were selected on a stratified random basis. The selection of the sample local planning authorities was undertaken by dividing all local authorities in England into each of the eight Government regions outside of Greater London. From each region, a random number generator was used to select four local authorities: a County Council; a Unitary Authority; a District/Borough Council; and a randomly selected fourth authority. In addition, two London Boroughs and a National Park Authority were also selected at random. The use of different types of planning authority reflects their different planning remits. For example, County Councils determine applications for large-scale minerals and waste developments, which often include S106 agreements that provide for significant levels of nature conservation gain. However, District/Borough Councils do not determine minerals or waste applications.

Each of the sample local authorities was contacted by telephone to identify an appropriate contact point and to confirm that they would be willing to participate in the questionnaire. Of these, only one authority declined to participate and was replaced on the list by another authority from the same region. Each sample authority was sent the questionnaire by email and either contacted for a telephone interview or was given two weeks to respond by email. The list of sample authorities is provided in Appendix A.

The questionnaire was also sent to members of the Association of Local Government Ecologists (ALGE). ALGE represents professional ecologists working in local government in the UK. In partnership with others, it supports and develops the nature conservation work of local authorities. It has over 150 members throughout the UK, all of whom are linked via an email newsgroup. This newsgroup was used to circulate the questionnaire to all ALGE members, with the same deadline as that given to the sample local authorities.

All of those contacted (sample authorities and ALGE members) were asked the same four questions (see Box 1.1). The number of questions was kept to a minimum to increase the likelihood of busy local government officers having time to respond.

Box 1.1 Questions in the questionnaire

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?
2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets or geodiversity targets?
3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?
4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

1.2.2 Case studies

The final question in the questionnaire was intended to identify potential case studies of the use of S106 agreements to secure benefits for nature conservation, which could be explored in more detail. In addition, details of potential case studies were requested from English Nature, the RSPB, the Wildlife Trusts and the Countryside Agency.

Six of the potential case studies identified from various sources were then investigated further to identify the nature conservation gains that were achieved, the mechanisms used to secure them, the financial aspects of the contribution and the success of the project.

1.2.3 Discussion group

A discussion session was held on 9 August 2005, attended by representatives of English Nature, RSPB, the Wildlife Trusts, Countryside Agency and ALGE, as well as Entec, to discuss the key issues that needed to be considered in reviewing the feasibility of using different types of planning obligations to achieve nature conservation gains. The initial findings of the questionnaire survey and review of the strengths and weaknesses of PGS and OPC were presented in the form of an interim report. The group discussed these findings and suggested ways to progress the work. The session identified the desired nature conservation outcomes from the planning process (ie the prevention of nature conservation losses and the provision of significant nature conservation gains) and highlighted the issues that need to be considered in assessing different approaches to securing these outcomes.

Key issues raised during the session are summarised in Appendix B.

1.2.4 Feasibility study

The findings of the discussion group formed the basis for the subsequent review of the feasibility of different approaches to the use of non-negotiated planning obligations in delivering nature conservation gains over and above mitigation. During the feasibility study, consideration was also given to the Government's desired outcomes from its revision of the system of planning obligations and how using obligations for nature conservation may affect the achievement of these goals.

Further work was undertaken to understand and illustrate the potential results of operating the proposed mechanisms in respect of their impacts on nature conservation (both positive and negative).

1.2.5 Secondary objective of the study

As part of the secondary objective of the project, consideration was given to the feasibility of using Building Regulations or the BREEAM assessment methodology alongside a PGS/OPC to incentivise the incorporation of nature conservation enhancements into new developments.

1.3 Structure of the report

Chapter 2 of the report seeks to identify how and why the planning system should contribute to the enhancement of nature conservation. Chapter 3 looks at the way in which planning obligations (eg S106 agreements) are currently being used for nature conservation. Chapter 4 reviews the opportunities presented for nature conservation by the proposals for a PGS and

OPC. It identifies the strengths and weaknesses of each approach and draws conclusions as to the most beneficial approach for nature conservation.

Having identified the most beneficial approach, Chapter 5 discusses how it could be implemented. This chapter also includes consideration of the secondary objective of the project.

Finally, Chapter 6 summarises the conclusions of the study and the main issues that were identified.

2 Key objectives for planning and nature conservation

2.1 Terminology

A key purpose of planning obligations is to oblige developers to undertake appropriate mitigation or compensation related to the effects of their scheme or to carry out specified environmental enhancements. In this report the following definitions are used.

- **Mitigation:** In the context of this study, this refers to the avoidance of effects or the reduction of effects to a level which is acceptable in terms of local planning policy.
- **Compensation:** Where significant effects cannot be mitigated, compensation can be used to ensure that significant effects are offset.
- **Enhancement:** Over and above mitigation and compensation, enhancement seeks to provide contributions that result in environmental benefits that are independent of the development.

For each of these, a brief description of the issues relating to nature conservation is provided below, together with the policy context for their use.

2.2 Mitigation for nature conservation purposes

2.2.1 Description

Local planning authorities should seek to avoid any significant adverse effects on features of nature conservation interest. In the first instance, development proposals should, wherever possible, be targeted in areas where such effects are unlikely to occur (eg areas of low nature conservation value). Where it is not possible to locate development in areas with no significant nature conservation interest, applicants should be required to design their developments in a manner that reduces the potential for adverse effects.

For example, working areas should be designed to avoid sensitive habitats or features, and measures should be put in place to ensure that such areas are not damaged during the construction and subsequent use of the site. Such measures could, for example, include the retention of areas of woodland and the creation of broad ‘buffer zones’ to provide sufficient stand-offs from development to ensure that root systems are not affected.

Local authorities should have policies in their Local Development Frameworks (LDFs) which enable the refusal of proposals that would result in the loss of features of significant nature conservation interest. Mitigation measures should be designed in such a way as to ensure that effects on nature conservation are reduced to a level that meets the necessary LDF policies. Measures should also be secured in such a manner as to ensure that they can be delivered.

This is most commonly achieved through the use of planning conditions, which are attached to planning permissions, requiring the applicant to undertake specified activities. Failure to meet these conditions would result in a breach of planning permission, which could result in enforcement by the planning authority or, in extreme cases, the revocation of planning permission.

2.2.2 Policy context

*The UK Sustainable Development Strategy*³ acknowledges that “the planning system provides a framework for managing development and the use of land in ways which take into account the sustainable use of our natural resources”. The Strategy includes a section (see Box 2.1), which reinforces the importance of the planning system in the delivery of sustainable development in the UK.

Box 2.1 Planning - with sustainable development at its heart

“The planning system is key to achieving sustainable development. The Government’s new planning policy statement *Delivering Sustainable Development* (PPS 1) sets out our vision for planning in England and the key policies which will underpin it. PPS1 makes clear that sustainable development is at the heart of the planning system. It sets the framework for reflecting the duty in the Planning and Compulsory Purchase Act 2004 for regional and local plans to be prepared with a view to contributing to sustainable development.

Other planning policies, set out in the Government’s Planning Policy Statements and Planning Policy Guidance notes, complement PPS1 in delivering sustainable development:

- planning policies for housing ensure that brownfield land is developed first for new housing, and that new housing is built at higher densities than previously, reducing the need for development on greenfield sites;
- other national policies ensure that new developments are located in areas such as town centres which are accessible by means of walking, cycling and public transport thereby reducing reliance on the private car;
- policies for the natural and historic environment ensure the conservation and reuse of buildings and the protection of wildlife resources, and
- policies for rural areas ensure that there are strict controls on development in the open countryside and that our finest countryside and landscapes are protected for the benefit of everyone.

The Government will also revise its policy on “planning obligations” in Spring 2005, to make it clearer how developers can be required through the planning system to take certain actions in order to ensure development is acceptable and in line with sustainable communities policies. For example, the revised policy will set out how planning obligations may be used to require a developer to provide a contribution towards affordable housing or to compensate for loss of habitat or damage to the environment.”

Mitigation, alongside compensation (which is discussed below), is an essential requirement for the conservation of the natural environment, which the Strategy highlights as contributing to sustainable development. Planning Policy Statement 9: Biodiversity and geological conservation⁴ (PPS9) requires local planning authorities to “*ensure that, before planning permission is granted, adequate mitigation measures are put in place*” to protect nature conservation interests.

³ Anon (2005). *The UK Sustainable Development Strategy*. HMSO

⁴ Anon (2005). *Planning Policy Statement 9: Biodiversity and geological conservation*. Office of the Deputy Prime Minister

2.3 Compensation for nature conservation losses

2.3.1 Description

Where it is not possible to mitigate (ie avoid or reduce) significant adverse effects of development, local planning authorities should seek the implementation of compensatory measures. Such measures could include, for example, the creation of new habitats and their subsequent management to increase and maintain their value for nature conservation, or the management of existing habitats. The objective should be to ensure that any significant losses to the local nature conservation resource are offset.

Where these compensatory measures are delivered within the development site, they are commonly secured through planning conditions. However, where it is not possible to provide compensation within the site, off-site measures may be necessary. In these instances, other forms of planning obligation (eg S106 agreements) may be required to secure their delivery.

2.3.2 Policy context

The provision of compensatory measures is in keeping with the UK Sustainable Development Strategy (as discussed in section 2.2.2) and PPS 9. Paragraph 1 of PPS9 states that “where a planning decision would result in significant harm to biodiversity and geological interests which cannot be prevented or adequately mitigated against, appropriate compensation measures should be sought”.

2.4 Nature conservation enhancement

2.4.1 Description

Mitigation and compensation should be used to ensure that significant effects on the natural environment are either avoided, reduced or offset. However, not all of the effects of development are significant enough to warrant mitigation. The result is that these cumulative impacts, though individually insignificant, result in the gradual erosion of the natural environment. The erosion of the nature conservation resource of this country has been occurring for generations and it is now recognised that it is necessary to not only prevent nature conservation losses, but to seek to reverse them through securing enhancements to the natural environment.

Enhancements can take a wide variety of forms, such as the creation of new habitats, the restoration of degraded habitats or the implementation of beneficial management regimes. These enhancements can be delivered locally, regionally (or sub-regionally) or nationally.

2.4.2 Policy/strategic context

Biodiversity Action Plans

At the 1992 Rio Earth Summit, the UK was one of the signatories of the Convention on Biological Diversity⁵. The Convention recognised that national governments provide the critical role of leadership, particularly by setting rules that guide the use of natural resources, and by protecting biodiversity where they have direct control over the land and water. Under

⁵ Anon (1992). *Convention on Biological Diversity*. United Nations Environmental Programme

the Convention, governments undertook to conserve and sustainably use biodiversity. Each government is required to develop national biodiversity strategies and action plans, and to integrate these into broader national plans for environment and development.

To meet this obligation, the UK Government published the *UK Biodiversity Action Plan*⁶ (UK BAP) in 1994. The UK BAP identified the species and habitats that are a priority for action and set out plans for each of these priority species/habitats. On a local level, biodiversity objectives and targets for a county, local authority or other area (eg sub-regional areas such as the National Forest) are contained in Local Biodiversity Action Plans (LBAP). They are usually the result of partnership working by local authorities, nature conservation organisations and community groups.

LBAPs build on the national priorities set out in the UK BAP, but also identify habitats and species that are locally important. They include a series of detailed plans for these priority habitats and species which identify objectives for their conservation and enhancement together with the actions that are required to meet these objectives. As such, they provide a framework within which contributions from development can be targeted to meet local biodiversity needs.

Also relevant to the definition of this framework are Regional Biodiversity Strategies, which have been (or are being) developed to deliver objectives and targets at a regional level. Although more strategic in nature than LBAPs, Regional Strategies allow for the delivery of significant ‘landscape-scale’ initiatives that can have wide biodiversity benefits.

The England Biodiversity Strategy

*Working with the grain of nature*⁷, the England Biodiversity Strategy (EBS) was published by the Department for the Environment, Food and Rural Affairs (Defra) in 2002. Defra’s vision, as stated in the Strategy, is for England to be “a country - its landscapes and water bodies, coasts and seas, towns and cities - where wild species and habitats are part of healthy functioning ecosystems; where we nurture, treasure and enhance our biodiversity, and where biodiversity is a natural consideration of policies and decisions, and in society as a whole”. In order to meet this vision, the Strategy sets out a national programme for meeting the country’s responsibilities for biodiversity. These responsibilities stem from the *Convention for Biological Diversity* that arose from the Rio summit in 1992 and are embodied in the UK BAP.

The actions set out in the EBS address a range of issues that affect biodiversity in England. The Executive Summary of the Strategy states that the Government and its partners will take action to make biodiversity a fundamental consideration in “Urban areas: where biodiversity needs to become a part of the development of policy on sustainable communities, urban green space and the built environment”. This is expanded upon in Chapter 7 of the EBS, which includes the aims set out in Box 2.2.

⁶ Anon (1994). *Biodiversity: The UK action plan*. HMSO

⁷ Anon (2002). *Working with the grain of nature: A biodiversity strategy for England*. Defra

Box 2.2 EBS's aims for towns, cities and developments

- “To ensure that cities, towns and other settlements contribute fully to the goals of biodiversity conservation.
- To ensure that construction, planning, development and regeneration have minimal adverse impacts on biodiversity and enhance it where possible.
- To ensure that biodiversity conservation is integral to sustainable urban communities, both in the built environment, and in parks and green spaces.
- To ensure that biodiversity conservation is integral to measures to improve the quality of people’s lives, delivered through other initiatives eg Community Strategies, including Neighbourhood Renewal and Cultural Strategies, social inclusion, health and equality of opportunity.
- To value, further and enhance people’s own contributions to improving biodiversity in towns and cities and to increase their access to it”

The second of these aims relates specifically to development and the planning system. A key phrase is the desire to “enhance” biodiversity. This implies that, in addition to protecting biodiversity features from damage, developments should seek to provide additional biodiversity gains. This concept is developed further in section 7.9 of the EBS, which sets out the desired outcomes of the EBS for urban areas and the ways in which they are to be achieved. Among these is a commitment to provide “encouragement to local authorities and developers to see the potential of biodiversity as an enhancement to developments through good practice sharing, partnership and guidance”.

Appendix 4 of the EBS contains the action plan for towns, cities and development. Under ‘Construction and new development’, the ‘Priority issue’ is described as “Ensuring biodiversity is enhanced as a consequence of development and building design”. The desired outcomes listed in the action plan are as follows:

- “biodiversity conservation and enhancement objectives in new developments;
- natural green spaces and wildlife features provided as part of new development;
- biodiversity targets in house-building and other developer schemes; and
- the use of Sustainable Urban Drainage Systems (SUDS) as standard practice for new build in all areas”.

In the planning system, contributions towards nature conservation gains can be secured through the use of planning conditions and negotiated planning obligations. In this way, a development proposal can be modified so that it becomes acceptable in terms of the policies set out in the local planning authority’s LDF.

Government planning guidance

The Government sets out guidance on how the planning system should be used to achieve specific aims in a series of Planning Policy Statements (PPSs). This series will replace the series of Planning Policy Guidance notes (PPGs), some of which are still in force.

The first of these is *Planning Policy Statement 1: Delivering sustainable development* (PPS1)⁸. In it, the Government sets out how the planning system should contribute to the delivery of sustainable development objectives (see Box 2.3).

Box 2.3 Paragraph 5 of PPS1

“Planning should facilitate and promote sustainable and inclusive patterns of urban and rural development by:

- making suitable land available for development in line with economic, social and environmental objectives to improve people’s quality of life;
- contributing to sustainable economic development;
- protecting and enhancing the natural and historic environment, the quality and character of the countryside, and existing communities;
- ensuring high quality development through good and inclusive design, and the efficient use of resources; and,
- ensuring that development supports existing communities and contributes to the creation of safe, sustainable, liveable and mixed communities with good access to jobs and key services for all members of the community.”

Paragraph 27 of PPS1 sets out the concepts that it expects to underpin the formulation of development plan policies, including a requirement to “enhance as well as protect biodiversity, natural habitats, the historic environment and landscape and townscape character”.

It should also be noted that, in paragraph 18, the Government acknowledges the wider benefits of a ‘healthy’ environment, stating that “the condition of our surroundings has a direct impact on the quality of life and the conservation and improvement of the natural and built environment brings social and economic benefit for local communities”.

In August 2005, the Office of the Deputy Prime Minister (ODPM) published *Planning Policy Statement 9: Biodiversity and geological conservation* (PPS9). This supersedes PPG9, which was published in 1994. PPG9 placed a significant emphasis on the need to protect nature conservation interests but its discussion of enhancement was relatively limited. Perhaps as a result, development plan policies have historically focused on the protection of nature conservation rather than its enhancement (in many cases limited to designated sites). Since the publication of PPG9, further non-statutory guidance has emerged (eg the Royal Town Planning Institute’s *Planning for Biodiversity*⁹) and in many cases as development plans have been reviewed, policies have been expanded to consider nature conservation outside of designated sites and to provide greater commitment for management and enhancement.

LDF policies should seek to protect designated sites from damage and ensure that wider nature conservation issues such as green corridors and stepping-stones are considered in the determination of a planning application. Government has provided guidance on the nature conservation policies that should be included in LDF documents.

⁸ Anon (2005). *Planning Policy Statement 1: Delivering sustainable communities*. Office of the Deputy Prime Minister

⁹ Tyldesley, D. (ed) (2001). *Good Practice Guide: Planning for biodiversity*. Royal Town Planning Institute

In PPS9, the Government has identified a series of objectives for the planning system and nature conservation (see Box 2.4). Once again, the Government includes objectives relating to the enhancement of biodiversity, alongside the need to protect it, and recognition of the benefits of enhancement in the context of the health and economy of local communities.

Box 2.4 Government objectives as stated in PPS9

“Working with the grain of nature: a biodiversity strategy for England sets out the Government’s vision for conserving and enhancing biological diversity in England, together with a programme of work to achieve it. It includes the broad aim that planning, construction, development and regeneration should have minimal impacts on biodiversity and enhance it wherever possible.

In moving towards this vision, the Government’s objectives for planning are:

- to promote sustainable development by ensuring that biological and geological diversity are conserved and enhanced as an integral part of social, environmental and economic development, so that policies and decisions about the development and use of land integrate biodiversity and geological diversity with other considerations.
- to conserve, enhance and restore the diversity of England’s wildlife and geology by sustaining, and where possible improving, the quality and extent of natural habitat and geological and geomorphological sites; the natural physical processes on which they depend; and the populations of naturally occurring species which they support.
- to contribute to rural renewal and urban renaissance by:
 - enhancing biodiversity in green spaces and among developments so that they are used by wildlife and valued by people, recognising that healthy functional ecosystems can contribute to a better quality of life and to people’s sense of well-being; and
 - ensuring that developments take account of the role and value of biodiversity in supporting economic diversification and contributing to a high quality environment.

The planning system has a significant part to play in meeting the Government’s international commitments and domestic policies for habitats, species and ecosystems.”

Paragraph 1 of PPS9 contains a set of key principles that local planning authorities should adhere to in delivering their planning function. Among these is a requirement that “plan policies and planning decisions should aim to maintain, and enhance, restore or add to biodiversity and geological conservation interests”. This is further addressed through a requirement for development plan polices to “promote opportunities for the incorporation of beneficial biodiversity and geological features within the design of development”.

PPS9 also requires greater detail to be provided in LDFs about local priorities for nature conservation gains. In paragraph 5, it states that LDFs should “identify any areas or sites for the restoration or creation of new priority habitats which contribute to regional targets, and support this restoration or creation through appropriate policies”.

Paragraph 14 of PPS9 recognises that “development proposals provide many opportunities for building-in beneficial biodiversity or geological features as part of good design. When

considering proposals, local planning authorities should maximise such opportunities in and around developments, using planning obligations where appropriate.”

