



# Committee Report

---

**PURPOSE:** Final Decision Report

**KEY OR NON-KEY DECISION:** Non-key decision

**COMMITTEE:** Economy and Skills Committee

**DATE:** 30 September 2024

**TITLE:** De-designation approach, performance update & securing biodiversity net gain on Council owned land

**Ward(s):** Citywide

**Officer presenting the report:** Simone Wilding **Job title:** Chief Planner

**Committee Chair:** Councillor Andrew Brown

**Executive Director lead:** John Smith: Executive Director for Growth & Regeneration

**Proposal origin:** BCC Staff

## **Purpose of Report:**

1. To endorse the approach to seeking de-designation on non-major planning applications and obtaining delegated authority to officers for preparing and submitting the de-designation request to the Secretary of State in October 2024;
2. To provide an update on current performance against key indicators for measuring the quality and speed of the development management service delivery; and
3. To endorse the approach of entering into a legal arrangement with neighbouring authorities to secure biodiversity net gain (BNG) delivery on Bristol City Council (BCC) owned land for Bristol City Council (BCC) schemes, at least until other arrangements can be put in place with the West of England Mayoral Combined Authority (the MCA).

## **Evidence Base:**

### ***Planning performance and requesting de-designation for non-major applications in October 2024***

1. Recovering the development management service has focused in tandem on building capacity and increasing productivity as reported to G&R scrutiny in November 2023. Good progress has been made in reducing unallocated applications which peaked at c 1,700 in August 2023 and have been oscillating at around 80 during July and August (equates just under 2 weeks intake, all less than 3 weeks' old). We are on track to reducing this to c50 over the course of September and retain it at that level going forward. Decision times for all applications have also decreased substantially since the introduction of an improved service on 6 December 2023.
2. As such the service is now largely back to (and in parts already better than) where it was prior to the

backlog that emerged during 2022/23. However, improvement work is continuing to ensure that service delivery is increasingly responsive to customers' needs and reliably facilitates timely, sustainable development. We have full confidence that through these further improvements we can secure good service delivery sustainably. This is though dependent on maintaining the necessary capacity and increasing skills and productivity.

3. The key variables defining and impacting on development management service delivery are summarised in table 1 below. Additional graphs and analysis tables are provided in slide format at Annex A.

**Table 1: Key indicators regarding development management delivery**

Position as of 16/09/24:

	Apr. 22 actual	Apr. 23 actual	Jun 23 Actual	Aug 23 actual	Jan. 24 actual	Mar 24 actual	Jun 24 actual	Jul 24 actual	Aug 24 actual	Sep 24 To date 16/9/24	Dec 24 forecast
<b>Unallocated applications</b>	Ca400*	1250	1608	1705	725	560	c90	c90	c80	c50	c50
<b>Decs made (excl trees/preapp)</b>	191	127	150	151	536	499	373	464	363	195	c450
<b>Applications 26+ wks old</b>	117	500	624	807	783	861	684	382	495	483	150
<b>FTE in DM (excl temp resource)</b>	31	25.2	22.2	23.7	26.4	26.9	30.9	31.9	33.9	32.9+2	33.9+2
<b>FTE in DM (incl temp resource)</b>	33	26.2	23.2	26.3	36	36.5	34.8	35.8	36.5	34.4+2	33.9 +2

