

# Planning Committee

01 April 2022

Agenda item number 11

## Biodiversity Net Gain- consultation

Report by Planning Policy Officer

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### Summary

The Government is consulting on the details of Biodiversity Net Gain. This report outlines the key points and some commentary on implications for the Broads.

### Recommendation

That the report be noted.

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## 1. Introduction

- 1.1. The government has published a [consultation](#) setting out how its new Biodiversity Net Gain (BNG) requirement could work.
- 1.2. The BNG requirement was introduced in the Environment Act, which [was passed last November](#), and is set to become mandatory in November 2023.
- 1.3. It will require developers to demonstrate how they will bring about a minimum 10% increase in biodiversity in order to obtain planning permission for their projects. Under the Act, the necessary habitat enhancement will be paid for by the developer and must be guaranteed to endure for 30 years.
- 1.4. This report is for information only. It summarises the main elements of Biodiversity Net Gain. The summary that follows is taken from two sources:
  - [10 key points from Defra's latest BNG consultation - Farmers Weekly \(fwi.co.uk\)](#)

- [20 things you need to know about the government's biodiversity net gain consultation | Planning Resource](#) (access via registration).

## 2. Key points from the consultation

- 2.1. There are two types of development where BNG will apply: residential and commercial developments for which planning permission is required under the Town and Country Planning Act 1990, and Nationally Significant Infrastructure Projects (NSIPs) consented under the Planning Act 2008.
- 2.2. The biodiversity gains and losses resulting from a development will be measured in “biodiversity units”, using a metric which uses habitats as a proxy for biodiversity and calculates units by taking account of the type, extent and condition of habitats. Natural England has recently published [biodiversity metric 3.0](#) which, subject to further consultation, is expected to be the metric generally used. However, a simplified metric may be used for developments on [small sites](#), which are defined as those of fewer than 10 residential units or an area of less than 0.5ha for other types of development. The Small Sites Metric is likely to be the metric mainly used at the Broads Authority.
- 2.3. Developers will be able to deliver biodiversity gains on-site, off-site, or by purchasing biodiversity units on the market. However, policy and guidance will encourage off-site biodiversity gains to be delivered locally to the development site.
- 2.4. Off-site biodiversity gain sites must be maintained for at least 30 years after the completion of the works to create or enhance the habitat. To count towards a development’s net gain requirement, the site must be secured through a conservation covenant or planning obligation to ensure that habitats are maintained even if the land is sold.
- 2.5. Market analysis estimates that there could be annual demand for around 6,200 off-site biodiversity units with a market value in the region of £135m, based on a unit price of between £20,000 and £25,000.
- 2.6. Applications from householders are likely to be exempt from the requirement to deliver 10% BNG, as will those where it can be shown that a development affects an area of habitat below a certain level. However, the government has changed its mind on exempting some brownfield sites and these are likely to be included.
- 2.7. A developer will need to submit a biodiversity gain plan to the relevant planning authority which sets out how the BNG will be achieved. The plan will need to be approved before development can start. Certain core biodiversity gain information will also need to be provided with the application for planning permission.
- 2.8. The government has said it is minded to allow landowners who want to make land available for BNG to be able to stack payments from the delivery of other environmental services on the same land parcel, provided they are paying for distinct additional outcomes.

- 2.9. The government is proposing dropping previously-considered exemptions for developments on brownfield land, in conservation areas or in national parks. Plans had been suggested in previous consultations to introduce exemptions for brownfield sites that "meet set criteria", for temporary permissions and for "developments for which permitted development rights are not applicable due to their location in conservation areas or national parks". But the consultation document issued on 10 March 2022 said these proposals have now been dropped. The proposal to exempt certain developments on brownfield land would, the government said, "deliver little added benefit and would greatly complicate the requirement's scope for developers and planning authorities alike". In addition, "many brownfield sites offer significant potential for achieving biodiversity net gain as they often have a low pre-development biodiversity value".
- 2.10. However, additional exemptions are being considered, the document states, for the "creation of biodiversity gain sites" and for self-build and custom housebuilding. The consultation document states: "The UK government will not introduce broad exemptions from delivering biodiversity net gain, beyond those exemptions already proposed for permitted development and householder applications such as extensions. The UK government will instead introduce exemptions for the most constrained types of development which do not result in substantive habitat losses." For self-build and custom build, the consultation says the government does not see a clear need for net gain for such schemes "because these developments are often particularly ambitious in wider sustainability terms (such as climate change mitigation), and many of these developments will be small in scale so may be subject to other exemptions and process easements".
- 2.11. Development occurring within designated sites such as Sites of Special Scientific Interest, Special Areas of Conservation, Special Protection Areas and Marine Conservation Zones will not be exempt from net gain. "The biodiversity net gain requirement is ... additional to any existing legal or policy requirements for statutory protected areas and their features, including restoration and conservation of designated features and the achievement of favourable conservation status and favourable condition. These requirements will need to be dealt with separately by the developer and planning authority," the document states.
- 2.12. The government wants net gains to be delivered quickly. The document states: "We propose that on-site biodiversity gains should be secured for delivery within 12 months of the development being commenced or, where not possible, before occupation. A clear timeframe for delivery should be reflected in any planning conditions, obligations or covenants which secure on-site gains. Any longer delay in creation must be reflected in the biodiversity metric calculation, meaning that a lower number of biodiversity units is generated. This will mean that long delays to the delivery of habitats would require more enhancement to be done, usually at greater cost."