2.5 Conclusions

As shown above, the Government recognises that the planning system is a key mechanism for the delivery of sustainable development and meeting the UK’s responsibilities for its natural environment. More specifically, it is the Government’s intention for the planning system to play a significant role in not only halting the decline in the UK’s nature conservation resource but also in helping to reverse that decline through the creation of new areas of habitat and the management of existing habitats to increase their value for wildlife.

Throughout the documents and strategies discussed in this section, the word ‘enhance’ is repeatedly used alongside ‘conserve’ when discussing the role of the planning system and nature conservation. As discussed in section 2.1, enhancement requires that measures should be undertaken over and above those needed to prevent nature conservation losses (eg by mitigating or compensating for the effects of development), and should seek to result in a net gain for the natural environment.

The use of planning obligations is a common method of securing delivery of agreed measures and contributions. It is common practice for new developments to make contributions to local infrastructure (eg transport, education, health, etc) in recognition of an increased demand on existing resources. However, at present, the same has not always been true for the delivery of contributions for nature conservation.

As stated in paragraph 14 of PPS9, planning obligations are an appropriate mechanism for securing the delivery of measures that are beneficial for nature conservation. The way in which these obligations are used is currently under scrutiny. It is the purpose of this report to review the different approaches that have been proposed and determine which presents the greatest opportunities for delivering significant gains for nature conservation.

3 Current use of planning obligations

3.1 Issues relating to the use of S106 agreements

The granting of planning permission is often dependant on the applicant subsequently complying with a number of obligations. Most commonly this is achieved through the use of planning conditions, which form part of the planning permission notice. Section 106 of the *Town and Country Planning Act 1990* allows local planning authorities to enter into agreements with developers and/or other parties with an interest in an area of land in order to address issues that cannot be secured through the use of planning conditions. Section 106 agreements (hereafter referred to as ‘S106 agreements’) were originally intended to be used to:

- restrict the use or development of an area of land in a specific way;
- ensure that required operations are undertaken on an area of land; or
- require that funds be paid to the authority in either a lump sum or at specified periods.

However, since their introduction, the use of S106 agreements has expanded to deliver benefits beyond the application boundary in what is often referred to as ‘planning gain’. These benefits can be obtained through in-kind contributions from developers or from financial contributions relating to issues such as transport infrastructure, emergency services, schools and community facilities.

Negotiations over S106 agreements can become protracted, thereby becoming a significant ‘bottleneck’ in the planning system. The negotiation of S106 agreements can be both expensive and time-consuming for all parties. It has also been stated that, in some instances, “some local authorities may misuse Section 106 to delay or discourage development, by asking for unreasonably onerous levels of developer contributions”¹⁰.

In its 2003 consultation paper *Contributing to Sustainable Communities*¹¹, the Government recognises that the “negotiation of planning obligations can frustrate or delay development” (see Box 3.1) and expresses a desire to revise the way in which negotiated planning obligations are used, including the use of an ‘Optional Planning Charge’. Subsequently, the Barker Review was published and includes a recommendation for a ‘Planning Gain Supplement’. These two approaches are the subject of chapter 4.

¹⁰ Source: Paragraph 3.48 of the Barker Review

¹¹ Anon (2003). *Contributing to sustainable communities - a new approach to planning obligations*. Office of the Deputy Prime Minister

Box 3.1 The Government's arguments for change

“Why do we want to change the current system?”

16. Planning obligations can be used successfully by local planning authorities and developers to unlock development and there are many examples of innovation and good practice. However, there are also less positive examples. Some agreements take an unacceptably long time to negotiate and they can involve unnecessarily high legal costs. The negotiation of planning obligations can frustrate or delay development. And there is a lack of clarity about what sort of contributions can be sought because of the distinction between existing policy and case law. Finally, contributions may not accurately reflect the true impact of development on services and infrastructure.

17. Together, these concerns have led to a consensus that the current system of using planning obligations to secure contributions, and the way it operates, needs to be changed.”

Source: *Contributing to sustainable communities*

The Government recognises that these two approaches require further consideration before a decision is made about how to proceed. In the interim, the ODPM has published a new Circular on planning obligations to replace Circular 01/97¹². Published in July 2005, Circular 5/05¹³ makes some amendments to the use of S106 agreements, but deliberately avoids addressing the more significant changes proposed in the 2003 consultation paper. It includes four significant additions to Circular 01/97:

- the facility for pooled contributions, whereby contributions can be secured both between developments and local authorities;
- the development by local planning authorities of codes of practice for the negotiation of planning obligations;
- formulae and standard charges drawn up by local authorities as a framework for negotiation; and
- standard agreements and undertakings or model clauses drawn up by local planning authorities to help expedite proceedings.

The Circular also offers clarification over the circumstances in which planning obligations might be sought, namely:

- prescribing the nature of development (making acceptable a development proposal that would otherwise be unacceptable in planning terms);
- mitigating the impact of a development; and
- compensating for loss or damage caused by a development.

These three circumstances are particularly important when considering the suitability of different approaches to the use of planning obligations for nature conservation.

¹² Anon (1997). *Circular 01/97: Planning obligations*. Department of the Environment

¹³ Anon (2005). *Circular 05/2005: Planning obligations*. Office of the Deputy Prime Minister

The Circular also updates the ‘tests’ for the use of planning obligations originally contained in Circular 01/97. It states that:

“A planning obligation must be:

- (i) relevant to planning;
- (ii) necessary to make the proposed development acceptable in planning terms;
- (iii) directly related to the proposed development;
- (iv) fairly and reasonably related in scale and kind to the proposed development; and
- (v) reasonable in all other respects.”

The policies set out in a local planning authority’s LDF provide the boundaries within which development is considered appropriate and/or permissible. Therefore, they are particularly relevant to the second of these tests as the acceptability of a planning application will be judged against the LDF policies.

3.2 Use of S106 agreements for nature conservation purposes

3.2.1 Results of Entec’s questionnaire survey

Overview

In total, 28 responses to the questionnaire were received. Of these, 22 came from the sample of 35 local planning authorities and a further six were received from ALGE members (from a potential sample of over 150).

This low response rate may be due to the timing of the project, which was undertaken during the school holidays. During this time, many local authority planning teams are short-staffed due to annual leave. Therefore, it is possible that officers who originally agreed to participate found themselves too busy to respond to the questionnaire.

The full responses to the questionnaire are provided in Appendix A and are summarised below in relation to each of the questions that were posed. It should be noted that, due to the poor response rate to the questionnaire, the responses provided can only be considered to be an illustration of views rather than the basis for statistical analysis.

It should also be noted that the view provided by a local authority officer may not represent the formal view of the Council.

Question 1: To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

Of the 28 respondents to the project questionnaire, only 4 (14%) stated that they had a standard practice of seeking S106 agreements for nature conservation above and beyond the mitigation of impacts. Of these, Islington Council has implemented Supplementary Planning Guidance on the use of S106 agreements for community benefits¹⁴. The SPG includes a list

¹⁴ Anon (2003). *Supplementary Planning Guidance: S106 Community Benefits*. Islington Council.

of the items that the Council will seek to fund through the use of S106 agreements. It uses these to obtain positive contributions from large developments, which includes work relating to the Islington BAP. More information on this is provided in the case study in section 3.3.5.

The largest group of respondents (12 respondents or 43%) said that their authorities did not have a policy regarding the use of S106 agreements, but considered the use of S106 agreements on a site-by-site basis. For example, St Helens MBC stated that “there have been a small number of S106 agreements relating to biodiversity” and that “these have been on a fairly ad-hoc basis”.

However, 5 respondents (18%) said that they rarely used S106 agreements specifically for nature conservation purposes and 7 (25%) had never used them. This may be due to the size or nature of their planning workload. Some of the authorities that responded do not use S106 regularly for nature conservation (or any other issue). Notable among these was the Northumberland National Park Authority, which determines fewer than 100 applications per year, few of which are of a sufficient size to warrant any planning obligations outside of planning conditions.

Question 2: How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets or geodiversity targets?

Islington Council considered its scheme of seeking contributions to be very successful. However, this was the only authority to be as positive. Four authorities had yet to use S106 agreements for nature conservation outside of mitigation/compensation. A further three stated that they were putting policies and/or mechanisms in place to facilitate the future use of S106 agreements or that the S106 agreements that had been used had yet to reach a point where success could be judged. Dudley MBC and Brighton and Hove City Council both stated that resource issues have precluded them from monitoring the success of S106 agreements.

Three authorities said that their use of S106 agreements had or was predicted to be unsuccessful. Teignbridge District Council identified two main problems:

- “enforcing them when they are in place - lack of time to check up and chase up non-compliers plus confusion over how to enforce when negotiation fails”; and
- “not every case that needs mitigation/compensation has an obvious way of providing it, eg where there is no room within the application site and the developer holds no ‘spare’ land nearby, as is often the case. Our planners take a very dim view of the ‘put money in a pot to spend on unspecified conservation in the future - this is seen as developers buying their permission and doesn’t fit with the Govt circular on conditions/obligations.”

In addition, Southampton City Council stated that “within the urban context and given the embryonic stages of the Local BAPs in the city, S106 only had a limited impact” and Leicester City Council considered that S106 agreements are “probably a minor contributor at present compared to management and enhancement of publicly owned land, SSSIs, Nature Reserves, etc which are funded through grants and existing revenue/capital budgets”.

Question 3: Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

Several authorities use planning conditions to achieve nature conservation outcomes but Brighton and Hove City Council considered that, due to resourcing issues, these are of limited benefit as they cannot always be adequately enforced.

Islington Council has published SPG on ‘green construction’¹⁵ that includes a biodiversity section which promotes the inclusion of use of green roofs, green walls and artificial nesting sites in new developments. The Council seeks to ensure that new development complies with the SPG.

St Helens MBC is promoting the use of the Building Research Establishment Environmental Assessment Method (BREEAM) standards, which it has used in its own school developments, but is uncertain as to whether they will be successful in delivering enhancements for nature conservation.

Teignbridge District Council has no other mechanism to ‘force’ nature conservation gains and considers that “developers aren’t going to offer [them] out of the goodness of their profit margin”.

Potential case studies

From the examples provided by respondents to the questionnaire and from information provided by English Nature, RSPB and partner organisations, six case studies were selected for further investigation. These were chosen to illustrate different approaches to the use of S106 agreements in securing benefits for nature conservation. They can be divided into two groups of three: those cases where S106 agreements were used to secure mitigation or compensation linked to specific developments; and those which secured contributions to deliver enhancements.

In each case, the relevant organisation was contacted for greater detail about the case, project or initiative. Information was sought about how a S106 was used, the financial aspects of the agreement(s) and, where appropriate, the policies supporting the approach that was taken. Views were also sought about the success of the approach and any lessons that were learned along the way.

3.2.2 Results of ALGE questionnaire

While the number of responses received to the Entec survey was low, the information was broadly in line with that obtained in response to a questionnaire survey undertaken by ALGE in 2004. The ALGE questionnaire sought members’ views on a wide range of topics, including the extent to which planning obligations such as S106 agreements were used by their local authority to ensure that biodiversity issues are fully incorporated into planning decisions. The results, based on 167 responses, are shown in Table 3.1.

¹⁵ Anon (2003). *Supplementary Planning Guidance: Green construction*. Islington Council

Table 3.1 Use of planning obligations for biodiversity

Use of planning obligations for biodiversity	Number of respondents	Percentage of respondents
Frequent	23	14%
Occasional	92	55%
Rare	35	21%
Never	7	4%
Did not provide a response	10	6%

Source: *ALGE members' questionnaire survey (2004)*

3.3 Case studies

3.3.1 Huntingdonshire District Council - Barford Road pocket park

Contact: Pat Knight (Countryside Services Manager)

In 1999, Wimpey Homes was granted outline planning permission for the construction of over 800 homes at Barford Road, St Neots. As part of its planning application, Wimpey Homes proposed to provide areas of public open space within the development. However, in discussion with Huntingdonshire District Council, Wimpey Homes agreed to amend this to include provision for the creation of a new 18ha pocket park at Barford Road.

Wimpey Homes provided the land and funded the capital works required to establish the pocket park. In addition, a commuted sum of £300,000 was provided to the District Council to fund annual management costs for the first 15 years of the park's life. It was agreed that, after this period, responsibility for funding the ongoing maintenance costs would revert to the Council.

The park was opened in 2000 and, during its first five years, the £20,000 per year provided by the management fund paid for the employment of a part-time ranger and provided a management budget. The ranger, who works three days per week, runs a successful programme of community involvement and public liaison. Local volunteers assist in site management tasks and regular community events such as 'Environmental Fun Mornings' for children and guided walks are held.

At present, the District Council has described itself as very happy with the work that they have achieved with Wimpey Homes and are confident that the pocket park will continue to be managed as a resource for the public to enjoy wildlife into the future. The Council hopes that the involvement of the community will provide significant contributions towards the management effort, thereby enabling the maintenance budget to 'go further' each year. In addition, the involvement of the community increases their ability to seek grants and outside funding for the pocket park.

3.3.2 Oxfordshire County Council

Contact: Craig Blackwell (County Ecologist)

Since 1996, Oxfordshire County Council has been running an area-based project to secure long-term funding for the management of restored minerals sites in the Lower Windrush Valley. The main objectives of the project are:

- the restoration and long-term management (usually for a period of 20 years) of gravel pits that have been restored to a nature conservation or amenity end-use;
- the establishment of a long-distance ‘Windrush Path’ and other public rights of way within the project area;
- the establishment and management of other landscape features and habitats outside of the minerals sites (but within the project area); and
- the employment of a warden to oversee and co-ordinate a range biodiversity, landscape and public access projects throughout the project area.

A key element of the project has been the inclusion of strong ‘enabling’ policies in the Oxfordshire Mineral and Waste Local Plan (see Box 3.2) that establish the use of S106 agreements to secure funding of the project.

Box 3.2 Development plan policies for the Lower Windrush Valley Project

“Policy SH5: after-uses for the Stanton Harcourt Area (Lower Windrush Valley) should normally conform with those shown on the proposals map (the categories of uses are explained in paragraph 7.2). Planning permission will not normally be granted until these after-uses and means of funding them have been secured.

Policy SH6: the county council will seek the establishment and long-term management and maintenance of:

- (A) Nature Conservation Areas
- (B) A footpath from the River Thames near Newbridge, and Associated Circular Routes.
- (C) Areas of General Public Access

Planning permission will not normally be granted until the means of funding these have been secured.”

Source: Anon (1996). *Oxfordshire Minerals and Waste Local Plan*. Oxfordshire County Council

Proponents of all minerals schemes within the project area are required to submit a detailed restoration scheme as part of their planning application. When granting planning permission, the County Council requires that a detailed S106 agreement is drawn up that includes provision for the following:

- submission of a detailed management plan in the fourth year of aftercare;
- the management plan is designed to run for 20 years following the end of aftercare;

- guarantees of funding to implement the management plan for the full 20 year period of its life;
- provision for annual monitoring of the restored site; and
- the regular review of the management plan to accommodate any necessary changes as indicated by the results of monitoring.

The County Council had some initial difficulties in establishing this approach to securing contributions but, now a precedent has been set, its officers find it relatively easy to persuade minerals developers to participate in the project when they are submitting new applications. Since its establishment, over a dozen minerals sites being restored to nature conservation end-uses and put into long-term management that benefits biodiversity.

Examples include the restoration of Standlake Common Nature Reserve, which was undertaken by SITA and included the establishment of a ring-fenced management fund of £110,000 (including interest), which is administered by the County Council. The contribution was calculated based on a levy on every tonne of gravel extracted from the site by SITA. In addition, to site management, a portion of the contribution (£30,000) was used to provide a new bridge over the River Windrush to join the Windrush Path.

Another example is the restoration of Rushy Common Nature Reserve, which includes provision for the developer to prepare a long-term management plan and fund its implementation and an annual review programme. The developer has also made provision for:

- the establishment of the northern section of the new Windrush Path, which is now in public use;
- the future creation of new public rights of way across their property;
- the preparation of a Lower Windrush Valley Strategy, which identified a range of projects that would result in gains for landscape, biodiversity and public access; and
- significant contributions towards the employment of the Lower Windrush Valley Project Officer, who oversees the delivery of the LWV Strategy.

The LWV Project Officer has successfully raised approximately £120,000 from landfill tax for the implementation of projects identified in the Strategy and further funding from the Aggregates Levy Sustainability Fund (ALSF) for a detailed ecological survey of most of the gravel pits within the project area. The survey findings are to be used in discussions with local landowners in an effort to improve the landscape, biodiversity and access potential of their landholdings.

Oxfordshire County Council believes that the value of the Lower Windrush Valley Project is that contributions secured through S106 agreements have been used to benefit a range of initiatives over and above the restoration and management of minerals developments.

As it is being delivered as part of a wider strategy, the project has been able to attract significant additional funding from other sources (eg landfill tax and ALSF) in order to further its objectives.

3.3.3 RSPB and Hanson Aggregates: Needingworth Quarry

Contact: Graham Elliott (Project Manager)

In June 1994, Cambridgeshire County Council granted planning permission for Hanson Aggregates to establish a major sand and gravel quarry covering some 945 hectares near the village of Needingworth.

The original approved scheme of restoration would have seen the land progressively returned to agriculture at ground level at Needingworth and at low level on Over Fen. However, during the planning process an alternative nature conservation scheme was suggested by English Nature, the RSPB, Cambridgeshire Wildlife Trust, Countryside Commission and Environment Agency. The initial sketch proposal focused on a range of habitat types created by partial flooding of the restored low-level agricultural area. The 1994 planning consent included a S106 agreement with Hansons, requiring the company to prepare a feasibility study for the alternative scheme. The RSPB made a considerable contribution to the study, which highlighted the potential to restore up to 600 hectares as a reedbed wetland.

Following extensive consultation with statutory and non-statutory bodies, Hanson submitted a planning application to Cambridge County Council in June 1999 to “create a wetland habitat following extraction of sand and gravel at Needingworth quarry”. After further consultations with the general public and other relevant bodies, the application was considered by the development control committee on 27 March 2000, which resolved to support the application subject to a legal agreement and the imposition of planning conditions. As part of the permission, a S106 agreement was drawn up between the County Council, Hansons and the RSPB. The elements relating to the nature reserve are summarised in Table 3.2, together with the party responsible for their delivery.

Table 3.2 S106 requirements relating to the nature reserve

Requirement	Party responsible
Ongoing groundwater monitoring	Hansons
The production of an ecological baseline study prior to extraction	Hansons
Before the completion of Phase 8 (or 31 December 2007 if sooner) to prepare a visitor management plan. This will be reviewed annually and updated every five years	RSPB
By December 2008 to provide a new access road and car park	Hansons
To provide and maintain the habitats that make up the nature reserve	Hansons and RSPB
To produce a reserve management strategy before the completion of Phase 2	Hansons and RSPB
To produce a habitat management plan and review it every five years	RSPB
To establish a local liaison committee and technical panel before the completion of Phase 2	Hansons and RSPB

The establishment of habitats is to be undertaken by Hansons as part of its phased restoration of the site. Once establishment is completed, the land will be handed over to the RSPB, which will then be responsible for its ongoing management.

To fund the management costs, Hansons set up a £1 million trust fund. The RSPB has invested this and will use the interest to cover annual management costs. These costs have yet to be determined as the phased nature of the restoration and handover means that management requirements will increase over a period of 20 years. However, the RSPB

anticipates that, in the first year of management, a warden will be employed and elements of management will be required, with a total cost of £30,000. By supplementing the annual funds from the commuted sum through environmental stewardship schemes and other funding sources, the RSPB is confident that the long-term management of the site can be funded.