4. A key part of our improvement plan is implementing changes that lead to improvements in the standard of application submissions, to design out 'failure demand' relating to missing or ambiguous information, insufficient levels of detail etc as much as possible. To this end we have updated and are continuing to improve the advice on our website. In particular, we have consulted on a revised [local list of validation requirements](#) and brought this into effect on 17<sup>th</sup> September 2024.
5. Ministry of Housing, Communities and Local Government (MHCLG) guidance sets out that achieving statutory performance targets is a crucial pre-requisite for obtaining 'de-designation' decisions. Officials have previously advised that 2 quarters of good performance would be the minimum required. Prior to designation we had focused on determining as many applications as possible without seeking extensions of time so that we were able to decide more applications and reduce the backlog as quickly as possible. Starting from 1 April 2024 we have now pivoted to seeking extensions of time wherever possible including on old applications (accepting that thereby we are not able to determine as many applications as otherwise) to meet statutory performance targets again from Q1 2024/25.
6. For non-major decisions this means that 70% or more will need to have been determined within 8 weeks or an agreed extension of time. Between April to June 2024 we delivered 73% of all non-major decisions within the statutory performance targets. For the 'second quarter to date' (ie July to mid September) our performance currently stands at 74%. We are therefore confident that by the end of September we will have delivered two quarters exceeding statutory performance targets. We will be able to provide the latest statistics in a verbal update at the committee.
7. We have also collated substantial additional evidence to demonstrate that we have returned the service to sustainable good service delivery and are continuing to improve it further. Annex A summarises the key information in slide format. An updated version of these will be presented at committee. We propose that the content of these will form the core of our submission to the Secretary of State requesting de-designation. We propose to make this request in mid-October 2024 although at this stage the quarter 2 performance statistics will not yet be officially published. In

previous years MHCLG tended to publish the official statistics about 2 ½ months after the end of the respective quarter. It is unclear whether the Secretary of State will be willing to take a pragmatic approach and support our de-designation ahead of the official statistics being published.

8. In addition to the statutory performance statistics MHCLG will be considering whether we have delivered what we said we would as part of the action plan that we have been keeping MHCLG updated on. The above linked slides and their subsequent updates summarise our action plan. Using the themes and indicators set out in the slides we will provide a detailed account for the department of all the actions undertaken and milestones delivered to illustrate and evidence all the progress made. The two most important elements of this will be a) a table setting out all the recommendations PAS had made as part of their review of the Development Management Service in September 2023 and how we have implemented all of these and b) our performance against the list of the core indicators set out in slide 7 at annex A.

### ***Securing Biodiversity Net Gain (BNG) implementation on BCC owned land***

9. From February 12 2024 most major development applications are subject to 10% mandatory BNG requirement as stated within the Environment Act 2021. This also became mandatory for small sites on 2 April 2024. Options to secure BNG within Bristol for those developments which cannot achieve 10% on-site are limited. Off-site BNG units need to be secured with a conservation covenant or via a S106 agreement for a period of 30 years. For BCC owned land/developments, BCC cannot enter into a S106 arrangement with itself and conservation covenants can only be entered into with 'responsible bodies'. The 'responsible bodies' that are currently available for BCC to enter into a conservation covenant agreement charge a substantial cost which would make most BCC projects unviable.
10. The MCA have started the process of becoming a responsible body with the intent of in future securing BNG units within its constituent local authorities. However, the application process will likely take a substantial period of time: on submission of the MCA's application (expected in the next months), Natural England will confirm registration as a responsible body within 12 months. To secure BNG delivery within BCC in the longer-term this is considered to be the best option.
11. In the short-term an alternative solution is needed as BCC-owned applications cannot wait until the MCA has been registered as a responsible body. Working with the neighbouring unitary authorities it is proposed to have reciprocal s106 agreement arrangements: This would mean that the named neighbouring unitary authority (eg BANES) would take on the role of 'local planning authority' for that piece of BCC land on which off-site BNG units are proposed and then enter into a s106 agreement with BCC as landowner of that site, thereby securing BNG unit delivery on BCC owned land for BCC schemes. I.e. the neighbouring authority, acting as local planning authority (LPA), would monitor our delivery on that site and if necessary enforce it.
12. Off-site delivery of biodiversity units needs to be secured with a S106 or conservation covenant in order to be registered on the Natural England register and to then be sold or allocated to specific developments. As of yet no land owner has come forward within Bristol to secure their land through a S106 to be used for the purposes of BNG banking; selling the units for the purposes of providing additional units for developments to achieve the required 10% net gain in biodiversity. On checking platforms which sell biodiversity units, none are shown to be available within Bristol, this suggests that there are no landowners within Bristol which are entering into conservation covenants with responsible bodies to secure BNG banking opportunities. Therefore, there is not currently an option to purchase or deliver off-site units within Bristol.
13. This is particularly important for BCC own projects as without a mechanism to secure BNG delivery on BCC land we are unable to offset biodiversity impacts close to the impact area. If we would have to rely on purchasing units from private organisations from land which is not situated within Bristol.

