

Planning Committee

01 March 2024

Agenda item number 14

Biodiversity Net Gain

Report by Biodiversity Net Gain Officer

Summary

Mandatory Biodiversity Net Gain (BNG) was first set out in the Environment Act 2021 and the detailed secondary legislation has been recently approved by Parliament, with BNG becoming mandatory for major developments from 12 February 2024 and for small sites from 2 April 2024. It aims to reverse the historic decline in biodiversity and leave the natural environment in a better state by making sure that any development subject to planning permission has a measurably positive impact on biodiversity by creating and improving natural habitats.

As part of the Broads Authority's delivery of BNG, it is considered appropriate to update our local validation list to ensure that adequate information is provided with applications to be confident that mandatory BNG measures can be delivered.

Recommendation

To note the report and endorse the consultation of an amended local validation list.

1. Introduction

- 1.1. Nature provides a wide range of services on which we depend, such as food, pollination, water supply, clean air, flood alleviation, climate change mitigation and resilience, and leisure and recreation.
- 1.2. Biodiversity is a measure of all the life on earth – species, habitats, and ecosystems. The UK is one of the most nature-depleted countries in the world. There has been a 19% decline in the average abundance of wildlife in the UK since the 1970s despite legislation and policy to protect biodiversity and wildlife. On top of that, nearly 1 in 6 species are threatened with extinction in the UK. (Statistics from the State of Nature Report, 2023.)
- 1.3. The Environment Act 2021 operates as the UK's post-Brexit framework of environmental protection and sets new binding targets. The goal of improving nature includes targets for 2030 to halt the decline in species and protect 30% of our land and sea for nature.
- 1.4. The Environment Act includes provisions to strengthen and improve the duty on public bodies to conserve and enhance biodiversity, including mandating a Biodiversity Net Gain (BNG) through the planning system, and the preparation of Local Nature Recovery Strategies (LNRS).

- 1.5. It is important to note that any existing protection for species and habitats, or policy considerations, will still apply to applications subject to mandatory BNG. Therefore mandatory BNG provision will be over and above all current ecological responsibilities and requirements from a legal and planning perspective.

2. Legislative Background

- 2.1. In England, BNG is being introduced under a statutory framework through Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021). In total there are 6 Statutory Instruments that have gone through Parliament between November 2023 and February 2024. These legislate for various parts of the BNG mechanism.
- 2.2. Mandatory BNG currently applies only to development subject to planning permission on terrestrial habitats. Further provision for other development types, such as Nationally Significant Infrastructure Projects (NSIPs) and marine habitats, is due in the future.
- 2.3. BNG is mandatory for major developments from 12 February 2024, and will be for small sites from 2 April 2024. A webpage was created to inform potential applicants [Biodiversity Net Gain \(broads-authority.gov.uk\)](https://broads-authority.gov.uk)
- 2.4. There are a number of exemptions from mandatory BNG. These include:
 - Householder applications;
 - Developments impacting below a 'de minimis' threshold, defined as less than 25 square metres of habitat, or less than 5 metres of hedgerow or watercourse and subject to there also being no designated sites or priority habitats impacted;
 - Certain self-build applications;
 - Sites for development mainly for the purpose of delivering biodiversity gain;
 - Development covered by permitted development rights;
 - Crown development; and
 - High Speed Rail.
- 2.5. It is intended that NSIPs will be covered by mandatory BNG by November 2025.

3. How BNG will work

- 3.1. In order to deliver BNG, the current and proposed biodiversity on the application site needs to be quantified and measured. For this purpose, habitat is used as a proxy for biodiversity, and this is measured and recorded using the Statutory Metric tool. BNG is "...an approach to development...that aims to leave the natural environment in a measurably better state than it was beforehand."

- 3.2. The Statutory Metric tool has been developed by Natural England and DEFRA over at least 10 years. Its purpose is to quantify biodiversity into Units, which can be used for comparison purposes before and after development proposals. Units can be area based, or linear (for hedgerows and watercourses); the two types of units are not interchangeable, so are measured separately and both are subject to BNG requirements separately.
- 3.3. To generate a baseline pre-development Unit value, the metric captures information on the habitat comprising of:
- size (area/length);
 - distinctiveness (habitat type and importance);
 - strategic significance (location); and
 - condition.

The metric is in the form of a spreadsheet and certain fields, for example on distinctiveness, have been pre-populated using data from Natural England to ensure that the correct weighting is applied. Other factors, for example strategic significance, are determined locally.