In 2000, the RSPB, Hansons and Cambridgeshire County Council received an RTPI Planning Achievement Award for Industry and Biodiversity in Partnership. From an original entry of 80 schemes submitted throughout the UK and Ireland, Needingworth was one of 10 category winners.

3.3.4 Ashfield Borough Council

Contact: Andrew Smith (Planning Policy and Projects Manager)

Ashfield Borough Council has a policy in its adopted Local Plan that requires the provision of public open space as part of housing developments (see Box 3.4).

Box 3.4 Ashfield Local Plan policy for public open space

Public open space in new residential developments

Policy HG6 Residential Development will only be permitted where open space is provided to meet the following requirements:

- a. on sites of two hectares and above, a minimum of 10% of the gross housing area will be provided as open space;
- b. on sites of less than two hectares and more than five dwellings the amount of open space required will be assessed by taking into account the type of housing proposed and the extent of, and accessibility of the site to existing open space in the locality.

Where it is not appropriate to provide open space within a site boundary, a planning obligation will be negotiated to allow a sum to be paid towards:

- i. Existing open space provision to be improved, or
- i. New open space to be provided elsewhere, or
- iii. Community woodland planting or appropriate natural habitat creation schemes to be undertaken.

5.85 The Authority places great value on the provision of public open space within new residential development, not only as a recreation amenity, but also as a contribution towards the quality of the environment. New residential developments should, where appropriate, contribute to open space provision either by the creation of additional areas or the improvement of existing facilities in the locality. The provision of new woodlands within residential development, which contribute towards the Community Forest and which form part of this open space provision, will be encouraged. Generally, the Authority will require an area of land not less than 10% of the gross housing area to be laid out as open space and, where appropriate, equipped for public recreation. The area must be safe, well related to dwellings and be of a shape and gradient to facilitate maximum usage and ease of maintenance. On some developments including those with a gross area of less than two hectares, it may be inappropriate to require on site public open space where small unmanageable sites will result, where the development proposed is unlikely to generate the need for open space, or where such sites may be in close proximity to existing facilities where duplication would be unnecessary.

5.86 Where open space provision on a site is inappropriate, unnecessary or better provided elsewhere, the Authority may require the payment of a commuted sum to facilitate off-site provision. This could take the form of upgrading existing areas of the locality or providing new facilities close by, including Community Forest projects. The commuted sum will be calculated in accordance with the Authority's scale of charges, which will be regularly updated, and secured by means of a negotiated planning obligation.

5.87 It is recognised that small developments of less than 5 dwellings and certain types of new residential development, such as elderly sheltered accommodation and residential care facilities, have different functional and operational requirements. In such cases neither the provision of public open space nor the payment of a commuted sum will be required.

This 'enabling' policy sets the basis for the collection of contributions for off-site open space provision. Where it is considered inappropriate to provide open space within a development, a fixed sum is levied on all dwellings constructed. The rate of the levy is updated annually by the Council to reflect inflation, house prices and land values. At the time of writing, the sum levied per dwelling was £1,500. This approach is taken on land allocated within the Local Plan and to 'windfall' sites.

This contribution is usually received on construction of the first dwelling and can be either paid as a lump sum or by staged payments. The contributions are pooled by the Council and are then subject to an annual bidding round through which Councillors are able to bid for projects in one of four geographic areas. The bids are then considered by Area Consultative Groups in each of the four areas and the successful bids are put forward for approval by the Council's Cabinet.

The pooled contributions (and the interest that they accrue through the year) are split in two, with 75% being used for the capital costs of projects and the remaining 25% being used for the ongoing maintenance costs. The maintenance fund is ring-fenced and can only be used for the management of projects funded through the scheme.

The scheme has been running since 1993 and, since then, it has funded a range of projects including:

- small scale habitat creation work;
- woodland planting;
- creation and management of ponds;
- wildflower grassland creation;
- Local Nature Reserve establishment;
- 'doorstep greens'; and
- new public open spaces.

It is estimated that, during the life of the scheme, approximately £3 million has been raised and, through match funding from sources such as landfill tax grants, this figure has been doubled in delivery.

3.3.5 Islington Council

Contact: Zayd Al-Jawad (Senior Planner – Community Benefits)

In 2003, Islington Council published SPG on the use of S106 agreements for community benefits. This was produced in support of Strategic Policy ST14 (sub-policy 13.5) of Council’s Unitary Development Plan (UDP) which enables the Council to obtain contributions for benefits (see Box 3.5).

Box 3.5	Strategic Policy ST14, sub-policy 13.5 of Islington Council’s UDP
“Imp 13	When dealing with development proposals, the Council will seek to secure benefits for the community through legal agreements in direct relation to the nature and scale of the proposed development, to its effect on the character of the area and to its likely impact on local infrastructure, facilities and services.”

The SPG also contains a list of the ‘items’ that the Council may seek to provide through S106 agreements. These include:

- “environmental improvements such as tree planting, works to privately owned land (including social housing areas)”; and
- “creation, enhancement or protection of nature conservation sites, natural features, trees or other sites”.

The Council seeks S106 agreements on ‘major developments’, which it defines as being those that comprise: 10 or more residential units; or 500m² or more of office space. As part of these agreements, the Council seeks a contribution of between £500 and £5,000 which is put towards funding the implementation of the Islington Biodiversity Action Plan. These contributions are sought over and above any on-site provisions that may be made for biodiversity and are used to ensure that new developments make a positive contribution to the biodiversity and sustainability of the Islington area.

This system has been in operation since early 2004 and, in its first 18 months has secured funds from 90% of ‘major developments’. This has led to a commitment of over £40,000 being agreed to, with between £10,000 and £12,000 having already been received.

The contributions are pooled by the Council and distributed by its Ecology Manager, who is in charge of delivering the LBAP. The Council absorbs the administration costs to ensure that all of the contributions are spent achieving genuine nature conservation and green infrastructure gains within the Borough.

Recent improvements that have been funded through S106 agreements include the development of green infrastructure in the Angel area where funded works include replanting, repaving, re-levelling, and removing existing walls at public gardens in the area. Of the £316,000 required for this work, £56,000 has already been secured. Furthermore, as part of City Road Basin redevelopment, it is intended that a range of works to benefit the nature conservation interest of the basin be funded through S106 agreements. The aim is to improve the nature conservation interest of the canal basin to Local Nature Reserve standard.

In addition, as part of the series of S106 agreements for the new Arsenal stadium development there are requirements for several areas of open space to be created or extended.

For one of these areas, an annual maintenance grant of £4,000 is to be paid to the council and there are further requirements for “environmental improvements” at two additional sites: up to £150,000 in the Aubert Court area and up to £350,000 in the Piper Close/Ringcross estate area.

The Council considers waiving the contributions for developments that make a positive contribution. The example given in the questionnaire related to developments that incorporate green roofs. The Council’s planning officers and ecologists are keen to encourage the provision of green roofs within the Borough and have included them in the Council’s SPG on ‘green construction’.

It considers that using incentives to get agreements from developers to install green roofs as part of the initial construction is more cost-effective than seeking to get them built in at a later stage.

3.3.6 The National Forest

Contact: Simon Evans (Chief Officer, Land Use)

The National Forest was conceived by the former Countryside Commission in 1987. It proposed that a forest, on a similar scale to the New Forest, should be created in the centre of England to demonstrate the benefits that trees, woodland and other natural areas can offer to local communities. Covering 200 square miles of Derbyshire, Staffordshire and Leicestershire, the National Forest links the remnants of the ancient forests of Charnwood and Needwood. It includes a variety of landscape types including areas of farmland, former coalfield and mineral workings.

The National Forest is recognised in *PPS 7: Sustainable development in rural areas* and the Regional Spatial Strategy for the East Midlands (RSS 8) includes a policy reference to the National Forest (see Box 3.6).

Box 3.6 Regional Spatial Strategy For The East Midlands (RSS 8)

“Policy 29 Regional priorities for woodlands

A regional target for increasing woodland cover local authorities, environmental agencies, developers and businesses should help to create new areas of woodland to meet a regional target of an additional 65,000 hectares of tree cover by 2021. Opportunities include the National Forest, Sherwood Forest, Greenwood Community Forest, and other forest initiatives.

Preference should be given to native species. Ancient woodlands and other woodlands of acknowledged national and regional importance should be protected through development plans and local development frameworks.”

The National Forest Company recognises the importance of the planning system in delivering significant gains for landscape and biodiversity. As such, they established a Planning Working Group, which is attended by Chief Officers of the local authorities included within

the National Forest. This group developed a series of planting guidelines, which were included in the first National Forest Strategy, published in 1994. Since then, the guidelines have been revised for inclusion in the new Strategy, published in 2004 (see Box 3.7).

Box 3.7 National Forest Strategy: Revised planting guidelines	
Development category	Proposed new planting guideline
Housing developments	
■ Sites under 0.5 ha.	■ Normal landscaping, appropriate to the site's setting.
■ Sites over 0.5 ha.	■ 20% of the development site area to be woodland planting and landscaping; either on-site or near to the development.
Industrial, commercial and leisure developments	
■ Sites under 1 ha.	■ Normal landscaping, appropriate to the site's setting.
■ Sites over 1 ha.	■ 20% of the development site area to be woodland planting and landscaping; either on-site or near to the development.
Road schemes	
■ New routes	■ Aim to achieve well-wooded settings with planting adjoining the road and off-site. Levels of planting will depend upon the scale and impact of the development.
All development schemes	<ul style="list-style-type: none"> ■ In exceptional circumstances if the planting guidelines cannot be met, a commuted sum should be paid. This will be at a guideline rate of £10,000 per hectare of the gross development area. ■ This will go towards the cost of buying land, planting new woodland, creating public access to it and maintaining the site for at least 5 years.”
Source: <i>National Forest Strategy 2004 - 2014</i>	

All eight of the District/Borough Councils and the three County Councils within the National Forest have adopted policies within their Development Plans that are based around the guidelines set out in the National Forest Strategy, as discussed above. An example, from the Hinckley and Bosworth Local Plan, is shown in Box 3.8. These policies act as both enablers (giving a local authority policy backing when seeking contributions from developers) and reminders (prompting local authorities that they should be seeking such contributions). Some local planning authorities have also adopted Supplementary Planning Guidance (SPG) that sets out the detail of requirement for habitat creation and a list of the schemes on which contributions would be spent.

Box 3.8 National Forest policy from Hinckley and Bosworth Local Plan

“Implementation of planting and landscaping schemes within the national forest

5.23.3 Where situations exist where it is not possible to provide planting adjacent to the development site, the Borough Council will seek to negotiate off-site planting, where appropriate. In exceptional circumstances, if developers are unable to provide an appropriate level of planting the Local Planning Authority will consider the provision of a financial contribution. This would be equivalent to the cost of planting and a five year maintenance period, to be paid into an off-site planting fund for use within the designated area of the forest.

5.23.4 POLICY NE23 - Implementation of planting and landscaping schemes for approved new development in the national forest.

The borough council will secure the implementation of planting and landscaping schemes for approved new development in the national forest by means of conditions or the negotiation of a planning obligation agreement or a combination of those measures appropriate to the individual circumstances of the application. The measures may include, as appropriate:

- a) The means and time scale for implementation;
- b) The nature of any obligation in respect of off-site planting;
- c) Details for the payment of a commuted sum in lieu of planting.”

Source: Anon (2000). *Hinckley and Bosworth Local Plan*. Hinckley and Bosworth District Council

The National Forest Company has indicated that this approach has been most successful with housing developments, development based on tourism end-uses and minerals developments. There has been less success in seeking contributions from commercial developments, where the benefits of enhanced landscape and biodiversity may be less apparent to the applicants. However, in the 11 years that the scheme has been running, the National Forest Company estimates that approximately £1.25 million has been raised for habitat establishment and management works. This has resulted in the creation of 150ha of new habitat over 11 years. It should also be noted that this figure excludes habitat restoration following minerals development, which has been estimated to have provided over 5,000ha of restored habitats.

The collection, administration and delivery of developer contributions are mostly dealt with by the relevant local planning authorities, who update the National Forest Company at the six-monthly Planning Working Group meetings as to the amounts received and what works have been delivered. However, in some instances the National Forest Company holds funds itself, to deliver specific projects or sometimes pools contributions with funding from other sources to acquire land.

As National Forest gains are delivered through 11 different local planning authorities, there is some variation in implementation across the Forest area. In particular, the National Forest Company has noted that some authorities are willing to deliver projects that are geographically separated from the funding development, while others work within a “tight envelope” to ensure that benefits are delivered in the immediate vicinity of the development.

The National Forest Company has produced *A Guide for Developers and Planners*¹⁶, which sets out what contributions will be sought, when they will be sought and provides case studies of where they have successfully been implemented.

When asked for feedback as to the factors behind the success of the scheme, the National Forest Company stated that the key to an approach such as theirs is not just to rely on the policy framework, but to keep an active role in monitoring the planning applications within their area to advise local planning authorities about the applications where gains should be sought.

¹⁶ Anon (2005). *A guide for developers and planners*. The National Forest Company

4 Review of proposals for non-negotiated planning obligations

4.1 Rationale

As discussed in chapter 2, it should be the aim of the planning system to:

- minimise the impacts that development has on the nature conservation resource through the avoidance, reduction or compensation of significant effects; and
- make a positive contribution to the delivery of wider nature conservation gains.

Therefore, it is important that any reforms to the mechanism of planning obligations are able to achieve these two objectives.

The following section reviews the feasibility of different forms of planning obligation for use in delivering these two objectives. A sequential test was used to first consider whether each mechanism (eg PGS or OPC) can meet the two nature conservation objectives set out above. For mechanisms that meet the first test, a second consideration was whether it would meet the tests set out in Circular 05/2005 and achieve the Government's goals of:

- providing greater transparency, predictability and accountability;
- promoting flexibility to meet the needs of sustainable communities; and
- reducing delays.

At each stage of the sequential process, if a mechanism failed a test, consideration was given to whether it could be modified in such a way as to meet the criteria necessary to pass. If a mechanism could not meet both of the tests, it was not considered to be appropriate to be taken forward as a preferred option for further development.

4.2 Planning gain supplement and a 'scaled back' S106

4.2.1 Background

In April 2003, the Treasury and the ODPM set up a review of "issues underlying the lack of supply and responsiveness of housing in the UK". In particular, it was tasked with considering: the role of competition, capacity, technology and finance in the house-building industry; and the interaction of these factors with the planning system and the Government's sustainable development objectives.

The resulting report, (which is commonly referred to as the 'Barker Review' after its author, Kate Barker) was published in March 2004 and contains of the following recommendations concerning the capture of development gains:

- "Section 106 should be 'scaled back' to the aim of direct impact mitigation and should not allow local authorities to extract development gain over and above this..."; and

- “Government should impose a Planning-gain Supplement on the granting of planning permission so that landowner development gains form a larger part of the benefits of development”.

The central idea is that S106 agreements are solely used to mitigate or compensate for the effects of development. Any broader gains should be sought through a PGS which would be used to derive contributions from the profits accrued when planning permission is granted for the development of an area of land (see Box 4.1).

Box 4.1 Recommendation 26 of the Barker Review

“Government should use tax measures to extract some of the windfall gain that accrues to landowners from the sale of their land for residential development.

Government should impose a Planning Gain Supplement on the granting of planning permission so that landowner development gains form a larger part of the benefits of development.

The following principles might be considered:

- Information would need to be gathered as to the value of land proposed for development in each local authority. Sources of data could include actual transactions and/or Valuation Office Agency estimates as to the land prices in various local authority areas.
- Government would then set a tax rate on these values. This tax rate should not be set so high as to discourage development, but at a rate that at least covers the estimated local authority gain from Section 106 developer contributions and provides additional resources to boost housing supply.
- The granting of residential planning permission would be contingent on the payment of the supplementary planning contribution of the proposed development.
- Government may want to consider the operation of a (substantially) lower rate for housing development on brownfield land, and the possibility of varying rates in other circumstances, eg for areas where there are particular housing growth strategies, or where other social or environmental costs may arise.
- A proportion of the revenue generated from the granting of planning permissions in local authorities should be given directly to local authorities. Government should also amend the operation of Section 106 planning obligations, as set out in Chapter 3, to take account of this new charge.
- The Government may want to consider allowing developers to pay their contributions in instalments over reasonable time periods so as to ensure that house-builder cash flow pressures are sufficiently accounted for.

The introduction of a tax would need to be accompanied by transitional measures to ameliorate the impact on developers already engaged in land sales contracts that were drawn up before this charge was introduced, or for those who hold large amounts of land already purchased, but where planning permission has yet to be secured.”

The Review also recommends that “Local authorities should receive a direct share of the development gain generated by the Planning Gain Supplement in their area, to compensate for a reduced Section 106. Local authorities should be free to spend this money as they see fit. This share should at least broadly equal estimates of the amount local authorities are currently able to extract from Section 106 agreements”.

Although minimal information on the structure and form of a PGS is provided in the Barker Review, it is Entec’s interpretation that the PGS is a charge based on the ‘uplift’ to the value of land that occurs when planning permission is granted for its development. It is intended to ‘capture’ a share of the development gains accruing to landowners so that increases in land values can benefit the community more widely. The PGS would be paid on realisation of the profits either through implementation of the planning permission or through the disposal of the land to a developer. As set out in the Barker Review, the intention is for the contribution obtained via a PGS to replace contributions which would otherwise be delivered through a negotiated S106 agreement, but are no longer possible in its ‘scaled back’ form. The local planning authority would then be able to use these contributions in whichever way they feel is most appropriate.

4.2.2 Environmental effects of the Barker Review

The Barker Review proposes that the ‘scaled back’ use of negotiated planning obligations (ie S106 agreements) should address only “direct impact mitigation and should not allow local authorities to extract development gain over and above this”. It should be recognised that the Barker Review, in which the concept of the PGS originates, is a report on housing supply. Therefore, the form of PGS presented in the Review has been developed solely for this purpose. Indeed, in paragraph 1.34 of the Review, Barker states that the review included “no attempt to estimate the overall cost for the environment or amenity”. As a result, no consideration was made of incorporating nature conservation (or other issues relating to the environment) in the PGS.

In 2004, Entec led a team which undertook a review for Defra of the environmental impact of increased housing supply¹⁷. The Barker Review was published towards the end of this study, too late to be subject to a detailed review. Subsequently, Defra and ODPM have let a contract to undertake a full review of the environmental impacts of the Barker Review. Once gain, Entec is part of the team delivering this project, which is not yet complete.

However, as part of the 2004 study, a short supplementary note was produced on the Barker Review, which included a brief consideration of environmental issues relating to its recommendations. In its summary, the note states that:

“The report gives scant consideration to environmental and sustainability issues, although it does recognise that environmental issues are important and need to be assessed. The report could have included much more about these aspects but instead focused on supply considerations.”

¹⁷ Entec UK Limited in association with Richard Hodkinson Consultancy and Economics for the Environment Consultancy (2004). *Study into the Environmental Impact of Increasing the Supply of Housing in the UK*. Department for Environment Food and Rural Affairs

It should also be noted that the Barker Review does not provide much in the way of detail regarding the financial structure or implementation of a PGS, but merely presents the concept as a recommendation for further consideration.

Wildlife and Countryside Link has stated that it is “particularly concerned that implementation of Barker’s recommendations will have significant impacts on a wide range of environmental assets, including landscape, biodiversity, water resources and the historic environment, especially in those regions subject to the greatest housing pressure, as well as contributing significantly to greenhouse gas emissions”. This concern is mirrored by other organisations (including English Nature).