This would both result in lost opportunity for biodiversity and delivering for local people and nature linked to the area being impacted. It would also result in loss of opportunity to have delivery for nature funded within Bristol and participate in the emerging green market. Having units outside Bristol may also increase the amount required to purchase if they can't be purchased within the same national character area.

14. It is proposed that by having s106 agreements in place on BCC owned land and therefore the ability to register these units on the Natural England register, these units can be sold to BCC own schemes and potentially also to private developers (provided enough units can be delivered). This way BCC housing delivery and other BCC schemes requiring off-site BNG credits will be able to legally secure specific off-site BNG delivery for projects in the pipeline.
15. To enable BNG delivery within Bristol in the short-term it is suggested that s.101 Local Government Act 1972 (the power for councils to delegate functions to other local authorities) is utilised to delegate the s106 power to a neighbouring authority/ies in relation to specific BCC land. A draft s.101 Agreement is appended at Annex 2 which sets out the terms for transferring functions.
16. It is proposed that this approach would only be considered for BCC owned land that is not needed for other purposes and is suitable for BNG delivery. To be clear, the mechanism would only be utilised for the purpose of BNG delivery.
17. Adopting this interim approach enables BCC to secure delivery of BNG units on BCC owned land as delivery would be enforced by the relevant neighbouring LPA such as eg Bath and North East Somerset (BANES). On individual applications the process would go through planning as part of the application process. If off-site provision is required to be secured by a s.106 agreement, Bristol (as landowner) would then enter into a s.106 agreement with an adjoining local authority with whom we have a s101 agreement, similarly to the process if a private landowner was to engage with their LPA to secure the delivery of BNG via a S106 agreement. BCC would in turn be in a position to enforce the delivery of biodiversity units on neighbouring LPAs' land for any delivery that they would want us to secure for them (with funding of the monitoring/enforcement costs covered by contributions set out in the respective s.106 agreements)
18. This would result in releasing multiple opportunities to deliver BNG within Bristol in the short-term, and at a lower cost. The risk of this approach is considered to be low as LPAs are stable organisations and under public scrutiny.

### **Officer Recommendations:**

That the Committee for Economy and Skills

1. Endorses the suggested approach regarding pursuing de-designation in October 2024 by preparing and submitting the de-designation request to MHCLG as outlined in this report.
2. Notes the update regarding planning performance; and
3. Endorses the suggested approach regarding securing BNG implementation on BCC owned land and supporting adjacent local authorities to secure BNG implementation on their land, including the Director of Legal and Democratic Services negotiating and completing s.101 agreements with adjacent local authorities, in consultation with the Director of Growth and Regeneration, for the purposes of:
  - a. delegating local planning authority functions under section 106 of the Town and Country Planning Act 1990 for specific BCC owned land and for the purposes of off-site BNG provision only; and
  - b. taking on delegated local planning authority functions under section 106 of the Town and Country Planning Act 1990 for land owned by the relevant adjacent local authority for the

purposes of off-site BNG provision only

### Corporate Strategy alignment:

1. Timely and reliable development management service delivery is crucial for enabling the sustainable development of the city, particularly but not limited to optimising efforts in tackling the housing crisis;
2. Re-gaining control of all non-major development through seeking swift de-designation returns all planning decision making powers to the local planning authority (subject to the Secretary of State's standard call-in powers); and
3. In principle agreeing the suggested approach to securing offsite BNG delivery on BCC owned land enables biodiversity improvements to be delivered within Bristol thereby providing all the benefits from enhanced nature locally and contributing to addressing the nature and climate emergencies.

