

# Biodiversity and Conservation in the National Parks



**James Neill**

## Key purposes and powers

- S.5 NPAC 1949
- Establishment of nature reserves: section 21 of the 1949 Act
- Management agreements under section 39 Wildlife and Countryside Act 1981
- Duty to conserve under section 40 NERC Act 2006

# Improving biodiversity through NP's planning functions

- NPPF para 170 (d) “minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks”
- Paragraph 174(b) NPPF 19: “plans should...identify and pursue opportunities for securing measurable net gains for biodiversity”
- Paragraph 174(d) NPPF 19: “opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity”
- SDNPA Local Plan policy SD2 (July 2019):  
*“Core Policy SD2: Ecosystem Services*  
*1. Development proposals will be permitted where they have an overall positive impact on the ability of the natural environment to contribute goods and services. This will be achieved through the use of high quality design, and by delivering all opportunities to:*  
  
*...*  
*b) Protect and provide more, better and joined up natural habitats”;*

## The Environment Bill

- C.90 amends section 40 NERC Act: duty will now be to conserve “and enhance”
- Cls 92 - 94 make provision for biodiversity gain
- Schedule 14 inserts a new s.90A into the TCPA 1990
- Detailed substantive provisions in Schedule 7A TCPA 1990
- All permissions subject to a deemed condition requiring the submission and approval of a biodiversity gain plan to secure the “biodiversity gain objective”
- Conservation covenants

## Calculating biodiversity net gain

- **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 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

## Calculating biodiversity value of a development

- Relevant percentage is 10%
- Value is calculated by reference to the biodiversity metric published by SofS
- Provision for establishing the “pre-development biodiversity value” to ensure activities for which planning permission not required have not been used to reduce that value
- Post-development is the projected value “at the time the development is completed”
- Value can only be taken into account in calculation if the LPA is satisfied it will be secured by condition/planning obligation/conservation covenant for at least 30 years
- Off-site gains can taken into account if via planning obligation/conservation covenant, and recorded in biodiversity gain register

## Conservation covenants under Part 7 of the Bill

- Culmination of long term project by Law Commission to enable positive obligations to bind successors in title
- A conservation covenant agreement is an agreement which contains provisions of a qualifying kind, has a “conservation purpose” and “is intended by parties to be for the public good”
- Landowner obligations bind successors in title: Cl. 107(2)
- No reason why NPs will not be able to be designated as “responsible bodies” (as can other LPAs)
- Modification only by Upper Tribunal “if it considers it reasonable to do so in all the circumstances”

## Conservation purpose

- (a) “To conserve the natural environment of the land or the natural resources of the land”; or
- (b) “To conserve land as a place of archaeological, architectural, artistic, cultural or historic interest”
- (c) To conserve the setting of land with a natural environment or natural resources or which is a place of archaeological, architectural, artistic, cultural or historic interest”

Very broad in scope: not limited to biodiversity conservation. Reference to setting enlarges its scope even further.

Thank you for listening

© Copyright Landmark Chambers 2020

**Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.**

**London**

180 Fleet Street  
London, EC4A 2HG  
+44 (0)20 7430 1221

**Birmingham**

4th Floor, 2 Cornwall Street  
Birmingham, B3 2DL  
+44 (0)121 752 0800

**Contact us**

✉ [clerks@landmarkchambers.co.uk](mailto:clerks@landmarkchambers.co.uk)  
🌐 [www.landmarkchambers.co.uk](http://www.landmarkchambers.co.uk)

**Follow us**

🐦 @Landmark\_LC  
🌐 Landmark Chambers