As part of the Sustainability Appraisal of the Eastern England RSS¹⁸, attention was drawn to the pressures that increased housing development places on the environment. In particular, when reviewing the environmental policies of the Plan, it was considered that “rapid economic and housing growth may well threaten achievement of the [environmental] aims of many of these policies by increasing pressures which the policies seek to reduce”. Elsewhere, it was recognised that there is an imbalance in Eastern England between the demand for water and the amount that can be supplied. It was noted that the “lack of water availability is likely to be a major constraint to further development in the region. This influences not just water supply for people but also habitats and biodiversity”. In light of these conclusions, it can be seen that the Barker Review, which promotes a significant increase in the construction of houses, has the potential to have long-term effects on nature conservation, not only through the direct effects of land-take for development, but also in less direct effects such as water supply.

The Appraisal of the Eastern England RSS also identified that “habitat loss is slowing down nationally, but is generally still continuing. Further development would need to avoid, and ideally reverse, loss of sensitive habitats”. This conclusion supports statements included in PPS1 and PPS9. Therefore, if the findings of the Barker Review (including the creation of a PGS) were to be implemented, it is important that the policies surrounding this implementation (and any subsequent policies for housing supply) recognise the potential effects on nature conservation and act to remedy this through the promotion of mitigation, compensation and enhancement.

4.2.3 Can a PGS and ‘scaled back’ S106 meet the twin objectives for nature conservation?

The retention of a ‘scaled back’ form of negotiated S106 would still enable local authorities to address the case-specific issues relating to the avoidance, reduction and compensation of impacts on nature conservation on a site-by-site basis. This would provide a mechanism that could minimise the adverse impacts of development on nature conservation interests.

The PGS could then be used to capture contributions for achieving nature conservation enhancements, which might also redress cumulative impacts which can not be easily identified in a site specific assessment. PGS contributions could be used to provide a network of sites of nature conservation interest throughout developments that benefit both the natural environment and local communities.

¹⁸ Land Use Consultants and Levett-Therivel (2004). *East of England Plan: Sustainable Appraisal Report*. East of England Regional Assembly

If, as is stated in the Barker Review, local authorities were “free to spend [PGS] money as they see fit”, they would be able to contribute to local nature conservation priorities (as identified in their LBAP and LDF) that would benefit not only the natural environment but also local communities. Contributions from development could be pooled by a local planning authority and distributed in a manner that ensures that the local community is involved and that their nature conservation priorities are met. The case study of Ashfield Borough Council demonstrates a mechanism for this type of local delivery. In some cases, it is more efficient to deliver projects over a wider area that can include more than one local planning authority. These larger nature conservation projects, which would provide benefits for larger numbers of communities, would be most effectively delivered on a regional or national level. In these cases, the contributions would need to be administered via a system that operated at a higher level. These issues are discussed in more detail in chapter 5.

Based on the above, it can be concluded that the use of a PGS alongside a restricted form of S106 would allow for the case-specific tailoring of obligations to ensure the mitigation of the effects of development, while also providing a mechanism for securing contributions for nature conservation gains. As such, it meets the nature conservation objectives set out in section 4.1.

4.2.4 Does the use of a PGS and ‘scaled back’ S106 achieve the Government’s goals?

Transparency, predictability and accountability

The use of a ‘scaled back’ S106 agreement to address mitigation and compensation will provide greater certainty for developers entering into obligations. This is because developers will be able to take the lead in the calculation of the costs of the agreement, drawing on information about the effects of their development, and necessary mitigation/compensation measures, which they should have considered during the course of designing their scheme and preparing their planning application. This costed information could then be presented to the local planning authority for agreement before being written into the S106 agreement.

For securing wider nature conservation gains, local planning authorities would be expected to provide the lead as they should have identified the requirements for a PGS in their LDF¹⁹. This information, which will have been tested at the public inquiry into the LDF, should include guidance on:

- in what circumstances a PGS would be levied;
- at what rate it would be charged;
- in what circumstances would discounted or varied rates be charged;
- how and when would it be collected; and
- how PGS contributions would be used.

With regard to the information on the nature conservation enhancements that would be delivered through a PGS, PPS 9 requires that LDF documents “identify any areas or sites for the restoration or creation of new priority habitats which contribute to regional targets, and support this restoration or creation through appropriate policies”. This concept could be

¹⁹ Under the proposals set out in the Barker Review, local planning authorities should set out PGS rates in the LDF, together with information on the ways in which contributions are to be spent.

expanded so that LDFs are required to include information on specific projects and initiatives that contribute to local and regional targets.

With this information being publicly available, it should be possible for developers to predict the likely rate at which the nature conservation element of a PGS for their proposals would be set and what it would be used for. In this way, the processes of non-negotiated and as well as negotiated planning obligations are made more predictable. In addition, using this simplified and transparent approach makes it easier to ascertain accountability for different stages of the process.

However, predictability could be affected if the way in which local authorities set PGS criteria were to be inconsistent. Given that there are approximately 400 planning authorities in England, there is the potential for 400 different ways of implementing a PGS. If this resulted in significant inconsistencies in when a PGS was levied or the rates that were used, patterns of development could be affected in unexpected and undesirable ways as developers seek out the local authorities that will give them the ‘best deal’. In addition, variation in PGS criteria would be likely to result in variation in the benefit of PGS contributions for nature conservation. In order to avoid this, it is important that the Government put measures in place to ensure consistency in the implementation of a PGS across the country.

Flexibility

The Barker Review suggests that “Government may want to consider the operation of a (substantially) lower [PGS] rate for housing development brownfield land, and the possibility of varying rates in other circumstances, eg for areas where there are particular housing growth strategies, or where other social or environmental costs may arise”.

The ability to vary rates depending on the type or location of a development provides a level of flexibility to identify local priorities and recognise the relative value of development to the local community. However, it should also be noted that the use of brownfield land as an example in the Barker Review raises an issue about the relative value of brownfield land for biodiversity. This will be discussed in greater detail in the next chapter.

Reducing delays

The use of a PGS and ‘scaled back’ S106 could reduce the time and expense that local authorities incur in negotiating detailed S106 agreements. By providing a more transparent system, the calculation of PGS values from rates published in the LDF will be simplified and can be achieved without the need for negotiation. In addition, by ‘scaling back’ the use of negotiated obligations to solely address mitigation and/or compensation, it will be more apparent what is required from a negotiated obligation in advance of discussions being held between the applicant and the local planning authority. This reflects the expectation that mitigation and compensation measures should have been identified by the developer prior to submission of the planning application. This should significantly reduce the time required in drawing up negotiated planning obligations.

Circular 05/2005

At this stage, it is not clear how a PGS would be implemented. However, it is possible that it would be considered to be a new form of planning obligation and, if this were to be the case,

consideration needs to be given as to whether it would meet the requirements in Circular 05/2005. The Circular states that planning obligations should be “directly related to the proposed development”. Therefore, if PGS contributions were collected in one geographic area but used to deliver gains in another (either within the same planning authority or across a wider area), it could be seen as breaking the link between development and contribution. While this is only one way in which PGS contributions could be distributed, the result would be that the concept of a PGS for nature conservation would no longer meet the tests set out in the Circular, if it were set up specifically for the purpose of obligations.

4.2.5 Is there scope to modify the PGS/S106 proposals to meet the Government’s aims?

The introduction of the PGS and the accompanying revision to S106 agreements would be a significant change to the planning system. Therefore, it is likely that new guidance would have to be issued by the Government to all local planning authorities. The production of new guidance would present an opportunity to include wording which would allow for the use of contributions in areas that are not directly geographically related to development.

It would, however, not be appropriate to give local authorities *carte blanche* to spend contributions without any form of oversight or scrutiny. One of the ways in which a local authority’s use of contributions could be framed would be through the use of its LDF. As has been discussed above, local planning authorities should be required to provide policies and supporting information for the use of planning obligations as part of their LDF. This should include information on the ‘items’ (eg projects, initiatives, partnerships) that would be funded by PGS contributions. This would provide a framework for the use of PGS contributions that could be publicly tested when the LDF is subject to Public Inquiry prior to adoption. In this way, it can be ensured that the nature conservation items funded by the PGS are both reasonable and beneficial.

By requiring the inclusion of PGS information in the LDF, Government could then include a revised set of tests for planning obligations in any new guidance Circular. The tests could be amended to require planning obligations to be directly related to the development plan, rather than the development itself. In this way, the use of obligations is relaxed but still contained within a tested framework. In addition, the new guidance could allow for a proportion of the development contributions to be pooled for administration on a regional or national level. This would allow for the delivery of cross-boundary projects that may not be included in the LDF of a local planning authority.

4.2.6 Conclusion

Table 4.1 summarises the findings of the above analysis in the form of a SWOT (Strengths, Weaknesses, Opportunities and Threats) analysis of the use of a PGS for nature conservation. It can be seen from the SWOT analysis that a combination of a PGS and a ‘scaled back’ negotiated planning obligation would meet the twin nature conservation requirements set out in section 4.1. In addition, if new guidance were introduced to allow for its use, a PGS could meet the Government’s goals for a more transparent and efficient system of planning obligations.

Table 4.1 SWOT analysis of the PGS approach to planning obligations

Strengths	Weaknesses
Retention of negotiated planning obligations allows for case-specific measures to mitigate/compensate the effects of development.	The use of planning obligations to fund gains in areas away from the development may not meet current Government tests as set out in Circular 05/2005.
The use of a PGS provides a mechanism to capture contributions for broader nature conservation gains.	
The PGS approach uses LDFs to set out policy on its use, the rates at which it would be charged and how contributions would be used. The publication of criteria would result in increased transparency and predictability.	
Different PGS rates could be used to recognise the differing nature of sites and to incentivise certain types of development.	
The use of a simplified negotiated planning obligation and a pre-set PGS should reduce the time and cost involved in agreeing obligations.	
Opportunities	Threats
In the form set out in the Barker Review, the PGS does not include provision for nature conservation. There is an opportunity to work with the Government to guide the inclusion of nature conservation (or other environmental) enhancements into the implementation of any PGS-based approach.	If rates are not set correctly, nature conservation may not receive a sufficient proportion of development contributions to provide meaningful gains.
It is likely that revisions to Government guidance would be required to enable the use of PGS. This presents an opportunity to introduce policies to enable the use of contributions in areas geographically separate from the development site.	
	If mechanisms are not established for the delivery of enhancements for nature conservation, it is possible that PGS contributions would be channelled to other issues.
	The introduction of a new ‘development tax’ is likely to result in strong opposition from developers and other groups.

4.3 Use of an Optional Planning Charge

4.3.1 Background

In 2003, the ODPM published a consultation paper *Contributing to sustainable communities*¹¹, which introduced the idea of “a new optional planning charge that would be an alternative to traditional negotiated planning obligations”. It was proposed that “where a developer would prefer the greater speed and certainty of a non-negotiated planning obligation they will have the option of paying a fixed charge”. However, should they prefer to negotiate the type and scale of their contribution, they will still be able to use a negotiated S106 agreement.

The Government considers that the non-negotiated OPC would provide developers with the opportunity to avoid lengthy (and potentially costly) negotiations and provide contributions based on a series of fixed ‘costs’ or rates. These rates would be used by local planning authorities to secure the same range of contributions as the established system of negotiated S106 agreements, but the amount would be set in advance by the local planning authority.

By operating this ‘either/or’ approach to planning obligations, the Government hopes to retain the flexibility to address more complex cases while providing a swifter option for more straightforward applications.

4.3.2 Can the OPC approach meet the twin objectives for nature conservation?

The OPC approach is based around the developer being given two options: a negotiated planning obligation or a non-negotiated one. Therefore, it is necessary to consider each of these options.

Negotiated planning obligations

Local authorities are already able to use negotiated planning obligations (in the form of S106 agreements) to ensure that the effect of developments on the natural environment is mitigated or compensated for. Although not all authorities presently use S106 agreements, the case studies from Oxfordshire, Huntingdonshire and Needingworth Quarry demonstrate that, where used correctly, they can deliver significant nature conservation benefits. In addition, negotiated S106 agreements can be used successfully to obtain significant contributions for nature conservation enhancement outside of development sites (as demonstrated by Ashfield District Council, Islington Council and the National Forest Company).

Concern was raised at the project discussion session that, with developers being given the option of a non-negotiated charge as an alternative to a negotiated agreement, securing these enhancements would not always be possible. In the case of sites protected under the Habitats Regulations²⁰ (eg Special Areas for Conservation and Special Protection Areas), if measures cannot be secured to ensure that there will be no adverse effects on the integrity of European sites, any resulting planning consent would be in breach of UK and European legislation. Therefore, in these cases the developer could not be given the option of using an OPC.

Non-negotiated planning obligations

The 2003 consultation paper states that “where a developer has chosen to pay the charge rather than negotiate the scale of contribution, they should not be asked to make additional contributions through a conventional negotiated agreement”. The Government acknowledges that, as a result, “the charge would be less flexible than a negotiated planning obligation as it could not be tailored to the needs of the proposed development”. This is because it would be based on a pre-determined set of rates.

Operated on this basis, the OPC could generate financial contributions for nature conservation enhancement measures and may provide sufficient resources for necessary mitigation and compensation measures. However, an OPC has the potential to adversely affect the ability of planning authorities to properly mitigate or compensate for the case-specific effects that individual developments can have on the natural environment.

²⁰ *The Conservation (Natural Habitats, &c.) Regulations 1994*

These concerns are reflected in consultation responses to *Contributing to Sustainable Communities*. English Nature questioned whether, “if the tariff payments are to be set so as not to deter developers, how can we be satisfied that the payments which result are adequate to mitigate for the impacts?” Furthermore, the Countryside Agency considered that “a standard charge will not be able to provide the flexibility needed to respond to local circumstances, meet local needs or contribute in a positive way to local distinctiveness”.

It is considered that the OPC does not provide sufficient certainty that the effects of a development on the natural environment could be adequately mitigated/compensated. Therefore, it cannot be shown that the OPC approach will meet the twin nature conservation objectives of delivering mitigation/compensation measures and enhancements for the natural environment.

4.3.3 Is there scope to modify the OPC proposals to meet the nature conservation aims?

Paragraph 39 of the consultation implies that local authorities would be responsible for setting the rate of an OPC in their area. It states that “the charge could be set at different levels for different types of development - such as brownfield and greenfield development or for residential and commercial development”. Therefore, it may be possible to extend the level of differentiation to identify the nature conservation features that may be affected by development and derive a ‘menu’ of rates. This menu could be used to calculate the cost of mitigation/compensation measures for a development.

However, such a system would be very complex and time-consuming to produce and implement. Therefore, its feasibility is extremely limited, as reflected in the RSPB’s response to the 2003 consultation (see Box 4.2).

Box 4.2 RSPB response to the use of formulae in calculating contributions

“The RSPB does not believe that it will be possible, or desirable, to create formulae for contributions in cases where mitigation or compensation is required because of impacts on designated nature conservation sites or protected species. The scale of contribution will be entirely case specific - in order that the impacts of the proposed development on the environment are ameliorated fully, and cannot be generalised. The formulae approach should therefore be limited to contributions towards specific types of non-environmental impact - such as providing additional infrastructure or educational capacity, or progressing the objectives of the local BAP.”

Source: RSPB response to 2003 consultation

Therefore, it is considered that it is not possible to modify the use of an OPC-based approach to meet the twin aims for nature conservation as set out in section 4.1.

4.3.4 Conclusion

As summarised in the SWOT analysis in Table 4.2, the use of an OPC-based approach to planning obligation would not adequately deliver the mitigation/compensation necessary to prevent significant nature conservation losses because a fixed rate of OPC would not provide the flexibility needed to address the variety of case-specific nature conservation issues that

can arise in a development proposal. Having failed the first sequential test, it was also found that it is not possible to amend the mechanism to create a version that allow it to meet the nature conservation goals set out in section 4.1.

Table 4.2 SWOT analysis of the OPC approach to planning obligations

Strengths	Weaknesses
Retention of the option of using negotiated planning obligations allows for case-specific measures to mitigate the effects of development, where an OPC is not chosen.	<p>If an OPC is chosen instead of a negotiated obligation, the ability to address case-specific nature conservation issues is lost. This could mean that the effects of development on nature conservation interests cannot be properly mitigated. This would result in the potential for large scale nature conservation losses that would threaten the achievement of LBAP and UK BAP targets.</p> <p>It is not possible to satisfactorily modify the mechanism to meet the needs of nature conservation.</p> <p>Local authorities would have no say in whether a negotiated or non-negotiated planning obligation is used for a development.</p>
The use of an OPC provides a mechanism to capture contributions for broader nature conservation gains.	
The OPC provides flexibility for the developer.	
The OPC approach meets the Government’s goals of increasing transparency while reducing the cost of planning obligations.	
Opportunities	Threats
It is likely that revisions to Government guidance would be required to enable the use of an OPC. This presents an opportunity to introduce policies to allow local planning authorities to veto the use of OPC where it is not appropriate.	<p>The use of an OPC presents a significant threat to the ability of local authorities and nature conservation organisations to avoid/mitigate the effects of development on nature conservation.</p> <p>If rates are not set correctly, nature conservation may not receive a sufficient proportion of development contributions to provide meaningful gains.</p>

Therefore, it is considered that the use of an OPC-based approach is not suited to the delivery of nature conservation gains.

4.4 Use of PGS together with a choice of S106 or OPC

4.4.1 Introduction

It may be possible to implement both approaches alongside one another. The PGS element would remain unchanged. However, whereas the approach discussed in section 4.2 included a ‘scaled back’ form of S106, it may be possible to replace it with the either/or approach of the OPC. In this way, the developer would retain the choice over the type of obligation used to address mitigation and compensation, while a PGS would be used to fund nature conservation enhancements.

4.4.2 Can the use of a PGS with a combined S106/OPC meet the twin objectives for nature conservation?

While the PGS element may be suited to gathering contributions for nature conservation enhancement, the problems of flexibility associated with the OPC would still be relevant. Therefore, it could not be demonstrated that a combined approach would reliably secure the avoidance, reduction and compensation of the effects of development.

4.4.3 Is there scope to modify the use of a PGS with a combined S106/OPC to meet nature conservation aims?

As discussed in section 4.3.3, the only way to provide sufficient flexibility to the OPC is through a complex series of rates which have been identified as being unlikely to achieve the desired outcomes.

4.4.4 Conclusion

In combining the use of a PGS with a choice of S106 or OPC, the benefits of the PGS are not sufficient to counter the significant problems relating to the use of an OPC for nature conservation. It is also likely that such a hybrid would lead to greater confusion and uncertainty. Therefore, it is not considered feasible to use such a combined approach to achieve nature conservation gains.

4.5 Effects of different approaches on the viability of case studies

In chapter 3, six case studies were used to demonstrate the different ways in which S106 agreements are being used to fund nature conservation gains. This section seeks to determine whether each of these six examples could meet the requirements set out in Circular 05/2005 and the two proposed mechanisms for non-negotiated planning obligations.

4.5.1 Circular 05/2005

The key issue under Circular 05/2005 is the retention of the requirement for planning obligations to be “directly related to the proposed development”. It could be argued that the creation of Barford Road Pocket Park in St. Neots was part of the public open space provision for the nearby Wimpey Homes housing development and, therefore, directly related to it. The same could be true for Needingworth Quarry where, although the establishment and management of the RSPB nature reserve is an enhancement of a site previously used for agriculture, the resulting site is a direct result of the restoration of the Hanson Aggregates minerals operation.

It is harder to justify that the cases studies from Ashfield District Council, Islington Council and the National Forest are directly related to individual developments as they involve the pooling of contributions for the delivery of nature conservation gains. However, in all three cases the relevant local authorities have ‘enabling’ policies in their development plans. Therefore, it could be argued that meeting these policies was “necessary to make the proposed development acceptable in planning terms”, which is one of the tests set out in Circular 05/2005.

