

Biodiversity Net Gain



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The origins of 'biodiversity net gain'

- **Legal Framework:** The Natural Environment and Rural Communities Act 2006 places a duty on decision-makers to have regard to the purpose of conserving biodiversity. (Part 3, Section 40(1))
- The Environment Bill 2019-2020 proposes to take the existing general duty in 2006 Act to have regard to conserving biodiversity further – the duty would be to conserve and enhance (more on the EB later...)
- **Policy Framework:** NPPF Para 175(a) – refusal, if development impacts on biodiversity cannot be avoided, mitigated or (as a last resort) compensated for
- BNG has grown out of the requirement for compensation approach for biodiversity.
- *Will there be an amendment to the NPPF ? Will mandatory BNG detract from compensation being 'a last resort'?*

How offsetting was previously used..

- ‘Biodiversity net gain’ - Secretary of State appeal decision at Whitehouse Farm, West Moor, Newcastle for Bellway (2013)
- Condition imposed to provide *offsetting* for biodiversity and creation of ecosystems. These would be off-site, but land would be reasonably in the control of the Appellant.
- Offsite land in ‘reasonable control’ of Appellant - potential deliverability issue if land cannot be secured to provide biodiversity offsets
- Although offsetting is part of BNG it will be possible to provide BNG ‘on site’



Current Local Plan approaches to net gain



Warwickshire:

- Policy requires use of Warwickshire Biodiversity Impact Assessment Tool (a local metric) to establish the biodiversity value of a site before and after development
- Where metric = residual biodiversity loss BNG is required and the developer can choose to:
 - secure an agreement with a third party to achieve a net gain outcome through an offset agreement (directly or via their broker); or
 - by making a financial contribution to Warwickshire County Council or who will find an appropriate offset scheme.

Local Plan approaches to net gain (2)

Barnsley

- Local Plan (2019) contains a biodiversity policy which list ways in which development will be ‘expected to conserve and enhance the biodiversity and geological features of the borough’
- includes an expectation that development proposals will follow the national mitigation hierarchy (avoid, mitigate, compensate)
- Development which may harm a biodiversity feature will not be permitted without effective mitigation or compensation measures



Local Plan approaches to net gain (3)



Plymouth and South West Devon

- The Joint Local Plan (2019) contains a policy which seeks proportional biodiversity net gain from all major developments
- The level of biodiversity net gain required will be proportionate to the type, scale and impact of development. Enhancements for wildlife within the built environment will be sought where appropriate from all scales of development.
- net gains will be expected to support local schemes for improving biodiversity, identified in the local action plan
- Development will also be expected to provide for the long term management of biodiversity features

The Environment Plan

- The Government's 25 Year Environment Plan includes a commitment to create a Nature Recovery Network
- The Environment Bill will establish Local Nature Recovery Strategies to create or connect habitat for wildlife putting spatial planning for nature on a statutory footing.
- Five pilot studies are underway to identify valuable sites for wildlife and restoration of nature.



The Environment Bill (2)

- Proposes compensatory habitat creation with a 30 year maintenance requirement. This provides a structure to establish a 'market' for offsetting with accredited providers selling 'credits' for developers to buy.
- likely to lead to more 'offsetting'?
- The 30 year requirement could equate to funding for 30 years in some cases, but details on implementation not yet clear.
- Proposed *two year transition* to 'mandatory net gains' (further detail on transitional arrangements awaited)
- Published guidance will also be required in relation to the new measures: for example, should some methods of calculating or achieving net gain be preferred over others?
- delivering BNG does not preclude developers from complying with their separate duties regarding protected sites and protected species

Biodiversity net gain: application

- Schemes where a biodiversity *net-gain* is inherent in the proposals should be promoted as such to LPAs; this can be a real benefit ahead of mandatory requirement
- Longer-term sites (going through Local Plan allocation at the moment) – plan ahead for BNG if they are likely to have an impact on habitats (consider on site mitigation and/or offsetting); collect evidence!
- Consider the impacts of net gain before option agreements are entered into; collect evidence!
- There are a number of mechanisms to deliver net gain. These currently include delivering net gain on land owned by developers through Section 106 agreements.
- It will also be possible to purchase ‘credits’ towards net gain projects off site: some local authorities are putting this service into place (such as Warwickshire CC), and Natural England is running a pilot to identify projects which may be suitable for credit investment in the future. The cost of each credit is currently expected to be between £9,000 and £15,000
- Conservation covenants, also introduced by the Environment Bill, could be used to deliver off-site net gain. Covenants are private, voluntary agreements between a landowner and a ‘responsible body’ to achieve a conservation purpose. They will be able to bind successors in title to both positive and negative covenants.

Planning for the Future

- The recent White Paper ‘Planning for the Future’ includes net gains for biodiversity as a key ambition of planning reform.
- Proposals are included in the White Paper to replace Section 106 agreements with a new Infrastructure Levy – detail is very light! However the White Paper only really details the effects on affordable housing and similar financial obligations. It does not fully consider the effects on securing non-financial obligations or off-site mitigation.
- It is difficult to see how the IL will be capable of securing 30 year management plans; the proposals do not suggest the IL will run with the land (unlike S 106)

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