



Andrea Pellegram Ltd.

# Planning Local

*BRIEFING*

## Biodiversity Net Gain – What it means for Local Councils and Neighbourhood Plans

### Introduction

The Environment Act 2021 introduced a new requirement for new developments to secure a Biodiversity Net Gain of at least 10 per cent from existing baseline conditions on development sites. The gain must be sustained over a period of at least 30 years.

Until now, the system has been introduced piecemeal in accordance with existing local planning policy and National Planning Policy Framework requirements. The new Act formally introduces the new system as a statutory requirement. Much of the detail will be introduced through Regulations which were consulted on between January-April 2022. The main components of the system are clear, and they are highly relevant for Parish Councils to consider in promoting Neighbourhood Plans.

### To what development would the Biodiversity Net Gain Requirement apply?

Draft Regulations make clear the requirement would apply to most developments, with some proposed exemptions for householder developments, development under permitted development rights, proposals for change of use, variations and changes to existing planning permissions and phased planning permissions.

A de-minimis threshold is proposed that would apply to area-based habitat (options from 2m<sup>2</sup> to 50m<sup>2</sup>) and linear habitat (2m-50m+). Whilst the requirement would apply in Conservation Areas, Areas of Outstanding Natural Beauty and National Parks (where permitted development rights are removed), the proposal is that the de-minimis threshold would apply to many developments.

There is also a proposal that the requirement would apply to brownfield sites, to temporary permissions, and where development is proposed inside statutory nature conservation sites, and this would apply over and above other requirements in relation to such sites. The new requirements will also apply to Nationally Significant Infrastructure Projects (NSIP).

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## When will requirements be fully in place?

A two-year transition is proposed for liable development, with introduction in 2024. For NSIP, an extra year is allowed (2025). The consultation on draft regulations asked for views on extending these transition periods.

## What determines the baseline Biodiversity value of a site?

A Biodiversity Metric (a calculator) made available from Natural England is being used to calculate the baseline value of individual sites prior to development. Factors relating to habitat size, habitat condition, the distinctiveness of the habitat and its strategic significance are considered and input to the metric to produce a baseline score, measured as biodiversity units. The workings are included within planning applications for consideration by the Local Planning Authority.

## How is Biodiversity Net Gain Demonstrated on site?

Developers are encouraged to use the metric at an early stage of their site selection and site design process so that impacts on the existing biodiversity can be avoided or minimised, before thinking about how design of proposals can conserve and enhance biodiversity, and how the development can incorporate additional benefits. The metric is used again to 'score' the biodiversity value of the site post development, to produce a net gain of 10% in biodiversity units over the baseline, pre-development conditions.

## What happens if Biodiversity Net Gain cannot be achieved on site?

The Act allows developers to meet their requirements off-site where Biodiversity Net Gain cannot be achieved on site, for example because of space constraints. This can be done directly by the developer who might indicate a site that would be the subject of works to improve biodiversity to the required level, or it could be through the purchase of Biodiversity Net Gain Credits relating to other sites (see below). Section 106 Agreements, Conservation Covenants and planning conditions would secure these commitments from developers.

## What are Conservation Covenants?

Conservation Covenants are introduced as a new, voluntary, and standalone legal mechanism that can secure long term conservation management obligations on land even if the land is sold. Conservation Covenants can be used to secure habitat enhancements for biodiversity gain. The Government expects this will make them a valuable tool for local authorities and developers to ensure that compensatory habitats are maintained in the long term.

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## How do Habitat Banking and Purchasing of Biodiversity Credits Work?

The Act provides for three complementary measures that would provide credits for purchase by developers to meet their requirements off-site.

The first would be through the purchase of credits from the market from sites on the Biodiversity Gain Site Register. Landowners will put land (based on a lease of at least 30 years) into a legal agreement and onto the biodiversity gain site register. These could be from sites registered for the purpose of demonstrating net gain associated from a specific development. The biodiversity metric would be used to determine baseline value and gain value as a number of units which would form the total available for the site. Units purchased by developers would be referenced against a planning reference.

The second is a system of Habitat Banking which requires a supply of market finance to support. The agreement provides upfront financial support for landowners to undertake works to prepare and create habitat improvements (in accordance with a Habitat Management Plan) and then an annual income for management and maintenance of the habitat over the period of the agreement. This would create an on-going supply of biodiversity credits independently of specific development, available for purchase. There are already a number of Habitat Banks operating in England and these are already supporting the establishment of registered sites.

The third would be statutory biodiversity credits to be sold by the UK Government to developers as a last resort, where developers can demonstrate as part of the net gain plan that they are unable to achieve net gain on-site, off-site on other landholdings or by purchasing biodiversity units on the market.

## How do developers demonstrate compliance with requirements through a Biodiversity Gain Plan?

The Act makes the achievement of biodiversity net gain a requirement of all planning permissions, subject to the thresholds set out in regulations. Developers will need to submit a Biodiversity Gain Plan or information in support of their planning applications, and the full gain plan in order to discharge this condition following grant of permission. The plan will set out the calculated baseline biodiversity value of the site, address the factors which have influenced site selection and design to mitigate impacts and take opportunities for enhancement. It will demonstrate the position on whether biodiversity net gain can be met on site and, if so, how this will be achieved over time through the phases of the development. This would be particularly relevant in relation to outline planning permissions with clear phases. The government propose to make it a requirement to demonstrate compliance prior to commencement of each phase.