Oxfordshire County Council’s Lower Windrush Valley Project combines the restoration of minerals sites for nature conservation (which is directly related to development) with off-site

enhancements such as the ‘Windrush Path’ and employing a project officer. However, once again, the Oxfordshire Minerals and Waste Local Plan includes an enabling policy. Therefore, it could be argued that those contributions that are not directly related to a development would be necessary to make the application acceptable in policy terms.

4.5.2 Planning Gain Supplement

Under the PGS proposals, a ‘scaled back’ form of negotiated planning obligation could be used to secure measures required to mitigate/compensate for the effects of development, but could not be used for contributions over and above this. Therefore, in the case of Barford Road Pocket Park, the project is directly related to mitigating the effects of development and the establishment and initial maintenance of the park could be secured through the ‘scaled back’ obligation. However, in the absence of firm guidance, it is possible that the long-term management of both of these sites, including the employment of staff, would constitute measures over and above those required to mitigate effects of development. If this were to be the case, the ongoing costs could be funded via PGS contributions.

The pooling of contributions in Ashfield, Islington and the National Forest is ideally suited to a PGS, while the Lower Windrush Valley Project and Needingworth Quarry could use a combination of the ‘scaled back’ obligation and the PGS to deliver their combination of restoration and enhancement.

4.5.3 Optional Planning Charge

As discussed above, the success of the OPC approach in delivering mitigation for nature conservation would be dependant on whether the developer chose a negotiated obligation or an OPC. Negotiated obligations could be used to deliver all six of the case studies (as discussed in section 4.5.1). If the developer chose to use the OPC, the local rates in Ashfield, Islington, the National Forest and the Lower Windrush Valley could be set so as to include a provision for nature conservation contributions.

However, if the developer did opt for an OPC it is unlikely that a pre-set rate (or limited range of rates) could adequately address the mitigation/compensation requirements of the Barford Road, Needingworth or Lower Windrush Valley case studies. Given that an OPC is likely to be attractive to developers and, as currently proposed, local authorities are not able to veto its use, it is likely that these three case studies could not be delivered under the OPC proposals.

4.6 Recommendation

From the information above, it can be seen that, especially given the new advice in Circular 5/05, the proposals set out in the Barker Review for the use of a PGS alongside a restricted form of negotiated planning obligation provide the most suitable mechanism for minimising the effects of development on nature conservation interests while also providing contributions for the delivery of nature conservation gains outside of development sites. A ‘scaled back’ negotiated planning obligation would be used to ensure that there is no net loss to nature conservation by securing any necessary mitigation or compensation measures, while the contributions from a PGS would be used to deliver nature conservation gains. These gains would not only enhance the nature conservation resource, but would also have the potential to

deliver benefits to the health and wellbeing of communities that come from access to wildlife-rich open space.

The OPC approach does not guarantee the level of flexibility needed to properly address the case-specific issues relating to nature conservation.

5 Implementation

5.1 Setting rates for a Planning Gain Supplement

There are three main issues relating to nature conservation and the setting of PGS rates:

5.1.1 At what rate should the PGS be set?

Possibly the most important issue that will affect how a PGS is received by developers and nature conservation organisations alike is what proportion of the profits from a development should go to the PGS. Unfortunately, the Barker Review does not include any indication of the level at which a PGS would be set or provide formulae demonstrating how it would function. Given the absence of information and the early stages of development, the use of any economic models for the inclusion of nature conservation in a PGS is speculative. As a result, it is beyond the scope of this project to develop a detailed financial model of the implementation of a PGS. However, it is possible to address the issues that should be considered in the incorporation of nature conservation enhancements in the setting of PGS rates.

5.1.2 How would the PGS rate vary to reflect different types of site?

As described in the Barker Review, there is the option within the PGS to set different rates to reflect the type of development and the development site. One of the examples given in the Review was the use of brownfield land. However, this raises a common problem with regard to the nature conservation value of previously developed land. In terms of housing and regeneration, brownfield land is often perceived as degraded and in need of reclamation. Therefore, its development is usually perceived as being as beneficial to the local community. However, brownfield land, particularly those areas that have been ‘derelict’ for some time, often have a high value for nature conservation. This is particularly so in urban areas, where post-industrial sites can represent oases for wildlife in an otherwise inhospitable landscape.

The UK BAP includes a habitat statement for urban habitats²¹ which includes a definition of the types of habitats covered. These include “naturally seeded urban areas or industrial sites such as demolition sites, disused railway lands or unexploited industrial land” which it describes as having the potential to be “particularly rich in species, often reflecting the complex mixture of features”. PPS9 recognises the potential for brownfield sites to support wildlife, stating (in paragraph 13) that “where [brownfield] sites have significant biodiversity or geological interest of recognised local importance, local planning authorities, together with developers, should aim to retain this interest or incorporate it into any development of the site”. Therefore, any proposed lower rate for brownfield development would need to exclude high value natural sites as defined in PPG3 and PPS9.

5.1.3 What proportion of the PGS fund would be used to provide nature conservation enhancements?

The Barker Review suggests that the PGS would be used to fund all those contributions that would otherwise have been funded through a S106 agreement. However, given the wide

²¹ Anon (1995). *Biodiversity: The UK Steering Group report - Volume 2: Action plans*. HMSO

range of different contributions that can be addressed through a S106 agreement, dividing the funds derived by the PGS between a large number of topics/issues would not be a simple task.

As stated in section 4.3.2, when local authorities prioritise their responsibilities, nature conservation is often afforded a lower priority than requirements such as housing supply, infrastructure and education. As a result, it is possible that nature conservation will ‘lose out’ in the setting of rates to the degree that the rates may actually be damaging to nature conservation interests. In order to avoid this, if rates were to be set at a national level, it would be possible for English Nature, RSPB and other partners to be active participants ensuring that the profile of nature conservation is maintained throughout the process.

However, in the absence of a national framework to guide the setting of rates, almost 400 local planning authorities would be required to set their own rates and the need to argue to priority of nature conservation would be required 400 times over. As has been demonstrated by the variation in commitment to nature conservation in Community Strategies, not all local authorities give nature conservation the level of priority it warrants. Therefore, it would be important for the Government to provide clear guidance to local authorities as to what they should be seeking to deliver through PGS contributions. This guidance should ensure that nature conservation is given sufficient weight in the setting of rates and the development of delivery mechanisms.

5.2 Using PGS rates to incentivise best practice for nature conservation

5.2.1 Background

The use of a PGS provides an opportunity to encourage the inclusion of best practice for nature conservation in the design and construction of new developments. This could be achieved by identifying developments that represent best practice for nature conservation (in terms of mitigation, compensation and enhancement) and ‘rewarding’ them with a lower rate of PGS contributions. This would provide a financial incentive to developers to incorporate best practice into the design and construction of their schemes.

At present, there are a number of mechanisms available to identify best practice in sustainable development (including nature conservation). The following sections review the three most relevant mechanisms and review how these might be used in relation to a PGS. Section 5.2.6 then considers the possible incentive effects of this approach.

5.2.2 Review of mechanisms

Building regulations

The *Building Act 1984* granted the Government powers to establish the Building Regulations for England and Wales. The majority of building works are required to comply with the Regulations, which are regularly updated to incorporate the latest standards.

Their purpose is to ensure that standards are applied to the construction of all types of building (ie domestic, commercial and industrial). The Building Regulations contain various sections which:

- define what types of building, plumbing and heating operations constitute ‘Building Work’ and are, therefore, subject to the Building Regulations;
- specify what types of buildings and/or operations are exempt from the Regulations;
- set out the notification procedures that are required when undertaking building work; and
- set out the requirements with which the building (together with its design and construction) must comply to ensure the health and safety of its users and to promote best practice.

The ‘requirements’ mentioned in the final bullet point are contained in Schedule 1 of the Buildings Regulations. They are divided into 14 groups or ‘Parts’ which range from structural matters through to hygiene (see Box 5.1). The requirements within each Part set out the broad objectives or functions that the individual aspects of a building’s design and construction must seek to achieve. They are often referred to as ‘functional requirements’ which are considered to be reasonable, adequate or appropriate. The requirements may not apply to every building, but it is the responsibility of those in charge of construction to ensure that all relevant requirements are met.

Box 5.1 Elements of the Buildings Regulations	
Structure	Combustion appliances and fuel storage systems
Fire safety	Protection from falling, collision and impact
Site preparation and resistance to moisture	Conservation of fuel and power
Toxic substances	Access to and use of buildings
Resistance to the passage of sound	Glazing - safety in relation to impact, opening and cleaning
Ventilation	Electrical safety
Hygiene	
Drainage and waste disposal	

BREEAM

The Building Research Establishment (BRE) is a commercial research organisation which specialises in construction, environment, fire and risk in the built environment, and certification of products and services. As part of this work it developed the Building Research Establishment Environmental Assessment Method (BREEAM). In use for over a decade, BREEAM can be used to assess the performance of buildings in the topic areas listed in Box 5.2.

Box 5.2 Topic areas assessed in BREEAM	
Management;	land use;
energy use;	ecology;
health and well-being;	materials;
pollution;	impacts; and
transport;	water.

The BREEAM methodology encourages the evaluation of buildings at the earliest stage (either during the design of new buildings or before the purchasing of existing ones for renovation). By addressing best practice at this stage, a developer should be able to incorporate measures and features that maximise its chances of achieving a high BREEAM rating for its building.

Within BREEAM, credits are awarded in each topic area (eg ecology) according to performance. A set of environmental weightings then enables the credits to be added together to produce a single overall score. A building is then rated on a scale of PASS, GOOD, VERY GOOD or EXCELLENT. The building can then be awarded a certificate confirming its performance.

BREEAM has been designed for use in evaluating a range of building types: offices; homes (known as EcoHomes); industrial units; retail units; and schools. Different evaluation criteria have been developed for each of these types of buildings and BRE also offers a bespoke form of BREEAM that can be used on other types such as leisure centres and laboratories.

Using domestic dwellings as an example, the BREEAM EcoHomes checklist includes five sections relating to ecology:

- Eco 1 - Ecological value of the site;
- Eco 2 - Ecological enhancement;
- Eco 3 - Protection of ecological features;
- Eco 4 - Change in ecological value of the site; and
- Eco 5 - Building footprint.

However, it should be noted that these five sections do not go into a detailed evaluation of ecological effects and do not address the full range of potential nature conservation issues relating to development.

The Code for Sustainable Buildings

In 2003 the Government established the Sustainable Buildings Task Group to identify how Government and industry could improve the quality and sustainability of new and refurbished buildings. In 2004 the Task Group reported back to ODPM, Defra and the Department for Trade and Industry (DTI)²². One of its recommendations was “that a single national Code for Sustainable Building (CSB) be established”. The intention that this code that could be used to promote and assess the inclusion of sustainable development best practice in new developments (see Box 5.3).

²² Anon (2004). *Better buildings - Better lives*. Sustainable Buildings Task Group

Box 5.3 Task Group rationale for the establishment of a national CSB²²

“2.5 The CSB would provide a single, coherent and consistent framework for industry, clients and the public sector to construct buildings with higher levels of environmental performance than those stipulated by regulation. The CSB would offer practical guidance and a means of measurement where standards higher than regulation are desirable or necessary. Building to a specified level within the CSB would be an indication of quality and sustainability.”

The Task Group recognised that the BREEAM methodology was already in use and suggested that it be used to form the basis of the CSB (see Box 5.4).

Box 5.4 Task Group rationale for the use of BREEAM as the basis for a CSB²²

“2.6 We have reviewed the range of existing standards and guidance and concluded that the framework and methodology of BRE’s BREEAM and EcoHomes offer the most practical and applicable basis for the Code. BRE has undertaken considerable development work on its standards, and Government has invested time and resource to enable it to do so. The model, under which BRE accredit inspectors rather than carry out appraisal directly, is capable of being rolled out relatively quickly, and we are attracted to the flexibility offered by BREEAM where points can be accumulated by meeting a range of sustainability criteria.

2.7 However, this flexibility is also a problem. At present it is possible to obtain, for example, a “Very Good” rating on the EcoHomes standard without necessarily achieving the improvements in resource efficiency which we wish to secure, because the points can be accumulated in other ways. If the BRE system is to form the core of the CSB then minimum standards in certain key areas must be specified, particularly resource efficiency criteria (energy and water efficiency, waste and use of materials).

2.8 The CSB will work by offering a series of levels as BREEAM and EcoHomes already do. While it will cover a range of criteria, including some qualitative ones, the resource efficiency criteria (energy and water efficiency, waste and use of materials) will advance in quantitative and verifiable steps from those set out in the Building Regulations. The base level of the CSB should be set marginally above those required under the Building Regulations and the highest level of the CSB would be current advanced practice. Thus some redefinition of the BRE standards will be necessary if it is to form the basis for the CSB.

2.9 Therefore, the Group recommends that the CSB be based on BREEAM and incorporate clearly specified minimum standards in key resource efficiency criteria (energy and water efficiency, waste and use of materials).”

In response to the Task Group’s report, the Government announced on 18 May 2004 that it had agreed to start work on investigating the possibilities for the development of a CSB. The Task Group was subsequently asked to develop the CSB with a target for completion of April 2006.

In its first progress report²³, the Task Group announced that “there has been some good progress on the Code for Sustainable Building, most notably the high level support by Government”. However, it goes on to note that “much work is still needed on the detail of

²³ Anon (2005). *Sustainable Buildings Task Group report: One year on*. Sustainable Buildings Task Group

the Code and Government will have to accelerate progress if it is to meet its target of April 2006”.

5.2.3 Opportunities for using assessment methods to provide incentives within a PGS

At present, there is no consideration of nature conservation best practice within the Building Regulations. Furthermore, the Regulations are a legal requirement of development rather than guidance as to what is desirable.

If a building does not meet the regulations, the developer may face prosecution. Therefore, in their present form, the Buildings Regulations are not suitable for use alongside a non-negotiated planning obligation (such as PGS) to incentivise best practice for nature conservation.

BREEAM

The BREEAM methodology is suited to use alongside a non-negotiated planning obligation to identify developments that embody best practice for sustainable development. However, at present its treatment of nature conservation is limited and, therefore, it would require additional work to be used to incentivise best practice for nature conservation.

The Code for Sustainable Buildings

The detail of the CSB is not yet known, as it is still being developed and is not expected to be delivered until April 2006. However, it is known that the BREEAM methodology is to form the basis for the CSB. Therefore, if the CSB can expand upon the ecological aspects of the BREEAM methodology to provide a more detailed measure of the ecological benefits from a building’s design and construction, it may be possible to use the CSB to identify developments which represent best practice for nature conservation. However, it cannot be assumed that nature conservation issues will be expanded in the CSB.

While the final detail of the CSB has yet to be agreed, it should be possible to use it to provide a series of thresholds or triggers that could be used to identify those developments that represent best practice for nature conservation under the Code. These developments could then be charged a lower rate of PGS in recognition of their contribution to sustainable development.

Such a system would be transparent, as it is based on existing, objective assessment procedures and would be straightforward to implement as qualifying developments could have their PGS rate reduced by a fixed percentage. This would not then affect any other form of rate differentiation that is used to recognise types of development (eg brownfield/greenfield).

Therefore, it is recommended that English Nature and partner organisations engage with the Sustainable Buildings Task Group to ensure that the developing Code fully incorporates nature conservation best practice in such a way as to be a useful tool in not only promoting sustainable development, but also measuring the sustainability of new development proposals.

5.2.4 Possible incentive effects

As discussed above, different PGS rates could be used to incentivise the use of best practice for nature conservation and sustainable development. They could also be used locally by planning authorities to encourage the development of certain areas or types of land. For example, in urban areas there is often a shortage of wildlife-rich greenspace. The local authority could identify the areas of greatest need in its LDF. This would be accompanied by a policy stating that development in these areas which provide a certain proportion and standard of greenspace will be subject to a reduced PGS. This would provide an additional mechanism for local authorities to drive development that benefits the wider community and developers would see the financial benefit of meeting the needs of the community.

However, alongside the incentives that come from the use of a PGS, there are likely to be a number of disincentives. In the absence of guidance from the Government as to the final form of a PGS, the effects of its introduction on the development industry can only be guessed.

Consideration would need to be given to whether a PGS may result in increased house prices or landowners and/or developers seek to offset reduced profits. In addition, variations in rates between different local authorities may affect the pattern of development as developers seek out ‘cheaper’ areas. These issues require a level of consideration that is outside of the scope of this report.

It should also be recognised that PGS originates from a review of housing that did not seek to address nature conservation issues. Therefore, if, in developing the concept of a PGS, nature conservation was not adequately addressed, the benefits for the planning authority (in terms of housing supply) could be outweighed by the damage to the nature conservation resource of their local area.

5.3 Delivery of nature conservation enhancements

5.3.1 Types of nature conservation enhancements

The delivery of nature conservation enhancements through a PGS could occur on a number of spatial levels. However, rather than address every possible permutation of spatial delivery, this study has used the way in which local planning authorities are organised to derive two key spatial levels of delivery: local (referring to delivery within the local planning authority’s administrative boundaries) and regional/national delivery (where delivery is across multiple local planning authorities).

Locally delivered enhancement

By delivering PGS-funded nature conservation enhancements within the same geographic area as the development that contributed to the PGS, a clear link is made established. In this way, communities in which development occurs will also see the benefits. To ensure that enhancements benefit the greatest numbers of people, the local delivery of enhancements could be considered in the same way as public open space requirements are currently met through *PPG17: Planning for open space and recreation*. PPG17 includes provision for the use of “planning obligations where the quantity or quality of provision is inadequate or under threat, or where new development increases local needs”. PGS contributions could be used in

a similar way to ensure that all communities have access to areas of nature conservation value. Clear links have been established between access to green spaces and benefits for the health and well-being of communities, and the Government could use contributions from a PGS to promote the expansion of green infrastructure through urban and rural areas.

Alongside the direct nature conservation enhancements that could be delivered locally through a PGS, it would be possible to use PGS contributions in a manner that could generate proportionately greater (although less direct) benefits. For example, a significant factor in the delivery of LBAPs has been the employment of LBAP co-ordinators across the country. The roles of these co-ordinators vary, but usually include responsibility for: maintaining, supporting and developing local partnerships; and enabling them to maximise delivery by focusing resources on local priorities. In recognition of this important role, a proportion of the local contribution could be used to fund the employment of a LBAP Co-ordinator. The aim should be for every LBAP to have a dedicated co-ordinator with secure funding.

In most areas, English Nature fund 50% of the LBAP Co-ordinator costs²⁴ and Defra has secured funding for the provision of regional co-ordinators. Therefore, the shortfall is likely to be relatively small. However, the benefits for local authorities of having a LBAP Co-ordinator are considerable and the use of a small proportion of the PGS fund (potentially less than £5,000) to ensure this would be a good investment.

Regional and national enhancements

Locally delivered enhancements would provide for locally identified priorities which would, in turn, contribute to regional and national objectives. However, certain projects can be more effectively delivered at a wider spatial level. Such projects are likely to include those initiatives that cross district or county boundaries. This is of particular importance for the delivery of sub-regional projects or coastal/riverine projects that tend to include multiple local authority areas. An example of this is the On-Trent initiative, which is delivering projects along the River Trent corridor from Staffordshire through to the Humber. This initiative covers three different Government regions and six counties.

5.3.2 Delivery mechanisms

Local delivery mechanisms

The case study provided by Ashfield District Council shows how pooled contributions can be delivered on a local level in a manner that involves the community in deciding the priorities for action. The establishment of area-based consultation groups allows communities, supported by bodies such as the Wildlife Trusts, English Nature and RSPB, to identify the needs of their local area and decide the best ways to meet these needs.