- 2.13. Net gain requirements will come into effect in November 2023, but the consultation flags that the National Planning Policy Framework "already encourages net gains for biodiversity when drawing up plan policies and making planning decisions." However, the consultation asks for responses on the creation of a "slightly extended transition period" of up to 12 months for developments on small sites. It says the move "could smooth the increase in biodiversity gain plans that planning authorities need to approve and give the wider sector the chance to become more familiar with the approach before applying it to minor development".
- 2.14. DEFRA says that it intends to use secondary legislation to remove development on 'irreplaceable habitats' from the scope of the requirement for net gain. It explains this is because irreplaceable habitat has such a high biodiversity value, and the ability to mitigate it is so difficult, that meeting the biodiversity gain objective "could be impossible". However, when a development results in losses of both irreplaceable and non-irreplaceable habitat, the government says that the BNG requirement will still apply to any affected non-irreplaceable habitat. DEFRA says it will publish "short supporting guidance on what constitutes irreplaceability and a set of principles to guide the implementation of bespoke compensation approaches. This compensation should be informed by appropriate ecological expertise and we expect that this would typically exceed the requirements that would be set through biodiversity net gain."
- 2.15. Applicants will be able to submit a "biodiversity gain plan" as part of their planning applications, setting out in detail information on a range of areas including the existing biodiversity on the proposed site and the proposed enhancements, and any proposed off-site enhancements. "The purpose of the biodiversity gain plan is to provide a clear and consistent document with which a developer can demonstrate their biodiversity net gain and a planning authority can check whether the proposals meet the biodiversity gain objective," it says. Such plans will have to be signed off by the planning authority before development can start. The document includes a draft biodiversity gain plan template. Biodiversity gain plans will be able to be submitted with a planning application or after planning permission is granted, but before commencement of development. However, all planning applications will have to include "certain core biodiversity gain information" at the application stage, the consultation says. This will include the pre-development biodiversity value of the proposed site, and any steps taken to minimise adverse biodiversity impacts.
- 2.16. For applications for outline planning permission and permissions that allow development in phases, there will be "additional requirements for the biodiversity gain information to be submitted with the application," the consultation says. This would include detail on "how biodiversity net gain delivery will be tracked on a phase-to-phase basis, including the target percentage gains to be delivered at each stage. For most phased developments, we intend to state in guidance that biodiversity gains should be 'frontloaded' into earlier stages."

- 2.17. Councils will be allowed to aim higher than a 10% net gain. The document states: "It remains the UK government's intention to continue to allow higher percentage targets to be set by planning authorities at a local or site level. Any higher target should be made clear at an early stage in the planning or development process and careful consideration should be given to the feasibility and achievability of any requirements above 10%, which can have significant impacts on the costs of developing a site."
- 2.18. Any biodiversity losses which cannot be mitigated on-site will have to be delivered off-site, either on a developer's "own land or by purchasing biodiversity units on the market". The government says it is not proposing to establish a centralised trading platform for biodiversity units, or "to take on other roles which could be performed by the private sector or other third parties, such as brokering". It adds: "Work is ongoing to develop our approach to regulating the biodiversity unit market, as part of broader ongoing work on environmental markets."
- 2.19. The government wants to encourage "habitat banking". It says this would see habitats specifically created in order for the resulting habitat units to be sold "when needed by developers". It says: "We recognise the benefits that habitat banking offers for biodiversity net gain and are considering how the UK Government can best support this approach. Access to finance will be critical for habitat banking, and the UK Government is already offering investment-readiness support through the Natural Environment Investment Readiness Fund."
- 2.20. Planning authorities "will be able to sell biodiversity units from their own land or act as a broker for third party units". But the consultation adds: "Where planning authorities choose to participate in the market, they will be expected to manage any associated conflicts of interest and will need to comply with the same rules and requirements that apply to other biodiversity unit suppliers."
- 2.21. The consultation confirms the government intention "to establish a publicly available register of off-site gains, with clear criteria in place to ensure these sites are providing legitimate gains for biodiversity". It also commits to working with "stakeholders to design the register in a way that allows local communities to access information on habitat sites being delivered and for these sites to be tracked and monitored over time. This will allow for scrutiny of outcomes and will help avoid double counting of biodiversity gains."
- 2.22. The consultation says the government "will be clear that planning authorities should set any specific and proportionate monitoring requirements as part of planning conditions and obligations used to secure off-site or significant on-site habitat enhancements". It says that "where enhancements are secured with conservation covenants, the responsible body should ensure that appropriate monitoring proposals are also secured. It will be the landowner or developer's responsibility to ensure monitoring and reporting obligations are fulfilled, or adequately delegated to another body (with necessary funding), to the specifications set out in the biodiversity gain plan."