### City Benefits:

1. Timely, reliable and responsive development management service that carefully considers competing demands and provides sound and compliant planning decisions that enables all communities in Bristol to grow inclusively and sustainably.
2. 10% BNG requirements arising from development in Bristol that cannot be accommodated on site to be retained within the city for the benefit of nature and people of Bristol.

### Consultation Details:

1. Not applicable

**Background Documents:** [Options for non-major planning applications \(bristol.gov.uk\)](https://www.bristol.gov.uk/options-for-non-major-planning-applications)

<b>Revenue Cost</b>	<b>£ None</b>	<b>Source of Revenue Funding</b>	Not applicable
<b>Capital Cost</b>	<b>£ None</b>	<b>Source of Capital Funding</b>	Not applicable
<b>One off cost</b> <input type="checkbox"/>	<b>Ongoing cost</b> <input type="checkbox"/>	<b>Saving Proposal</b> <input type="checkbox"/> <b>If yes - existing or new saving?</b> N/A <b>OR Income generation proposal</b> <input type="checkbox"/>	

**1. Finance Advice:** This report notes progress on eliminating the backlog on planning applications and plans to remove the central government designation that has meant applications can be rerouted to the Planning Inspectorate. The Council becoming responsible again for all planning applications will have an impact on current income assumptions that will need to be included in the Medium Term Financial Plan.

Separately, the report requests approval to delegate to Bath & North East Somerset Local Authority responsibility for approving the Council's plans to meet the 10% requirement for Biodiversity Net Gain on all Council owned properties. In return, Bristol City Council will fulfil the same role for other neighbouring Local Authorities. This has no financial implications with all additional activity to be managed within existing resources.

**Finance Business Partner:** Ben Hegarty, Finance Business Partner Growth and Regeneration, 10 September 2024.

**2. Legal Advice:** .

The Environment Act 2021 introduced the statutory framework for biodiversity net gain (BNG), requiring the majority of developments to provide at least 10% BNG either on-site, off-site or by purchasing credits. This BNG must be secured by planning condition, s106 agreement/conservation covenant or both.

Bristol City Council, as landowner, can use its land for off-site BNG provision. However, Bristol City Council, as local planning authority, cannot enter into a s.106 agreement with Bristol City Council as landowner in order to secure this BNG provision.

Section 101 of the Local Government Act 1972 allows a Council to delegate its functions to other local authorities as long as that function, also being a function of the other authority, is not the responsibility of the other authority's executive. Subject to that exception, the function of local planning authority could therefore be delegated to another local authority for the purposes of securing, monitoring and enforcing these s.106 agreements on Bristol City Council land.

**Legal Team Leader:** Joanne Mansfield, Team Manager - Property Planning and Transport Team, 19 August 2024.

**3. Implications on IT:** I can see no implications on IT regarding this activity.

**IT Team Leader:** Alex Simpson – Lead Enterprise Architect 14 August 2024

**4. HR Advice:** There are no HR implications evident

**HR Partner:** Celia Williams, HR Business Partner (Growth and Regeneration), 19 August 2024

## APPENDICES

**Appendix A – Further essential background / detail on the proposal**

**YES**

<b>Appendix B – Equality Impact Assessment (EqIA)</b>	<b>YES</b>
<b>Appendix C – Environmental Impact Assessment</b>	<b>NO</b>
<b>Appendix D – Decision Risk Assessment</b>	<b>NO</b>
<b>Appendix E – Exempt Information</b>	<b>NO</b>
<b>Appendix F – Details of consultation carried out - internal and external</b>	<b>NO</b>
<b>Appendix G – Options appraisal matrix</b>	<b>NO</b>
<b>Appendix H – Business case / financial analysis</b>	<b>NO</b>