Such an approach provides enhancements in the areas that are affected by development and also encourages greater community engagement in efforts to enhance their local environment. This can, in the experience of the Entec project team, be seen by developers as being beneficial in that the improvements are delivered in the vicinity of their development, which can be an attraction for potential purchasers.

²⁴ Pers. comm. Peter Brotherton, English Nature

Drawing upon the Ashfield example, the following would be one option for local delivery.

- 1 The local authority would establish a small number of area-based consultation groups. The spatial arrangement of the groups could be based on the main settlements within the borough, Natural Areas or another method. In some cases, such as small urban authorities, it may not be necessary to establish more than one group. Each group should have representation from nature conservation bodies to provide technical input.
- 2 Each area-based group would identify the key nature conservation priorities (and the associated benefits for the local community) within its area and actions needed to address these needs. This work should be guided by the nature conservation bodies, the LBAP and Regional Biodiversity Strategy.
- 3 The priorities and actions identified by each of the area groups would be published as part of the LDF. This would be in keeping with paragraph 5 of PPS9, which states that LDFs should “identify any areas or sites for the restoration or creation of new priority habitats which contribute to regional targets, and support this restoration or creation through appropriate policies”. Publishing the lists of priorities in this manner would increase transparency and allow developers to see where their contributions are to be spent.
- 4 Each year, the local planning authority would allocate a portion of the pooled contributions from the previous 12 months between the different areas. With this known budget, each area group could then decide which actions to fund and identify the best mechanism to deliver them.
- 5 The proposals from each area group would then be put before the local planning authority’s Members (either at Cabinet or a suitable Committee) for ratification. Once approved, the area-based projects would then be funded from the pooled contributions.
- 6 At the end of the year, the area-based groups would report back to the Council on the work undertaken that year.

The involvement of nature conservation bodies and links with LBAPs would provide an element of continuity between different District and Borough Councils, thereby providing greater consistency.

Where there is a two tier system, the County Council will only determine applications for minerals and waste development. Therefore, in order to minimise repetition of effort, any contributions held by the County Council could be devolved to the relevant District/Borough Councils for delivery.

Regional/national delivery

An example already exists of the national delivery of contributions derived from development to provide gains for sustainable development goals: the ALSF (see Box 5.5).

Box 5.5 The Aggregates Levy Sustainability Fund

The Aggregates Levy came into force on 1 April 2002. It is levied on primary aggregates (mainly sand, gravel and crushed rock) and is intended to bring about environmental benefits in areas affected by aggregate extraction. 10% of the money raised through the levy has been allocated by HM Treasury to finance the Aggregates Levy Sustainability Fund (ALSF). The objectives of the fund are:

- minimising the demand for primary aggregates;
- promoting environmentally friendly aggregates extraction on land and in the marine environment;
- promoting environmentally friendly transport of aggregates;
- compensating local communities for the impacts of aggregates extraction; and
- addressing the environmental impacts of past aggregates extraction.

As part of delivering these objectives, English Nature was selected as a major distributing body by Defra, which manages the ALSF. English Nature has so far allocated grants totalling £10.7million to more than 160 projects across England, where the aims are to benefit local communities and nature conservation. All of the projects focus on one or more of the following aims:

- contributing to the development and achievement of UK and Local BAPs;
- supporting the management of geological sites and facilitating improved interpretation;
- addressing the effects of old mineral planning permissions;
- enhancing access on sites for scientific study, education, recreation and tourism;
- building the capacity of communities to be involved in, contribute to, and benefit from their natural environment; and
- improving people's quality of life (especially those who have been affected by aggregate extraction activities).

A small percentage of the fund (7%) is used to cover the costs of administration, although English Nature also makes in-kind contributions in the form of technical support from its scientific staff.

The delivery of projects and initiatives at a regional or national level may be best delivered through a similar mechanism to the ALSF. The nature conservation element of the ALSF has been delivered by English Nature and has recently been combined with of the landscape element delivered by the Countryside Agency to create a broader nature conservation/landscape-based fund.

One option for the PGS would be to establish a central co-ordination unit (similar to that used for the ALSF) to administer the national/regional portion of the PGS nature conservation fund. This central unit would hold and pool contributions, which it would then distribute in the form of grants. Applications for these grants could be made by any party and would be judged by a panel drawn from English Nature/CA and partner organisations, to ensure the input of a range of viewpoints and interests.

By creating a centrally held and controlled fund, the administrative costs would be significantly reduced. In addition, it may be possible to fund administrative costs by using a small percentage of the pooled contributions.

An alternative to a single national body, would be to establish a number of regional co-ordination bodies to administer PGS contributions. However, while this would reduce the cost savings identified for a national co-ordination, it would not address the need to deliver national projects. Therefore, it is considered that a single national delivery mechanism would be more appropriate.

Nevertheless, it would be possible for such a national mechanism to deliver a regionally allocated fund. This could be delivered through a process of bidding by prospective projects and the drawing of grants from a regional allocation.

Whichever option is selected, the purpose of the fund should be to address the delivery of regional and national nature conservation objectives as set out in regional biodiversity strategies and the UK BAP. The delivery of these enhancements would be an important part of addressing the erosion of the wider nature conservation resource of the country that inevitably results from development. These projects, while delivered on a regional or national level, would provide diffuse benefits for large numbers of communities.

5.3.3 Conclusions

As discussed above, there are strengths and weaknesses associated with the local and regional/national delivery of nature conservation enhancement funded by a PGS (these are summarised in Table 5.1). Therefore, it may be appropriate to use both systems in parallel, with the funds captured by a PGS for nature conservation being divided between the local and national delivery mechanisms. Although it is not possible to fix these proportions at this stage, it is suggested that, in recognition of the large number of potential local projects, it may be appropriate a larger share of the fund be provided to local delivery mechanisms.

The focus on local delivery would have implications for the cost of administering contributions. However, the value of these projects for local communities would be significantly greater too. The use of this twin delivery approach would ensure that local needs can be met, while ensuring that funding is made available for projects across a wider spatial area.

Table 5.1 Pros and cons of local and regional/national delivery mechanisms

Local delivery	Regional/national delivery
Pros	Pros
Is suited to the delivery of small, locally co-ordinated projects.	Is suited to the delivery of large, cross-boundary initiatives.
Can be tailored to meet the specific objectives of the LBAP.	Could be tailored to address regional and national objectives as set out in Regional Spatial Strategies and UK BAP.
Encourages greater engagement of local communities.	Could be delivered by a single co-ordinating body.
Provides link between development and enhancement.	Promotes greater consistency in delivery.
The greater inclusion of communities could result in greater political support.	Significantly reduced administration costs.
PGS funds could be used to acquire further contributions (eg through match-funding).	
Cons	Cons
Is not suited to the delivery of large, cross-boundary initiatives.	Is not suited to the delivery of small, locally co-ordinated projects.
Requires delivery to be undertaken by all local planning authorities (up to 400 in total).	Would be harder to tailor to meet the specific objectives of individual LBAPs.
Potential for inconsistency in delivery between local authority areas.	Local communities are not involved in the decision-making process.
The overall cost of up to 400 delivery mechanisms would have significant cost implications.	Does not provide a link between development and enhancement.

5.4 Illustrative example

5.4.1 Background

To provide an illustration of the way in which nature conservation gains could be funded through a PGS, this study has used the housing allocations for the South West region between 1996 and 2016. It should be noted that this model has been used to illustrate the potential of a PGS for nature conservation rather than seek to propose a financial mechanism for its use. However, it does illustrate that the value of housing development is significant and, even if a relatively small proportion of the PGS were to be used for nature conservation purposes, it would have the potential to capture millions of pounds per year to contribute towards local, regional and national targets.

As an example, this model has mirrored the Aggregates Levy, where the ALSF is allocated 10% of the income from the Levy. Using this model, a potential division of PGS contribution is provided in Table 5.2. It should also be noted that, as yet, it is not known what proportion of the uptake in land value will be required for the PGS. Therefore, the illustrative models

provided in this section use two potential PGS rates 5% and 10% to provide examples of the potential contributions that could be derived.

Table 5.2 Possible division of PGS contributions

Contribution	Possible percentage of PGS income
Infrastructure and social(eg highways, drainage, education, health)	90%
Sustainability (eg nature conservation, landscape, cultural heritage)	10%

Of the 10% sustainability fund, a portion would be used for landscape and nature conservation projects. The size of this portion is open to debate. Discussions with the ALSF have indicated that the Aggregates Levy does not provide a fixed proportion for nature conservation each year. Instead, each year the allocations are reviewed and amended to address different issues. Therefore, it is not possible to use the ALSF as a direct model in this instance. In the absence of such a guide, a figure of 25% has been chosen (ie 2.5% of the total PGS).

The South West region has been used as the target area for the worked examples as it presents a range of conditions from the urban areas of Bristol where the costs of development land are high, to more rural areas where the house prices are lower, leading to a lower value of development land. In addition, data are available regarding long-term housing allocations and past increases in the value of the housing market. Regional Planning Guidance for the South West (RPG 10) provides for the construction of an average of 20,200 per year between 1996 and 2016 (see Box 5.6).

Box 5.6 Subdivision of the housing allocation for the South West region

(Source: RPG 10)

“Policy HO 1: Levels of Housing Development 1996 – 2016

The levels of net additional housing for which provision should be made in the region’s structure plan areas over the period 1996- 2016 should be based on the following average annual rates:

Dwellings per annum

Avon	3,700
Cornwall	2,050
Devon	4,300
Dorset	2,650
Gloucestershire	2,400
Somerset	2,100
Wiltshire	3,000”

The uplift against which a PGS would be levied is based upon the increase in land value following the granting of planning permission (ie on the profits from the sale of the land). In order to develop an illustrative model for the South West region, information was obtained from the Valuation Office Agency’s (VOA) property market report for January

2005²⁵, Tables 5.3 and 5.4 show the values of agricultural land and development land across England. It should be noted that the original VOA data includes values for hill-farms. However, these areas are unlikely to be suitable for development and their low value would skew the average values. They have therefore not been included in the model.

Table 5.3 English agricultural land values (as of January 2005)

Region	Agricultural land value (£ per hectare)			
	Arable	Dairy	Mixed	Average
North East	£5,681		£4,594	£5,138
North West	£5,434	£7,674	£6,864	£6,657
Yorkshire and Humberside	£8,769	£7,205	£7,452	£7,809
East Midlands	£6,869	£5,866	£5,187	£5,974
West Midlands	£7,709	£6,526	£6,405	£6,880
Eastern	£6,195		£5,886	£6,041
South East	£6,316		£6,284	£6,300
South West	£6,407	£6,368	£5,928	£6,234

Source: Valuation Office Agency

Table 5.4 English residential development land values (as of January 2005)

Region	Development land value (£ per hectare)			
	Small Sites	Bulk Land	Sites for flats or maisonettes	Average
North East	£2,340,000	£2,210,000	£2,650,000	£2,400,000
North West	£2,550,000	£2,520,000	£2,840,000	£2,636,667
Merseyside	£1,250,000	£1,120,000	£1,340,000	£1,236,667
Yorkshire and the Humber	£2,610,000	£2,320,000	£2,530,000	£2,486,667
East Midlands	£2,220,000	£2,010,000	£2,270,000	£2,166,667
West Midlands	£2,210,000	£2,120,000	£2,300,000	£2,210,000
Eastern	£3,100,000	£3,425,000	£3,750,000	£3,425,000
South East	£3,160,000	£2,960,000	£3,590,000	£3,236,667
South West	£2,490,000	£2,200,000	£2,790,000	£2,493,333
Inner London	£9,370,000	£7,800,000	£10,810,000	£9,326,667
Outer London	£6,280,000	£5,990,000	£7,340,000	£6,536,667

Source: Valuation Office Agency

From these figures, it can be seen that, in the South West region, the average value of agricultural land is £6,234 per hectare while the average value of residential development land is £2,493,333. Therefore, on average, the uplift in land value following the grant of planning permission in the South West is £2,487,099 per ha.

5.4.2 Worked illustrative example

Table 5.5 contains an estimate of the value of a PGS set at one of two rates: 10% of the uplift and 5% of the uplift. For each of these rates, the nature conservation contribution has been set at 2.5% of the total value of the PGS. This is based on 10% of the total value of the PGS being used for a sustainability fund and 25% of this fund being used for nature conservation gains.

²⁵ Source: www.voa.gov.uk/publications/property_market_report/pmr-jan-2005/index.htm

The number of hectares required for development each year in the South West region has been based on the Government's recommendation (in paragraph 58 of *PPG3: Housing*) that development should seek a minimum density of 30 dwellings per hectare. Therefore, to accommodate 20,200 dwellings per year, approximately 673 hectare of development land would be required.

Table 5.5 Illustrative examples of the use of a PGS for nature conservation in the South West

Basis for uplift	Number of hectares	Uplift	Total uplift (£M)	PGS of 10%		PGS of 5%	
				PGS (£M)	Nature conservation as 2.5% of PGS (£M)	PGS (£M)	Nature conservation as 2.5% of PGS (£M)
Land value	673	£2,487,099	1,673.82	167.38	4.2	83.7	2.1

Using the housing allocation from RPG 10, it is possible to estimate the financial value of nature conservation contributions from the two rates of PGS described above (ie 10% and 5%) for each of the counties (or former counties) in the South West region over the next 10 years (see Table 5.6).

Table 5.6 Illustration of PGS contributions for each county in the South West

County	Annual housing requirement	Nature conservation element of a PGS (£M)	
		Based on a PGS of 10%	Based on a PGS of 5%
Avon	3,700	0.77	0.38
Cornwall	2,050	0.42	0.21
Devon	4,300	0.89	0.45
Dorset	2,650	0.55	0.27
Gloucestershire	2,400	0.50	0.25
Somerset	2,100	0.44	0.22
Wiltshire	3,000	0.62	0.31
Total	20,200	4.2	2.1

5.4.3 Illustration of the value of a PGS in delivering nature conservation enhancements

As can be seen from Tables 5.5 and 5.6, there is the potential for a PGS to deliver significant financial contributions to the delivery of nature conservation gains. At present, work is being undertaken to update and revise costings for the UK BAP and few LBAPs have up-to-date costs attached to them. Therefore, it is difficult to provide accurate funding requirements for the delivery of nature conservation action plans in England.

As discussed above, one option for the use of PGS contributions allocated to nature conservation would be to fund LBAP co-ordinators. In a recent review²⁶, it was estimated that there are 111 active LBAP partnerships in England. The review identified that, at the

²⁶ C Gault (2004). *LBAP coverage and funding 2003-6*. England Biodiversity Group

time of its production, 56 of these were known to employ an LBAP co-ordinator. This meant that 55 partnerships did not have the support of a dedicated co-ordinator.

The review also investigated future funding for LBAP co-ordination posts and found that only 14 partnerships had secured funding for their LBAP co-ordinator through to the end of the 2005/06 financial year.

The review found that, in 2004, of the 56 LBAP co-ordinators employed, 37 (56%) were full-time while the remaining 29 (44%) were part-time. Using this ratio and indicative costs of £30,000 per year for a full-time co-ordinator (based on salary and on-costs), Table 5.7 contains an illustrative estimate of the annual cost of providing a full coverage of LBAP co-ordinators in England.

Table 5.7 Estimated annual costs of LBAP Co-ordinators in England

Type of contract	Proportion	Number	Individual cost	Total costs
Full-time	56%	62	£30,000	£1,860,000
Part-time	44%	49	£15,000	£735,000
Total		111		£2,595,000

The potential income for nature conservation from a PGS of 5% of the uplift from residential development in the South West (£2.09M) would therefore deliver 80% of the funds required to cover the total annual cost of funding LBAP co-ordinators for all 111 partnerships in England (£2,595,000). These co-ordinators would then be in a position to drive the delivery of their LBAPs and the wider enhancement of the nature conservation resource of their local areas.

Given that this funding would only account for the equivalent of the potential PGS income from one Government region, there would still remain significant funds from the PGS for the delivery of direct enhancements.

6 Conclusions

From the research and discussion that formed the basis of this study it is possible to draw the following conclusions:

- National strategy and policy now requires the planning system not only to mitigate the effects of development on the natural environment, but also to deliver nature conservation enhancements. These gains are best secured through the use of planning obligations.
- The strength of the current system of negotiated S106 agreements is that they provide the flexibility to address the case-specific effects of development on features of nature conservation interest.
- At present, S106 agreements are used by some local planning authorities to secure wider nature conservation enhancements. However, the majority of those questioned during the study used them relatively infrequently and few had a policy of using planning obligations for nature conservation.
- Even where this has been achieved, it is questionable whether such approaches will be facilitated under the new circular 5/05, which potentially narrows the scope of application to those issues which, if not addressed, would prevent grant of permission.
- The proposals for an Optional Planning Charge (OPC) do not provide sufficient scope or flexibility to ensure that the effects of development can be adequately mitigated. In addition, the proposals do not allow the local planning authority to determine whether an OPC or a negotiated planning obligation should be used. An OPC is therefore not considered to be a suitable mechanism for the delivery of nature conservation gains.
- The proposals for a Planning Gain Supplement (PGS), together with a revised form of S106 agreement, provide the most promising potential mechanism for addressing case-specific mitigation and/or compensation of the effects of development on the natural environment, while also capturing contributions that could be used to achieve nature conservation enhancements outside of development sites. It is therefore recommended that PGS (and the revised S106 agreement) is taken forward as a delivery mechanism for nature conservation enhancements.
- Local Development Frameworks (LDF) would be important mechanisms for the successful implementation of a PGS. They could be used to publish the rates at which a PGS would be charged, including details of any variations in that rate designed to encourage development on certain types of sites or to encourage the delivery of best practice in the design of development in relation to nature conservation and other sustainable development issues. They could also be used to publish a list of the sites, projects and initiatives that would be funded through PGS contributions. The use of the LDF for this purpose would allow for public scrutiny of these procedural details at Public Inquiry.
- Any proposed lower rate for brownfield development would need to exclude high value natural sites as defined in PPG3 and PPS9.
- In order to promote the inclusion of best practice, a discounted rate of PGS could be levied on those developments that incorporate best practice techniques for nature conservation and other sustainable development issues. The assessment of best practice in development should be based on the emerging Code for Sustainable

Buildings which is due to be published in April 2006. English Nature should engage with the Sustainable Buildings Task group to ensure that nature conservation is fully incorporated into the Code.

- The delivery of PGS contributions for nature conservation could be achieved on a local or national basis. In recognition of the strengths and weaknesses of both approaches, it is suggested that they are run in parallel. The report discusses the Aggregates Levy Sustainability Fund as a potential model.
- The Barker Review did not consider environmental impacts in its considerations, and subsequent analyses have raised serious concerns about the pressures that might be generated by Barker. Designing environmental objectives into the Planning Gain Supplement may be one way of helping to develop the environmental sustainability of the Barker agenda.
- The secondary objective of this study was to review the feasibility of linking the use of a PGS to Building Regulations or the BREEAM assessment methodology. In order to promote the inclusion of best practice, a discounted rate of PGS could be levied on those developments that incorporate best practice techniques for nature conservation and other sustainable development issues. The assessment of best practice in development should be based on the emerging Code for Sustainable Buildings which is due to be published in April 2006. English Nature should engage with the Sustainable Buildings Task group to ensure that nature conservation is fully incorporated into the Code.