If it is not possible to meet requirements on site, alternative approaches may be presented, including clear plans to meet requirements on another site, or evidence (credit certificates)

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to demonstrate that an appropriate number of credits can be secured from a habitat bank. If obtaining credits, this should be in relation to a single site.

### **Can a Habitat be created in advance of development?**

It would be possible for a landowner to create a habitat in advance of any development and then, provided it is a registered site, use this as a credit towards Biodiversity Net Gain requirements connected to a proposed development.

### **What safeguards are in place to ensure the biodiversity net gains are delivered over the long term?**

The Environment Act has established a requirement for a public biodiversity gains sites register. Regulations and criteria will be established to determine what sites can be put onto the register and what enhancements would need to be satisfied. Sites on the register will be subject to monitoring and reporting requirements to ensure requirements are being met. There will be a requirement for sites to be managed and maintained for at least 30 years.

Mechanisms will be established to prevent double-counting of biodiversity credits for developments in relation to sites on the register. Monitoring and reporting requirements on performance against the agreed Habitat Management Plan can be a condition of planning permission. Those responsible for managing sites on the register will report as required to local planning authorities. Developers will be required to submit information at planning application stage giving the baseline biodiversity value, indicating any degradation since 30 January 2020 other than that associated with a planning permission.

### **What types of land can deliver the best uplift in biodiversity?**

Potentially, all sites can be improved in biodiversity terms. Arable land offers the best potential uplift, perhaps with a focus on lower-yield land given the need for some consideration of retaining the best and most versatile agricultural land in food production. Habitat improvements for woodlands, wood meadows, species rich grassland, wetlands or rewilding all could foster high value biodiversity habitats. It is important to consider the specific local context within the framework emerging Nature Recovery Networks and Nature Recovery Strategies.

### **What scale of sites are suitable for Biodiversity Net Gain Projects**

Habitat Bank companies currently funding the creation of registered sites say they are considering sites larger than 10 hectares, up to around 100 hectares. Beyond this, the Act makes provision for the introduction of regulations setting out criteria and conditions for placing land on the statutory register of biodiversity net gain sites to be introduced. This may cover site area.

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Understanding the criteria will be important for determining whether smaller local sites can be identified to become net gain sites with credits in relation to developments which need to meet the requirement off-site. If not, bespoke agreements with owners of land would be needed, secure through Section 106 Agreements.

### What does the new system mean for protected sites – SSSI, SAC, SPA, Ancient Woodland etc?

Schedule 13 to the Act says that current legislation and policy governing the protection of statutory nature sites and irreplaceable habitats are unchanged, i.e. proposed development should avoid creating significant impacts on them and net gain cannot be applied to development of irreplaceable habitats. The new system is not intended to allow this to be bypassed by net gains in biodiversity.

### What are the implications for Parishes and Neighbourhood Plans?

There are a number of ways in which, and perspectives from which, communities working on Neighbourhood Plans could act on the Biodiversity Net Gain provisions in the Environment Act.

**Identify locations** – There is an opportunity for Neighbourhood Plans to identify areas suitable for biodiversity improvements. Indeed, areas which could experience significant development might wish to identify such areas in order to ensure that biodiversity improvements happen locally, reducing the potential that developers will purchase credits for habitat improvement and management elsewhere. Draft Regulations encourage local off-site mitigation and the biodiversity metric includes a ‘spatial risk multiplier’.

**Develop partnerships** – Going a step further, local councils could foster the development of suitable partnerships between local nature conservation bodies and local landowners to create areas at scale for local habitat improvements, with economic benefits accruing to landowners who would then deliver the works required and manage sites with support. Landowners with land being promoted for development could have a clear interest in doing this, but so would others looking for opportunities to diversify farms businesses as the farms subsidies regime is replaced.

**Ensure allocated sites can meet requirements** – In allocating sites for development, Neighbourhood Plans will need to ensure that biodiversity net gain requirements are capable of being met through the available mechanisms.

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**Promote what's needed locally** - Understanding the local context for nature conservation by examining emerging local Nature Recovery Strategies and Nature Recovery Networks, and existing biodiversity baseline, could be important groundwork for determining what's possible, needed and desirable. The biodiversity metric includes a 'strategic significance score' which captures this contribution.

**Connect habitats** - There is a clear focus on emerging strategies for measures which recognise the value of existing habitats and enhance them further. There is a further strong emphasis on improving connectivity between habitats to reduce isolation and increase the scale of habitat available to species which gives them a much stronger chance to flourish.

**Guide developers** - Within a Neighbourhood Plan setting, having a locally identified area for nature conservation and improvement could provide clear guidance to developers and local planning authorities. Ensuring that this is based on sound understanding of the biodiversity of the area is important.

**Encourage wider support** – Whilst the focus of bio-diversity net gain is on development, it could be imagined that the ability to make contributions or take credits for local bio-diversity improvements would be attractive to corporate enterprises looking to demonstrate corporate environmental and social responsibility, or off-set impacts from business processes.

**Support Net-Zero** - Similarly, whilst the focus is on bio-diversity gain, some forms of habitat improvement could also make a carbon-sequestration contribution, helping to meet community goals to delivering net-zero carbon.

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