- 3.4. To generate the post-development Unit value, additional information is also captured. This includes:
- time to reach target condition;
 - spatial risk (how close to the development site); and
 - difficulty of creating the habitat type.

These factors are also weighted according to the benefit they offer. For example, there is a strong preference for providing BNG on site, so offsite BNG will score lower, meaning that more must be provided to adjust for the increased distance.

- 3.5. There is a requirement for the metric to be completed by a suitably experienced person; this will usually be an ecologist for the full metric. Specific training is required to complete the metric for rivers and watercourse, and this will be important in the Broads.
- 3.6. The Regulations require that an applicant must provide at the planning application stage a statement and justification on whether BNG will apply to the application. If BNG is required, they must also provide a correctly completed metric tool for the biodiversity value on site, together with supporting plans and ecological reports. The Local Planning Authority (LPA) will then need to assess the quality and reliability of data submitted in order to validate the application. If the BNG element is not provided, is incomplete or incorrect the planning application cannot be validated.

- 3.7. How BNG will be delivered is a matter for the pre-commencement stage – i.e. after planning permission has been granted. Further information will need to be submitted for approval by the LPA before the development commences, as follows:
- A fully completed metric tool including the post-development biodiversity unit values;
 - A Biodiversity Gain Plan that sets out how the proposed biodiversity enhancement and creation necessary will be delivered;
 - Proof that any offsite biodiversity units or statutory credits required have been purchased; and
 - Any necessary legal agreements for provision and monitoring of the BNG relating to the development
- 3.8. Earlier iterations of the BNG guidance suggested that information on how BNG would be delivered, for example through the post-development metric or the Biodiversity Gain Plan, would need to be submitted with the planning application, but this is not in the final Regulations.
- 3.9. BNG can be delivered on-site, off-site, or by using government statutory biodiversity credits as a last resort. On-site BNG will be within the application site and may use areas of land on the edge of a development but may also utilise areas of land with other uses, such as amenity land and gardens. Off-site BNG provision may use other land owned by the applicant to deliver biodiversity enhancements, or it may be on third party land, such as a habitat bank created by a local farmer, but a legal agreement will be needed between the landowner and the applicant in this case. It is expected that a private market for biodiversity units will become established.
- 3.10. Land used for off-site BNG provision will need to be registered on the national Natural England Sites Register and allocated to the development.
- 3.11. All off-site and significant on-site BNG must be secured and monitored for a period of 30 years, for which a legal agreement will be needed. The onus is on the developer to undertake the monitoring, but the LPA will need to check the applicants monitoring for that 30-year period and ensure any enforcement necessary.
- 3.12. Applicants for schemes where BNG is likely to apply are strongly encouraged to engage with the planning team through pre-application advice.

4. Local Validation List

- 4.1. The information which is statutorily required at the application stage is limited to the site baseline information, which is provided through the Metric. All the information on how the BNG will be delivered is left to the pre-commencement stage and required through the imposition of a General Biodiversity Gain Condition. However, to determine an application the LPA will need to have confidence that the necessary BNG

can be delivered in accordance with the statutory requirements. National guidance makes provision for LPAs to require the submission of additional information through their local validation lists, including on how the BNG will be delivered.

- 4.2. It is proposed that the Broads Authority's Local Validation List be updated to include a requirement for information to be provided on BNG delivery. The required information could include a fully completed post-development metric tool, a draft Biodiversity Gain Plan for certain applications or other types of report on how the BNG requirement will be delivered and/or, where necessary, draft heads of terms for a section 106 or other legal agreement to secure provision and monitoring of BNG for 30 years.
- 4.3. The updated validation checklist will need to go through a consultation process before being adopted. It would be useful to produce a comprehensive draft for the consultation in order to get as wide a range of views as possible.

5. Conclusion and recommendation

- 5.1. Biodiversity Net Gain is a completely new legislative framework and there will be opportunities to improve the process nationally. However, it does have the potential to offer real benefits to the natural environment if it is embraced at all levels.
- 5.2. Updating the Local Validation List to include additional information would improve the process of fully approving planning applications and avoid delays at the pre-commencement stage.
- 5.3. It is recommended that Members agree the proposal to update the Local Validation Checklist and undertake consultation on this.

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Date of report: 21 February 2024

[Broads Plan](#) strategic objectives: B3