Appendix A Questionnaire responses

Responses from sample authorities

Table A1 Sample local authorities

Name	Region	Type of authority
Chelmsford Borough Council	East Anglia	District
Essex County Council	East Anglia	County
Huntingdonshire District Council	East Anglia	Unitary / Metropolitan Borough Council
St Edmundsbury Borough Council	East Anglia	District
Boston Borough Council	East Midlands	District
Corby Borough Council	East Midlands	District
Leicester City Council	East Midlands	Unitary / Metropolitan Borough Council
Northamptonshire County Council	East Midlands	County
Islington Council	London	London Borough
Southwark Council	London	London Borough
Blyth Valley Borough Council	North East	District
Durham County Council	North East	County
Middlesbrough Borough Council	North East	Unitary / Metropolitan Borough Council
North Tyneside Metropolitan Borough Council	North East	Unitary / Metropolitan Borough Council
Northumberland National Park	North East	National Park
Lancashire County Council	North West	County
Preston City Council	North West	District
St Helens Metropolitan Borough Council	North West	Unitary / Metropolitan Borough Council
West Lancashire District Council	North West	District
Buckinghamshire County Council	South East	County
Hart District Council	South East	District
Lewes District Council	South East	District Council
Southampton City Council	South East	Unitary / Metropolitan Borough Council
Bournemouth Borough Council	South West	Unitary / Metropolitan Borough Council
Bristol City Council	South West	Unitary / Metropolitan Borough Council
Cornwall County Council	South West	County
Torridge District Council	South West	District
Oswestry Borough Council	West Midlands	District
Stafford Borough Council	West Midlands	District
Stoke on Trent City Council	West Midlands	Unitary / Metropolitan Borough Council
Warwickshire County Council	West Midlands	County
Doncaster Metropolitan Borough Council	Yorkshire & Humber	Unitary / Metropolitan Borough Council
North Lincolnshire Council	Yorkshire & Humber	Unitary / Metropolitan Borough Council
North Yorkshire County Council	Yorkshire & Humber	County
Ryedale District Council	Yorkshire & Humber	District

Blyth Valley District Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

There is one good example of the use of a S106 agreement to achieve benefits for nature conservation (see question 4). The S106 agreement was used as the mechanism for agreeing the implementation of a planning condition established during a public enquiry.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

Great crested newt *Triturus cristatus* is a priority species in the Northumberland LBAP. The example described under question 4, relates to the enhancement of habitat on a SSSI for this species.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

The only other mechanism used for obtaining biodiversity benefits from developers is the development control process itself. Due to a very active nature conservation team within the authority, the development control team are well aware of the importance of biodiversity issues. Therefore wherever there is an opportunity to achieve habitat enhancement through scheme adjustment, it will be sought.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

The authority refused planning permission for a large housing development, which was to be sited adjacent to a SSSI that supported a breeding population of great crested newt. Permission was subsequently granted by the Secretary of State during the public enquiry, but subject to the condition that the developer undertook works to enhance and improve the SSSI as habitat for great crested newts, and ensured future management of the site. The Local Wildlife Trust was too under-resourced to take on the management of the site, and so the council entered into an S106 agreement with the developer. The S106 agreement committed the developer to the habitat enhancement works, an initial five year management period, the subsequent transferral of the freehold to the council and the provision of a commuted sum to ensure future management of the site. This agreement was considered to represent a successful outcome for both parties, allowing the developer to comply with their planning conditions, and providing the council the means to achieve real habitat enhancement and biodiversity benefits.

Boston Borough Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

The planning department within the Council could not recollect a significant example where a S106 agreement had been used to achieve benefits for nature conservation. S106 agreements have more commonly been used in relation to issues such as town centre development.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets or geodiversity targets?

The Council has not used S106 agreements for nature conservation purposes.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

None were mentioned.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

The Council has not used S106 agreements for nature conservation purposes.

Bournemouth

Not had any previous experience of these here but we are currently dealing with an application for a residential development where we are using a S106 to limit the age of occupiers, to ensure the properties will be leasehold, and to stop householders keeping cats and dogs as, in the view of English Nature, they would have an adverse impact on the nearby SSSI and Turbury & Kinson Common. It is envisaged that the enforcement involved in the issue of the keeping of pets would be undertaken by the management company.

Bristol City Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

There are relatively few developments within the City that have direct nature conservation impacts. S106 agreements have, however, been used in the past when a development has been shown to have such an impact. They have been used to secure off-site mitigation rather than to specifically seek enhancement and benefit for nature conservation over and above the requirement for mitigation/compensation.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

The Council has no experience of using LBAP or geodiversity targets as part of the S106 process.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

Planning conditions and planning obligations have also been used where necessary.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

S106 agreements have been used by the Council to secure off-site mitigation. Examples include the translocation of populations of slowworms and the creation of like-for-like habitat off-site when development land-take is to cause direct habitat loss.

Buckinghamshire County Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

Could think of only one example relating to biodiversity. This related to a development which impacted on an area of semi-natural ancient woodland. The section 106 agreement was used to commit the developer to the provision of an equivalent area of replacement planting, and to tie them to the long term management of this site.

There are few geological SSSIs within Buckinghamshire. These are all protected from potentially damaging developments. Could not recollect any examples where a S106 agreement had been used to protect or enhance any features of geological interest within the county and commented that the promotion of geodiversity through the use of S106s would be far more complicated than that for biodiversity.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

The S106 agreement described is still being implemented, and the actual planting is yet to happen. It is however hoped that this habitat creation will contribute towards LBAP targets.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

When mitigation and biodiversity benefits can not be adequately secured through the use of planning conditions the authority will consider the use of S106 agreements. Could not think of any other mechanisms that they had used to secure biodiversity benefits.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

A case study is described in the answers to the first two questions. It was used to ensure the adverse effects of a development were adequately mitigated, and it relates to the creation of off-site compensatory habitat. It is too early to assess the extent to which it will achieve the desired outcomes.

Corby Borough Council

Development Control have not used many Section 106 agreements and those that they have used have been targeting community facilities/play equipment areas rather than gains for wildlife.

With the review of the Local Plan and the work towards a Local Development Framework, policies relating to biodiversity and nature conservation will be reviewed. There may be changes as a result of this work.

Cornwall County Council

We usually agree all measures to be included in mitigation or further conditioned prior to the grant of PP and therefore S106 agreements are unnecessary. Obviously as the County Authority most of our major applications are EIA and therefore these issues are dealt with through that process.

Doncaster Metropolitan Borough Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

The Council recognised the potential for S106 agreements to be used to deliver significant benefits for nature conservation within its boundaries. At present they are used to secure commuted sums from developers where this is considered possible/appropriate, and there is an example of this provided in response to question 4. The Council's Ecologist and Biodiversity Officer have been working on the development of the forthcoming LDF. They are seeking a requirement for the provision of commuted sums with new allocations for development land. These sums would be used to contribute to local sites.

The Council is also currently exploring the extent to which S106 agreements could be used to secure contributions to fund nature conservation work (the 'bigger picture'). It believes that this would be far more successful/beneficial than simply committing individual developers to small-scale on-site mitigation/compensation work.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets or geodiversity targets?

There had been little evidence of S106 agreements contributing towards LBAP or geodiversity targets. However, as stated above, it was hoped that the development of the new LDF would require the developers of new allocations to provide a commuted sum which could be used to meet LBAP and geodiversity targets.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

On-site benefits have been achieved through planning conditions and negotiation during scheme design.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

Potterick Carr SSSI/nature reserve is located very close to the centre of Doncaster. As a result, it is surrounded by land which is very valuable for development and, as such, is subject to a very high level of development pressure. Much of this land has been allocated for development in the local plan. The SSSI itself is subject to Supplementary Planning Guidance and S106 agreements have been used to commit any new development within 2km of the site to providing a commuted sum towards the management and enhancement of the reserve. This scheme has recently enabled the Council to purchase additional land to extend the nature reserve, as well funding enhancement works and general maintenance.

Huntingdonshire District Council

HDC has tried to be innovative in terms of its use of S106 Agreements to enhance biodiversity and I think that we could have a good case study for you.

In respect of a large scale housing development in St Neots the S106 Agreement required (as normal) the provision of public open space but we used that requirement to deliver a new small scale country park and we used the related commuted maintenance monies to fund the appointment of a ranger to both carry out the maintenance (to encourage biodiversity) and to develop local community links. Pat Knight, our Countryside Services Manager, will be able to provide you with much more detail should you wish to follow this up.

With regard to geodiversity, it very much depends on the interpretation of the definition of geodiversity and/or features of geological interest. The Council is currently working on the 'Great Fen Project', with English Nature and other partners, to recreate a large area of fen within the county. While still very much in the early stages of planning it is thought that the council could attach S106 agreements to new developments in the vicinity of this project, as a method of raising funds for its completion and maintenance. It was considered that this may contribute positive benefits to local geodiversity, but the council are still in the process of determining the key issues associated with geodiversity in the district.

Islington Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

We seek a £500-£5000 contribution towards the implementation of Islington Bio-diversity Plan. This is to ensure the development makes a positive contribution to the bio-diversity and sustainability of the area. This is over and above on site contributions. However, we do consider waiving it if the developer provides a green roof. Separately we seek far more substantial benefits for Environmental Improvements, which can cover numerous other things which improve the bio-diversity of the area.

The council has not had any experience of using a S106 agreement to protect or enhance features of geological interest. However, the authority is an inner London borough where there are almost no features classified as being of geological interest. The closest issue to geology that the planning team deals with is the protection of groundwater springs.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

Very successful. We have only been seeking it over the last 18months, but we secure it on 90% of agreements, with over £40,000 being agreed to.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

We have a sustainability Code that we seek compliance with, which covers the construction of the development.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

None given.

Leicester City Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

Occasionally - perhaps one or two a year at most. Difficult to separate out mitigation and compensation arrangements from 'extras'. S106's could cover both - most of our existing S106's are set up to achieve mitigation or compensation. The council has not had any experience of using a S106 agreement to protect or enhance features of geological interest. There has however been one instance where a geological SSSI was protected and enhanced. However, the council was the applicant (as it was a highways scheme) and, as such, could not enter into a S106 agreement with itself. Planning gain was achieved through a Committee

resolution which undertook to carry out the work that the council would normally require using a S106 agreement.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

Probably a minor contributor at present compared to management and enhancement of publicly owned land, SSSIs, Nature Reserves, etc. which are funded through grants and existing revenue/capital budgets.

The possibility exists however for larger contributions to BAP targets - for example we are negotiating a flood compensation/wetland creation project with a developer at the moment. SUDS schemes represent another opportunity. But these benefits take up valuable land, and are not easy to obtain in a city like Leicester, where all land is at a premium and there is very little undeveloped or undevelopable land (ie green wedge/belt, SSSI).

I suspect that a straight biodiversity enhancement scheme, provided just for its own sake without the need for mitigation/compensation, would never happen. Too many other things require S106 money, like highways, affordable housing, education, open space, play etc. - biodiversity is relatively low on this list. But we may get biodiversity improvements on the back of flood/SUDS requirements - worth talking to EA about this. Also important to realise that flood/SUDS measures will not automatically be good for wildlife. Additional work over and above that required for flood compensation will always be needed to create a wetland of habitat value.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

Apart from planning conditions related to landscape, SUDS etc., no.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

Not at present - if wetland/flood scheme comes off this would be a good case study.

Lewes District Council

1. To what extent does your authority use S106 agreements to achieve benefits for biodiversity over and above those required for mitigation?

Very few S106 agreements have been used specifically for biodiversity. The Council works very closely with East Sussex County Council, whose primary focus has been the use of S106 agreements to secure open space and play space. Most biodiversity benefits from S106 agreements have therefore accrued indirectly, as an offshoot of the main focus of the agreement. The difficulties of using a S106 agreement to secure positive benefits for nature conservation surround the fact that the development has to be shown to be causing a disbenefit and, as such, any enhancement work has to be linked back to the original

development. The District Council tends not to allow development in areas where there is the potential for significant ecological effects. Smaller scale on-site mitigation works (eg the survey and translocation of a small population of slowworm) are secured through pre-application negotiation and the use of planning conditions. The Council has no experience of using a S106 agreement for the purposes of the promotion/enhancement of geodiversity.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets?

S106 agreements put in place by the Council have only contributed to LBAP targets indirectly, if at all.

3. Does your authority use any other mechanisms to obtain biodiversity benefits (in-kind or financial contributions) from developers? If so how successful has this been?

The Council secures on-site biodiversity mitigation and enhancement through the use of planning conditions and through pre-application negotiation with developers.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for biodiversity? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

There are very few S106 agreements that could be directly linked to biodiversity. However, new flood defences for Lewes are being proposed and, since these have the potential to impact areas of wetland habitat, it is likely that enhancement of these wetland areas will be required through the use of a S106 agreement. It was noted that in examples such as this, where a direct link can be shown between the effects of a development and an area of habitat, S106 agreements can be used to secure enhancements for nature conservation. The Council has not, in the past, been able to use a S106 agreement to this end if no direct link can be established.

Northamptonshire County Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

Due to the nature of the county council's role as a planning authority (primarily dealing with minerals and waste issues), and the fact that very few large planning applications have been submitted in the last five years, there has been little recent use of S106 agreements. They have however used S106 agreements in the past, and that they have not been used recently reflects a lack of opportunities to do so.

The council has not used a S106 agreement to protect or enhance any features of geological interest. However, the council has in the past acted to safeguard geological faces/exposures within quarries that have been threatened by applications relating to site restoration, expansion etc. They achieved this through pre-application negotiations on scheme design and the use of planning conditions.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

Most examples of S106 agreements, especially attached to the larger developments, were agreed before the LBAP was established.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

S106 agreements have not always been needed to secure benefits for biodiversity. In the past beneficial outcomes for wildlife (establishing reedbeds, enhancing floodplain grasslands) have been delivered through the site restoration plans, as part of the five-year commitment to aftercare agreed during the planning application process.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

The best examples in Northamptonshire are from the 1980s and pre-date the wider use of biodiversity as a ‘buzzword’. For example, a Section 62 agreement was negotiated for a minerals application for a large site at Stanwick in the mid 1980s. This required the land to be restored, post-extraction, as a nature reserve and it was intended that the RSPB would be then be responsible for the day to day management of the reserve. All subsequent commissions relating to this site were also ‘sucked in’ to this agreement. The RSPB were not eventually able to fund the management of this reserve, but it is now being managed by the district council for a variety of purposes, while still recognising the importance of the site for birds.

North Tyneside Metropolitan Borough Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

North Tyneside MBC has previously used S106 agreements to achieve benefits for nature conservation where the circumstances have been appropriate. It found the main issue surrounding the use of S106 agreements to be the length of time required to get such an agreement in place. If they were to be used in every instance, the authority would struggle to meet the Government’s performance targets. Consequently, where a development has the potential to affect nature conservation, mitigation and enhancement would generally be sought through pre-application discussions and/or the use of planning conditions.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

Mitigation and enhancement works associated with developments have certainly contributed positively to nature conservation in the Borough, but at present there are few formal biodiversity/geodiversity targets against which these contributions can be measured. There is an LBAP for a strategic wildlife corridor that extends into the Borough, but few developments have come forward which would potentially affect it. One North East have,

however, found the LBAP a useful tool in the pre-application scoping of their works to regenerate former colliery pit heaps and were able to design their mitigation work to prioritise the key habitats identified in the LBAP.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

Nature conservation benefits are preferably secured from developers through pre-application discussions and/or the use of planning conditions, as described above. These are more commonly used than S106 agreements.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

A good example of the successful use of a S106 agreement to secure gains for nature conservation was provided during the upgrading of the Howden Sewage Treatment Works. These works were extensively upgraded in order to provide secondary and tertiary treatment facilities. A S106 agreement was agreed to secure an outline conservation strategy for the mitigation of the effects of the works and for the provision of enhancement through the creation of a new wetland area. Several years on from these works, the Council considers the results to be very successful, delivering substantial gains for nature conservation.

Northumberland National Park

The Northumberland National Park Authority determines less than 100 planning applications per annum and therefore, we rarely enter into S106 agreements, except in respect of agricultural dwellings. Additionally, there have been very few major developments in the National Park, as such development has to be justified as being in the national interest. The two major developments that have occurred are the development of Military Training Facilities at Otterburn and an extension of Harden Quarry to extract a mineral that cannot be found elsewhere.

We have secured mitigation and biodiversity benefits from development by other mechanisms than S106 agreements, such as with agreement with the MoD in respect of development at the Otterburn Training Area. Dealings with the Crown are of course somewhat different than with private developers.

North Yorkshire County Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

S106 agreements are used as appropriate. NYCC use conditions where possible. Any issues over and above what can be conditioned are handled through S106 agreements (as was). We are putting greater pressure on developers and development control officers to emphasise the significance of biodiversity, therefore increasing the likelihood of good conditions being

incorporated into decisions and if appropriate S106's. Therefore we have definitely facilitated more conditions and S106's to the benefit of wildlife.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

North Yorkshire County Council is working in partnership with seven district councils to produce Local Biodiversity Action Plans. So far 5 of the 7 LBAPs have been completed, but little has been invested in LBAP implementation to date. Therefore it is not possible to attribute biodiversity gains to Section 106's at the moment.

However, links have been made between minerals planning applications and the LBAPs, with biodiversity gain sought through conditions. Section 106's (or their equivalent) will be used in the future if appropriate.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

Early consultation has been a good mechanism for engaging with Minerals operators, pylon and pipeline projects, etc, regarding likely requirements for survey and mitigation, etc. We aim to achieve positive wildlife benefits prior to determination.

The only other issue that might fall into this category is the increased use of wildlife advice notes by planning officers. Devised by LBAP partnerships (and Wildlife Trusts, etc) advice notes can be sent to developers at pre-application stage. These include things like promoting the use of swift bricks.

Oswestry Borough Council

We do not have much in the way formal bio-diversity arrangements at present but have consistently utilised our public open space policy to acquire sites which have bio-diversity value although it was not termed as such at the time. For example, a large oak tree on a new residential estate was included in public open space to protect the tree and ensure it had sufficient room to develop whilst other planting was coming on. We took over woodland on two residential sites which will have wildlife corridor value. Before being aware of the presence of great crested newts in the locality we were insisting on the protection of ponds despite the health and safety concerns expressed by other parts of the Council and the extra maintenance costs that they attract.

All of the above were achieved through S106 (and the previous S52) Agreements.

Preston City Council

1. To what extent does your authority use S106 agreements to achieve benefits for biodiversity over and above those required for mitigation?

Preston City Council does not presently have an adopted policy on S106 agreements and, as such, S106 agreements are undertaken on an ad hoc basis. The Council is in the process of employing an officer to specifically deal with S106 agreements and draw up a policy relating

to their use. At present, therefore, the Council has no examples of S106 agreements being used to the benefit of biodiversity, with the potential exception of any indirect benefits which may have resulted from their use to secure public open space.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets?

The Council has not used S106 agreements for nature conservation purposes.

3. Does your authority use any other mechanisms to obtain biodiversity benefits (in-kind or financial contributions) from developers? If so how successful has this been?

No.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for biodiversity? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

The Council has not used S106 agreements for nature conservation purposes.

St. Edmundsbury Borough Council

1. To what extent does your authority use S106 agreements to achieve benefits for biodiversity over and above those required for mitigation?

St. Edmundsbury Borough Council has no experience of using S106 agreements to achieve benefits for biodiversity. The only instances in which the Council has used S106 agreements relate to affordable housing, the provision of recreational facilities and the control of building specifications.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets?

The Council has not used S106 agreements for nature conservation purposes.

3. Does your authority use any other mechanisms to obtain biodiversity benefits (in-kind or financial contributions) from developers? If so how successful has this been?

No.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for biodiversity? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

The Council has not used S106 agreements for nature conservation purposes.

St Helens

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

In St Helens there have been a small number of 106 Agreements relating to biodiversity. These have been on a fairly ad hoc basis and have included pond restoration and woodland planting, or GCN translocation. All examples tend to pre-date Biodiversity Action Plans. The problem we have with all S106s is resources to monitor them.

