

## **PREPARING FOR BIODIVERSITY NET GAIN**

Presented by Head of Planning

### **EXECUTIVE SUMMARY**

Biodiversity Net Gain is an approach to development, and/or land management, that aims to leave the natural environment in a measurably better state than it was beforehand. It delivers measurable improvements for biodiversity by creating or enhancing habitats in association with development. Biodiversity Net Gain can be achieved on-site, off-site or through a combination of on-site and off-site measures.

The Authority has been approached by developers, local authorities and other agencies looking to use its land for Biodiversity Net Gain and the provision for at least a 10% Biodiversity Net Gain is now a mandatory requirement for all new development, (except those exempt from Biodiversity Net Gain requirements). It is a matter for consideration as part of the Authority's statutory planning consultee role and will need to be addressed as part of any future development projects undertaken by the Authority. Importantly the Authority's role as a landowner potentially offers opportunities to secure enhancements for the biodiversity of the Regional Park through the creation of new habitat as well as enhancing existing habitats.

This report sets out the background to Biodiversity Net Gain and explains the Authority's position in respect of its role as statutory consultee, developer and landowner. It outlines the steps officers are undertaking to be in a position to benefit from Biodiversity Net Gain and to identify potential sites within the Authority's ownership that could be enhanced and managed as Biodiversity Net Gain sites.

### **RECOMMENDATIONS**

- Members to note:
- (1) the work that officers have undertaken, as set out in paragraphs 32 to 33, and the next steps proposed in order to be in a position to benefit from Biodiversity Net Gain and in particular its proposal, set out in paragraphs 34 to 37 to undertake a two-phase study to identify potential sites within its ownership that could be enhanced and managed as Biodiversity Net Gain sites;
  - (2) officers will present the findings of the study to Members in the autumn and that these findings

will inform the development of a position statement in respect of Authority landholdings to guide responses to enquiries from developers and internal land management decisions; and

- Members to Approve (3) that a formal request will be made to all the riparian planning authorities to:
- a) involve the Authority in early discussions regarding Biodiversity Net Gain and the Biodiversity Gain Plan where these are likely to affect the biodiversity of the Regional Park and/or require offsetting; and
  - b) ensure that the Authority is formally consulted on any Biodiversity Gain Plan relating to land within or adjacent to the Regional Park boundary.

## **BACKGROUND AND STATUTORY FRAMEWORK**

### **1 Statutory Framework**

Biodiversity Net Gain (BNG) is a way of creating and improving biodiversity by requiring development to have a positive impact ('net gain') on biodiversity. The requirement for BNG in England became mandatory under section 90A and Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) from the 12 February 2024, and also now applies to small developments from 2 April 2024.

### **2 Planning condition for BNG**

Under this statutory framework all planning permissions (except those exempt from BNG requirements) are deemed to include a planning condition requiring submission of a biodiversity gain plan and its approval by the Local Planning Authority (LPA) prior to commencement of any development. A LPA may only approve a biodiversity gain plan if it provides for at least 10% increase in biodiversity in relation to the pre-development biodiversity value of the on-site habitat.

### **3 Achieving 10% Increase**

This 10% increase in biodiversity required can be achieved through:

- on-site biodiversity gains (within the application's red line boundary);
- registered off-site biodiversity gains on land in the applicant's ownership outside the development site or by the purchase of off-site biodiversity units on the market;
- or as a last resort via the purchase of statutory biodiversity credits from the Government.

Developers can combine all three options, but must follow the steps in order. This is part of the Biodiversity Hierarchy, which is described further at paragraph 9 below.

- 4 BNG will be measured using Defra's statutory biodiversity metric and significant on-site habitat and all off-site habitat is to be secured for at least 30 years via conditions, planning obligations or conservation covenants.

5 **Biodiversity Metric**

The statutory biodiversity metric is used to calculate the pre-development and post-development biodiversity value of the development's on-site habitat, as well as the value for off-site biodiversity gains and biodiversity credits. It uses habitat information to generate "biodiversity units", a proxy measure for biodiversity value. The statutory biodiversity metric data value inputs include habitat type, size, distinctiveness, condition, and its location in the local area. Spatial location can also affect a habitat's value, in particular whether or not the habitat is of, or in a location that is of, 'strategic significance'.

6 **The Development Process**

The Government's Biodiversity Net Gain Planning Practice Guidance (February 2024) requires applicants to consider BNG early in the development process and factor it into site selection and design. BNG requirements should, where appropriate, be discussed with the LPA as part of any pre-application service. An application will only be validated if it is accompanied by certain minimum information, including:

- the pre-development biodiversity value of the onsite habitat together with the completed metric showing the calculations made;
- a statement confirming that the biodiversity value has taken account of any degradation of habitat by using the value of the site prior to any degradation where appropriate;
- a description of any irreplaceable habitat (e.g. ancient woodland, veteran trees) on land to which the application relates; and
- a plan showing on-site habitat existing on the date of application (or an earlier date), including any irreplaceable habitat.

