

Biodiversity Net Gain and the Environment Bill



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Biodiversity net gain today

- NPPF paragraphs 8 and 32 (“opportunities... to secure net gains”) and:
 - “*minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures*” (170(d))
 - “*plans should... identify and pursue opportunities for securing measurable net gains for biodiversity* (174(b))
 - “*opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity*” (175(d))
- Local plan policies
- Regularly advanced as a benefit of developments (especially e.g. greenfield housing)

Use of offsetting generally

- Within scheme
- Off-site (e.g. specific receptor/enhancement sites)
- Habitat banks (see e.g. the work of [The Environment Bank](#))
- Use of offsetting matrices to show “no net loss”
 - Controversial in own right (see e.g. [HS2 Select Committee Report](#), para 302ff)

Environment Bill

- Sections 92-94 will make provision for “biodiversity gain”
- Schedule 14 inserts a new s 90A into the Town and Country Planning Act
- Substantive provisions in new Schedule 7A TCPA 1990, “biodiversity gain in England”
- All permissions subject to a condition requiring the submission and approval of a **biodiversity gain plan**

Biodiversity gain objective (1)

- Biodiversity gain objective: “met in relation to development for which planning permission is granted if the biodiversity value attributable to the development exceeds the pre-development biodiversity value of the onsite habitat by at least the relevant percentage”
- Biodiversity value is:
 - the post-development biodiversity value of the onsite habitat,
 - the biodiversity value, in relation to the development, of any registered offsite biodiversity gain allocated to the development, and
 - the biodiversity value of any biodiversity credits purchased for the development

Biodiversity gain objective (2)

- The relevant % is 10%
- Value is calculated by reference to the biodiversity metric, published by S/S
- Provision for establishing the date “pre-development biodiversity value” to ensure that activities for which planning permission was not required have not been used to reduce that value
- Post-development value is the projected value “at the time the development is completed”
- “Value” can only be taken into account if satisfied that it will be secured for at least 30 years

Biodiversity gain objective (3)

- Offsite gains can be counted so long as:
 - Enhancement required under a planning obligation or conservation covenant
 - The enhancement is recorded in the biodiversity gain site register

Biodiversity credits

- Section 94 of the Bill
- S/S may make arrangements for the use of credits to meet the gain objective, including the price to be paid
- Payments may be used to carry out works, purchase land and administer arrangements

Other relevant provisions

- Regulations may be made to modify the requirements for “irreplaceable habitats”
- Regulations may modify the requirements for particular types of planning permissions, including retrospective permissions
- Various consequential amendments to provisions of the TCPA 1990

BNG in infrastructure

- No general support for BNG (but obliquely mentioned e.g. in National Networks NPS)
- Note the recent [Cleve Hill decision](#), where the S/S approved compulsory acquisition powers for a BNG plot:

“a compelling case for inclusion particularly in view of the additional benefits in respect of biodiversity net gain that the Development would be able to deliver if the Lowland Grass Meadow Habitat Management Area can be implemented in full”

What next?

- Bill progress
- Establishment of biodiversity credit system
- Impact on local plan policies/duplication of controls
- Scale of impact (e.g. s 73 applications)

Thank you for listening

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