The council has not had any experience of using a S106 agreement to protect or enhance features of geological interest. There are however seven or so RIGS sites in the borough and as geodiversity is an issue which is rising up the agenda, it is feasible that they could be used in future. At present these RIGS sites are given the same status as local wildlife sites and the council is looking to develop an LGAP.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

Hopefully, through *A Biodiversity Plan for St Helens* (which transposes the North Mersey Side BAP down to Borough Level) and SPG on biodiversity we will achieve a strong framework to achieve biodiversity gains above basic mitigation such as nesting box schemes within developments.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

We are currently working with section of the Council to redevelop a school. The new school will be designed to BREAM standards and biodiversity will be built in. We are trying to get a non-Council school development to adopt the BREAM standards also, allowing us to get biodiversity built in- not too sure how successful we will be!

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

We don't really have any great 106 examples which go massively beyond basic mitigation.

Southampton City Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

All planning obligations are normally linked to impacts of schemes and so are mitigating impacts. However some of our S106 agreements may involve compensation that is not like-for-like and may therefore be viewed as over and above.

S106 have only been sporadically used in the past, normally linked to larger schemes or developments in strategically important areas. Usage is becoming more frequent, however most on-site mitigation is required through planning conditions rather than S106. Many conditions require a scheme of monitoring/maintenance to be implemented and so to an extent over short-medium term timescales avoid the need for S106 to secure this.

Used to secure land (often transferring ownership to the City Council), providing for management of transferred land and adjoining areas of Greenway, and deliver long term management/maintenance of wildlife features. In the early 1990s S106 agreements were instrumental in establishing linear public access to some areas of the Greenways.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

Within the urban context and given the embryonic stages of Local BAPs in the city, S106 have only had a limited impact. As S106 are linked to the development and its impact, there are limited opportunities (those development that adversely affect BAP priorities would tend not receive consent).

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

Not sure what these would constitute. Appropriate biodiversity benefits (.g. habitat management, provision of appropriate structures such as features for bat roosting) are linked to the development are normally negotiated during the application phase, either to be included in the scheme or carried out as a result of conditions.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

Successful examples in relation to Greenways are probably a little out of date but please contact me directly if you require further details.

Southwark Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

The Council has recently issued draft Supplementary Planning Guidance concerning the use of S106 agreements within the Borough. This details how S106 agreements can be used to compensate for the indirect and cumulative impacts of new developments. It sets out a strategy for securing contributions for the provision and management of open space, of which biodiversity is to be considered a part. The Council officer could not recollect an example where a S106 agreement had been used specifically to secure benefits for nature conservation. However, several had been agreed which resulted in the provision of open space and which consequently would have had indirect nature conservation benefits. The main problems with the use of S106 agreements to secure direct benefits for nature

conservation result from the very limited amount of available and appropriate land in this urban borough, together with a very high level of development pressure (including GLA guidance to plan for 29,530 new homes to be provided within the Borough by 2016). The draft SPG is currently out to consultation.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

Not directly. It was, however, considered that this could be achieved through the use of S106 agreements.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

The council could not recollect any examples over and above those used to secure on-site mitigation.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

Potters Field is a park within the borough and it has been identified as one of the Mayor's '100 spaces'. Of the £2.6 million funding for this park, around £1.5 million was secured through the use of S106 agreements. Biodiversity has been one of the key themes in the design of this park.

Stafford Borough Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

Stafford Borough Council has not previously used S106 agreements to achieve benefits for nature conservation. It was felt that S106 agreements are a relatively "*unwieldy vehicle*" for achieving such benefits and, consequently, planning conditions tend to be preferred for securing nature conservation benefits. S106 agreements are more commonly used when there are issues relating to affordable housing and public open space.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

The Council has not used S106 agreements for nature conservation purposes.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

The authority has secured on-site nature conservation benefits from developers, through the use of planning conditions, especially in relation to two species: badger and great crested newt. However this often relates to mitigation work and the authority does not have any experience of securing off-site nature conservation benefits from developers.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

The Council has not used S106 agreements for nature conservation purposes.

Responses from ALGE members

Brighton and Hove City Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

Our development control policies require enhancement and the introduction of new nature conservation features, even outside protected sites, so we frequently use S106 to obtain biodiversity gain.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

Our LBAP is still at the early stages of development, so this question cannot be answered directly. Biodiversity gains have definitely been achieved on paper - but this is more difficult to demonstrate on the ground for several reasons: eg

- New DC policies haven't been operating for long enough to feed through into many finished schemes - several are currently being implemented
- Particularly on small sites, various 'unforeseen circumstances' frequently crop up (eg need for underground cables, drains, etc. to be moved at the last minute) which can scupper carefully planned biodiversity improvements
- Monitoring post-development has not been taking place in most cases

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

Planning conditions - limited benefit - know of cases where conditions simply have not been implemented - planning enforcement is seriously under resourced.

S106 have more legal clout and therefore seem to be treated with more respect by developers.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

Bazehill Road: Original proposal for a block of flats threatened chalk grassland (in a lawn - former large, neglected garden) outside a protected site. S106 required detailed mitigation & enhancement scheme to protect the grassland during construction, introduce a wildlife pond, build nest boxes into the walls of the new building & introduce 'green walls'. The S106 also requires monitoring and the submission of a summary report annually for 5 years post construction. The construction work is currently underway & the features are being incorporated over the next couple of weeks. Scheme involved grassland translocation (last year) which was of limited success - although the turfs were lifted & put back & watered perfectly, suspect it caused nutrients to be released - the translocated turfs have much lower species richness than the control area.

Brighton Station: Largest brownfield site on south coast, currently under construction. An SNCI running through the centre of the site (former railway siding) has been 'preserved' - although all habitats on it have been completely destroyed, a detailed habitat creation plan has been submitted to re-landscape the area as an 'urban greenway' with naturalistic planting, cycle way, etc. £50,000 will be paid to the local authority in perpetuity to maintain it.

Suggestions:

It would be very good to see the current Government guidance re-interpreted to allow a proportion of S106 moneys to be directed towards sites of City-wide nature conservation importance (LNRs), even if they are not in the immediate locality (on the basis that such sites benefit everybody, including people in the vicinity of the development) and to fund BAP development (on the basis that BAP development will lead to benefits locally). Broadening the scope of S106 payments in this way would yield greater biodiversity benefits.

We need to be a lot more clever about developing a spatially-based 'vision' for biodiversity to make the most of S106 opportunities and the new LDF process. This takes things one step beyond BAPs (as these are not usually spatially based).

Dudley MBC

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

Occasionally but generally difficult to get adequate mitigation let alone benefits due to lack of Development Control commitment.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

Not known as there is complete absence of monitoring due to lack of resources.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

No but ideas would be welcomed.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

No due to lack of monitoring.

Macclesfield Borough Council

As most of the applications we receive are small scale (rural nature of the borough and housing moratorium in effect) most enhancement can be secured by condition.

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

This has been identified as a suitable mechanism as part of the Boroughs emerging Nature Conservation Strategy. No hopefully we will be doing more of this as and when the need arises. In the past S106s have mainly been used to secure management plans.

Geological diversity is given equal weighting with biological diversity in the council's nature conservation strategy. Consequently S106 agreements for geodiversity should be employed in the same manner as they are at present for enhancing biological diversity. The council has not yet however had any experience of proposed developments which would affect any features of geological interest, and due to the size and nature of the borough it is believed that such developments may only be proposed once a decade. Nevertheless it is foreseen that, for example, a sum of money could be secured through a S106 agreement to recreate a similar geological exposure at a nearby site, if an existing exposure was to be affected by a development.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

No personal experience.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

Not sure.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

The most obvious use of Sec106s is in connection with runway 2 at Manchester airport. The S106 was successful in securing long term management of translocated habitats and for habitat creation.

South Somerset

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

None known - used for mitigation only (to date).

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

None specifically for this purpose.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

No.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

No.

Teignbridge District Council

1. To what extent does your authority use S106 agreements to achieve benefits for nature conservation over and above those required for mitigation?

We only use S106s for mitigation & compensation (for loss of existing wildlife value on site). Our planners are still working to the Govt circular on that says that you shouldn't seek 'gain' through planning conditions and obligations.

Our use of S106s for mitigation & compensation has not been very successful over the years. We are now better at writing them, but have 2 big problems:

- enforcing them when they are in place – lack of time to check up and chase up non-compliers plus confusion over how to Enforce when negotiation fails
- not every case that needs mitigation/compensation has an obvious way of providing it, eg where there is no room within the application site and the developer holds no

‘spare’ land nearby, as is often the case. Our planners take a very dim view of the ‘put money in a pot to spend on unspecified conservation in the future – this is seen as developers buying their permission and doesn’t fit with the Govt circular on conditions/obligations.

We did once manage to get £2,000 to spend on conservation of the single species affected by a development, in or around the village where the development was. But we then found that money really hard to spend effectively. We also had to show an audit trail in case the developer ever demanded to know what became of their money.

The council has not had any experience of using a S106 agreement to protect or enhance features of geological interest. This is however due to the fact that very few planning applications have been considered to affect features of geological interest, rather than any lack of awareness of the importance of the issue. There are 24 RIGS sites in the district, as opposed to some 150 County Wildlife Sites and around 500 proposed County Wildlife Sites, and the geological sites tend to cover a smaller area than many of the wildlife sites. There has however been one recent application for permission to locate a new house close to a quarry, which is a RIGS site (and is potentially internationally important), to which the council requested an appraisal be submitted detailing the potential effects on the features of geological interest. The planning application has subsequently been withdrawn, but with the quarry being under different ownership to the proposed development land, if it were to be resubmitted then mitigation could not be ensured simply through a condition.

2. How successful has the use of S106 agreements been in achieving contributions to Local Biodiversity Action Plan targets and geodiversity targets?

Not very – the mitigation/compensation achieved by a S106 has to relate directly to the wildlife harmed by the development, not to whatever happens to be on the LBAP shortlist. Plus we aren’t getting planning gain: in most (or all) cases we are failing to get full compensation for the wildlife that is being lost to the development.

3. Does your authority use any other mechanisms to obtain nature conservation benefits (in-kind or financial contributions) from developers? If so how successful has this been?

No – we have no mechanism to force this and the developers aren’t going to offer it out of the goodness of their profit margin! We do have a ‘Percent for Art’ scheme, but this is to put art into the development that is paying for it (I think). We discussed this briefly with planners, but they said we should stick to the ‘compensation for wildlife lost’ approach.

4. Do you have any examples which could be used as case studies of successful or unsuccessful uses of S106 agreements to secure gains for nature conservation? If so could you briefly explain the objective of the S106, how it was funded and to what degree it achieved the desired outcomes?

25 examples of S106s that have failed to compensate for the loss of wildlife to the development, due to: badly written S106s/Management Plans; or the developer’s lack of inclination to comply (plus lack of time to chase them up); or the difficulty for lay people of doing wildlife management properly (plus lack of time to lead them by the hand).

About three examples of S106s that we are fairly happy with. Two of the successful ones are where we managed to require the developer to retain the services of an ecological consultant who has the time and close contact with the developer to keep prompting and prodding them to implement their S106 properly. In the third case, the RSPB have taken on this prompting and guiding role as they have a particular interest in the species and location concerned.

Appendix B Key findings of discussion session

Note of discussion session – 9 August 2005

Attendees

Name	Representing
Craig Blackwell	Association of Local Government Ecologists (ALGE)
Jonathan Burney	English Nature
Brian Cleary	RSPB
Neil Hall	Entec
Sam Lattaway	Entec
Heather Mitchell	RSPB
Mike Oxford	ALGE
Jonathan Price	English Nature
Joanna Russell	Countryside Agency
Ian Smith	English Nature
David Westbrook	The Wildlife Trusts
Robin Wynde	RSPB
Apologies	
Mark Southgate	Environment Agency

Key findings

The following are the main findings and discussion points raised in the discussion session, which have been grouped into common topics.

Broad concepts

- A Planning Gain Supplement (PGS) “breaks the link between development and community” by allowing benefits to be delivered in areas geographically separate from the development site. The present system of Section 106 (S106) agreements presents the ability to meet local opportunities.
- PPS9 clearly states the importance of the wider countryside and the need for nature conservation enhancements to be included in developments.

The need for flexibility

- There are two ‘strings’ that need to be considered:
 - mitigation and compensation of effects; and
 - the delivery of wider enhancements.
- It was recognised that there is a need for local flexibility to meet the needs and opportunities presented by individual development proposals (ie mitigation and compensation). It was considered that the Optional Planning Charge (OPC) and PGS concepts would be too constrained to satisfactorily address these local issues.

However, it was felt that PGS and OPC could be used to address wider issues (regional/national), while S106 agreements could be used to meet the case-specific issues. Therefore, it was considered that some form of ‘hybrid’ approach may be necessary.

The use of Local Development Frameworks

- It is important to recognise that a PGS is a means to an end (eg the delivery of nature conservation gains) and that the objectives of delivery need to have been established. This should have been done through the LDF, which was considered to be crucial. It was pointed out that this would be dependent on whether the LDF was developed from a good knowledge base. However, the use of LDF was recognised as being central to the delivery of any non-negotiated planning agreement.
- LDFs could be used in a ‘spatial approach’ to target contributions from a PGS/OPC to areas where they are needed most.
- The RSPB is currently seeking to prioritise its involvement in the development of LDF across the country.
- It was noted that it is important to remember the ‘time lag’ in getting new policies into LDFs. This is due to the time taken to review and adopt new development plans.

Feasibility of a non-negotiated planning agreement

- It was recognised that the key to the success of any non-negotiated planning agreement would be how it was set up.
- It is important to consider the Government’s perspective: what do they want to achieve?
- English Nature considers that the PGS has the potential for use in delivering infrastructure. English Nature wishes to investigate the potential for using PGS for nature conservation gains and recognised that significant sums of money would be involved. Therefore, it is important to look at how best to make use of non-negotiated planning agreements.
- Consideration would need to be given to administrative areas (eg counties, boroughs, unitary authorities). However, it was noted that nature conservation does not obey such boundaries and that cross-boundary work would need to be accommodated. It was suggested that it may be possible to base delivery on joint character areas.

Potential problems

- Concern was raised as to whether a PGS or OPC could be used in a divisive manner by developers or local planning authorities. For example, developers could ‘target’ areas with a lower rate of non-negotiated planning obligation for greater development, while local planning authorities could use PGS/OPC rates to deter development in certain areas. Neither outcome is beneficial.
- Inconsistency in the setting of delivery of non-negotiated planning agreements could be manipulated to target development in cheaper or easier areas. Therefore, it is

necessary to ensure a level of consistency. It was suggested that regional strategies could be used to achieve this.

- It was acknowledged that, under the ‘tests’ for planning obligations set out in Circular 05/2005, obligations are required to be directly related to the development. This may prevent the use of PGS/OPC contributions in a manner that cannot be directly linked to the development that provided the funds. However, it was suggested that one solution would be to seek a revision of the ‘tests’ to make it a requirement that the obligation should be directly related to the development plan (ie the LDF). Therefore, if the LDF contains information on the areas/projects which are to be funded through a PGS/OPC, the use of contributions in areas unrelated to a specific development would still be related to the development plan, thereby meeting the ‘test’.
- It would be important to consider potential overlaps with the new form of environmental stewardship to ensure that there is no double funding of projects/sites. However, it was suggested that stewardship may not be effective.

‘Selling’ the concept

- It is necessary to get developers, decision-makers and the public to think of nature conservation in the same way as transport or other infrastructure issues.
- The Barker Review does not give particular consideration to the environmental effects of its proposals. Therefore, it is important to stress the need for this consideration to be built into any method of implementing its findings (eg through a PGS).
- It is necessary to consider the political arguments for delivering nature conservation; which is the best approach (ie PGS, OPC, etc); and how it should be used.
- In determining how a non-negotiated planning agreement could function and the funds that could be derived, it was suggested that the study should link the housing needs of a sample region and link the feasibility study to the available evidence base (eg regional housing allocation). This could be used to determine the potential income from a PGS/OPC.
- It was recognised that it is important to keep the arguments simple and to place the arguments for using planning gain for nature conservation early on in the study report.



Research Information Note

English Nature Research Reports, No. 672

Using a planning gain supplement for nature conservation purposes English Nature and the Royal Society for the Protection of Birds

Report Authors: Entec UK Limited, January 2006

Keywords: planning gain; S106 agreements; optional planning charge; planning gain supplement

Introduction

Alongside farming, land use planning is one of the most significant mechanisms for effecting both positive and negative change in the nature conservation resource of the UK. In the 2003/2004 financial year 675,000 planning applications were processed by local planning authorities in England. Many of these applications will have had the potential to make positive contributions to the nature conservation interest of its surrounding area and it is important that these opportunities are maximised.

What was done

Entec was contracted by English Nature to undertake a review of the opportunities for achieving nature conservation gains through proposed changes to the way in which planning obligations are used, and in particular the potential role of a planning gain supplement. A short questionnaire was circulated to development control planning officers at 35 local authorities and to members of the Association of Local Government Ecologists. A discussion session, with key stakeholders, and a subsequent review were then undertaken to determine the feasibility of utilising different approaches to planning obligations in delivering nature conservation gains over and above the mitigation/compensation of effects.

Results and conclusions

National strategy and policy (as set out in PPS1, PPS9 and the England Biodiversity Strategy) now encourages the planning system not only to mitigate the effects of development on the natural environment, but also to deliver nature conservation enhancements.

The current system of negotiated S106 agreements is used by some local planning authorities to secure wider nature conservation enhancements. However, the majority use them relatively infrequently and few had a policy of using planning obligations for nature conservation. Even where this has been achieved, it is questionable whether such approaches will be facilitated under the new Circular 5/05. However, S106 agreements should remain a key tool for mitigating site-related impacts on nature conservation.

Continued.....

S106 agreements, tailored to the specific circumstances of a development site remain the most appropriate mechanism for achieving site-specific mitigation of impacts on nature conservation interests. The proposals for a Planning Gain Supplement (PGS), together with a revised form of S106 agreement, provide a promising potential mechanism for achieving wider nature conservation enhancements, which are not confined to the development site.

Local Development Frameworks (LDF) would be important mechanisms for successful implementation of a PGS. They could be used to publish, for example, the rates at which a PGS would be charged and a list of the sites, projects and initiatives that would be funded through PGS contributions. The use of the LDF for this purpose would allow for public scrutiny of these procedural details at Public Inquiry.

The report considered aspects of the design of the potential PGS:

- the use of a PGS has the potential to create incentives and disincentives for the environmental performance of the housing industry;
- any proposed lower rate for brownfield development would need to exclude high value natural sites as defined in PPG3 and PPS9;
- the delivery of PGS contributions for nature conservation and other environmental objectives could be achieved on a local or national basis. The report discusses the Aggregates Levy Sustainability Fund as a potential model.

English Nature's viewpoint

The proposed OPC is not considered to be a suitable mechanism for delivery of nature conservation gains, however, there is potential for the proposed Planning Gain Supplement to contribute to nature conservation objectives if it is designed in the right way with that explicit objective for nature conservation.

It is therefore recommended that a PGS (and the revised S106 agreement) is taken forward as a delivery mechanism for nature conservation enhancements. Designing environmental objectives into the PGS may also be one way of helping to develop the environmental sustainability of the Barker agenda.

Selected references

ANON 2005. *Planning Policy Statement 9: Biodiversity and geological conservation*. Office of the Deputy Prime Minister

ANON 2003. *Contributing to sustainable communities – a new approach to planning obligations*. Office of the Deputy Prime Minister

Further information

English Nature Research Reports and their *Research Information Notes* are available to download from our website: www.english-nature.org.uk

For a printed copy of the full report, or for information on other publications on this subject, please contact the Enquiry Service on 01733 455100/101/102 or e-mail enquiries@english-nature.org.uk



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