

Biodiversity net gain in the Environment Bill



Richard Turney

Where are we with “net gain”?

- Environment Bill (3rd Reading in HL this week)
- NPPF: “policies and decisions should contribute to and enhance the natural environment by... minimising impacts on and providing net gains for biodiversity” (174); “pursue opportunities for measurable net gains” (179); integrate biodiversity “especially where this can secure measurable net gains” (180)
- Natural Environment PPG
- NPSs and draft NPSs

The Bill: architecture

- Clauses 99-102 and Schedules 14 and 15 make provision for “biodiversity gain”
- Schedule 14 inserts a new s 90A into the Town and Country Planning Act
- Schedule 15 amends the Planning Act 2008

Planning permission under TCPA 1990

- Substantive provisions in new Schedule 7A TCPA 1990, “biodiversity gain in England”
- Paragraph 13 of Sch 7A will provide that all permissions are subject to a condition requiring the submission and approval of a **biodiversity gain plan**
- The BG plan must explain the steps taken to minimise adverse effects; the pre-development biodiversity value; post-development biodiversity value on site; any registered offsite gain; any purchased biodiversity credits; other prescribed matters

Planning permission under TCPA 1990 (2)

- BG plan may only be approved if (para 15(2)):
 - Satisfied pre/post development value is correct
 - Any offsite gain has been allocated (and correct)
 - Any credits have been purchased
 - The biodiversity gain objective has been met (see below)
- Regulations about determinations may be made under para 16

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

Exceptions

- Planning permission granted by development order (para 17)
- Urgent Crown development (para 17)
- Other specified development (para 17)
- Exclusion of “irreplaceable habitat” by regulations (para 18)
- Modifications by regulations for phased developments, retrospective permissions (para 19/20)

Biodiversity credits

- Section 102 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

BNG & NSIPs

- Recent amendments to Environment Bill contemplate BNG obligations being placed on schemes consented under the PA 2008
- Provision anticipates that such changes may take place outside of the NPS designation process through a “biodiversity gain statement”
- The BGS will set a % for net gain for a type or types of project and specify the manner in which that can be met
- BGS will then be given effect through changes to the determination provisions PA 2008

Conclusions on the Bill

- Fairly radical change to the planning system
- Regulations will be key to various aspects... beware the lessons of CIL!
- For NSIPs, the biodiversity gain statements will serve some of the purposes of the regulations anticipated for TCPA applications – expect a lot of detail, and potentially multiple BGSs
- Ultimately substantive impact on developments will turn on the application of the metric, availability of offsite habitat, and pricing of credits

Risks in implementation

- Timing is unclear
- Sch 7A TCPA anticipates a “front loading” which may be unfamiliar for biodiversity issues
- LPA resource issues
- Delivery and enforcement

Thank you for listening

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London

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

Birmingham

Cornwall Buildings
45 Newhall Street
Birmingham, B3 3QR
+44 (0)121 752 0800

Contact

✉ clerks@landmarkchambers.co.uk
🌐 www.landmarkchambers.co.uk

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