- 2.23. The consultation says that "failure to deliver, or attempt to deliver, biodiversity net gain outcomes which are secured with conditions or limitations (subject to which planning permission is granted) can result in enforcement action by the planning authority. Planning authorities have a range of existing planning enforcement tools at their disposal, and the Environment Act includes mechanisms to ensure commitments through conservation covenants are adhered to."
- 2.24. Alongside the consultation, the government has announced a new funding pot of £4 million to help local planning authorities and other local authorities with what it calls "planning oversight" to prepare for BNG. The government statement said the funding would help local authorities "expand ecologist resource and upskill ecologist teams, increasing their capacity to work with developers and communities to provide biodiversity gains by helping restore wildlife, plants and landscapes after building work has taken place". It said this work could take place on the development site, elsewhere in the local area or, if neither option is possible, by purchasing credits for nature restoration elsewhere in England.
- 2.25. Net gain is likely to be expanded to projects at sea. The document says that "projects, or components of projects, in the marine environment beyond the intertidal zone are not included within the scope of the mandatory requirements for biodiversity net gain." However, it adds that the Environment Act does, "provide options for introducing such a requirement for Nationally Significant Infrastructure Projects when a suitable approach has been developed and consulted upon. We are currently working with a wide range of stakeholders towards a consultation on the principles for marine net gain early this year."
- 2.26. In the consultation document, DEFRA says that it may be the case that some types of nationally significant infrastructure projects (NSIPs) are unable to deliver a 10% BNG, but may be able to deliver a lower percentage target. The document says: "We intend to apply the 10 per cent as a minimum requirement broadly but, if modifications prove to be necessary, we would prefer to apply a different percentage requirement rather than to apply an exemption."
- 2.27. The document also says that the biodiversity net gain requirement for NSIPs "will be brought forward through a 'biodiversity gain statement' or statements." It explains that these will be published "as standalone policy documents but we intend to subsequently integrate these into the National Policy Statements when these are reviewed". It adds: "These biodiversity gain statements will set out the biodiversity net gain requirement for all types of NSIPs, including the date from which the objective is expected to be achieved, and the stage of project design to which commencement threshold applies." Net gain requirements for NSIPs will come into effect in November 2025, the document says.

### **3. Some Neighbourhood Plans in Broads area bring in BNG early**

- 3.1. Some of the Neighbourhood Plans that are in the Broads and are soon to be adopted, have policies which bring BNG in now. So, for applications in those areas, when the Plans are adopted, there will be a requirement for certain development to provide BNG.
- 3.2. Ecologists and Planners are meeting to discuss how to implement such policies, ahead of the national requirement.

### **4. Sites/schemes in the Broads could be delivered through the off-site route**

- 4.1. There seems potential for schemes and sites in the Broads to deliver BNG, 'funded' through the offsite approach as mentioned earlier in the report.
- 4.2. Officers will keep informed of this potential as, depending on the detail of the approach for such schemes, the Broads may be ideally placed to be an area to deliver BNG.
- 4.3. There would be a number of issues to be considered and addressed were this to come forward, including practical, management and theoretical considerations. The idea behind BNG is to improve environmental standards nationally and it would be important to ensure parity as far as possible, so that the provision of off-site gain did not result in the creation of a BNG hot spot at the receiving site and a nature-depleted development site.

### **5. Consultation response**

- 5.1. National Parks England are coordinating a response to this consultation, which they tend to do for most such consultations. The consultation response had been prepared by the National Parks Ecology Group, before sign off by National Parks England.
- 5.2. The main points in the response are as follows:
  - a) A main concern is the resource needed for Local Planning Authorities to approve, monitor and enforce BNGs.
  - b) Exempting self-build and custom-build schemes is not supported as self-build and custom build housing can involve larger sites, divided into a number of service plots.
  - c) Exempting change of use applications is not supported as change of use involving land can have potential significant impacts on biodiversity and provides valuable opportunity for BNG
  - d) Mitigation measures for protected species and off-site impacts are mitigating harm and so are not net gains, therefore they should not be counted as BNG. Only creation and enhancement beyond the necessary for mitigation should be included in BNG.

5.3. Officers are supportive of the response from National Parks England and do not have any further or additional comments to make. As such, it is not proposed to provide a response from the Broads Authority, rather to rely on the National Parks England response. This response was being drafted at the time of writing this report and if Members wish, when it is completed, it can be sent around for information.

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