- 7 Ultimately the LPA will need sufficient information to consider whether the general BNG condition is capable of being discharged successfully through the imposition of conditions and agreement of section 106 planning obligations to secure significant on-site gains and registered off-site gains. If development is commenced without BNG requirements being met planning conditions will be breached and enforcement action could be taken.

8 **Biodiversity Gain Plan**

A Biodiversity Gain Plan will need to be submitted and approved to discharge the general biodiversity gain condition prior to commencement of development. A Biodiversity Gain Plan must include:

- information to demonstrate how adverse impacts of the development on the biodiversity of habitats have been minimised;
- the pre-development and post-development biodiversity value of the onsite habitat;
- the biodiversity value of any registered offsite habitat provided in relation

to the development; and

- any statutory biodiversity credits purchased.

In addition a description of arrangements for maintenance and monitoring of habitat enhancement over the 30 year period will be required. In terms of 'phased' development this cannot commence before an Overall Biodiversity Gain Plan and a Phase Biodiversity Gain Plan have been submitted to and approved by the LPA.

## 9 Biodiversity Hierarchy

Planning authorities must take into account how the "Biodiversity Hierarchy" has been applied when determining whether or not to approve the Biodiversity Gain Plan. This states that:

- development should avoid adverse effects to on-site habitats that have a medium to very high distinctiveness and, if they cannot be avoided, then those effects should be mitigated; and
- then in relation to all onsite habitats which are adversely affected by the development, the adverse effect should be compensated by prioritising the enhancement of existing on-site habitats, creation of new on-site habitats, allocation of registered off-site gains and finally the purchase of biodiversity credits.

## 10 Securing BNG

For significant on-site gains, and all off-site gains, the BNG must be maintained for at least 30 years following the completion of the habitat enhancement works. Responsibilities will be set out in a legal agreement, either a section 106 agreement or a conservation covenant agreement with a responsible body. A responsible body may be a local authority, a public body or charity with at least some purposes or functions relating to conservation or a private sector organisation where at least some of its main activities relate to conservation. The Government intends to publish a list of responsible bodies in the near future. The LPA or responsible body must register the section 106 agreement or conservation covenant agreement as a local land charge. The obligations in a section 106 agreement or conservation covenant agreement are binding on future owners of the land. The obligations will be enforced by the LPA or responsible body.

## 11 Interaction with existing environmental protections

It is important to note that BNG does not change existing legal environmental and wildlife protections for protected sites and species or priority species and habitats (e.g. Habitats Regulations Assessment).

## 12 The Authority's Role

The Authority position with regard to BNG needs to be considered in relation to its role as:

- **statutory consultee**, responding to planning consultations both within and adjacent to the Regional Park that may impact upon the amenity, visitor enjoyment and biodiversity of the Park;
- **developer** in terms of delivering projects and submitting planning

applications; and

- **landowner** - responsible for managing a range of open spaces, nature sites, venues and visitor attractions.

The Authority has already received approaches from developers, local authorities and other agencies looking to use its land for BNG and provision for BNG is already being raised and considered through the planning application consultee process.

### **13 The Authority's Business Plan 2024-2027**

The Authority's Business Plan 2024-2027 states that the Authority will explore how best it can strategically realise the potential benefits of BNG while carefully balancing the other uses of the Regional Park. It goes on to state that it will look to assess its sites within the Park for their potential for biodiversity and habitat improvements and will look to set out its approach to BNG.

## **AUTHORITY AS STATUTORY CONSULTEE**

### **14 Authority's statutory consultee role**

Section 14 of the Lee Valley Regional Park Act 1966 sets out provisions for the Authority's planning consultee role. LPAs are required to consult with the Authority where it appears that the application for planning permission that it has received is likely to affect any part of the Regional Park and to take account of any representations the Authority may make in determining that application. The Authority regularly comments on matters relating to biodiversity as part of this consultee role, taking account of biodiversity proposals within the Park Development Framework (PDF), the objectives and priorities set out within the Authority's Biodiversity Action Plan (BAP) and the need to conserve and enhance the designated sites within the Park.

### **15 Authority assessments**

Under the statutory requirements for BNG, baseline information regarding on-site habitat condition and potentially off-site habitats condition will be provided as part of the planning application. The Authority will be able to assess this information alongside other environmental regimes which apply to planning applications such as Environmental Impact Assessment and Habitats Regulations Assessment as well as ecological information supplied via the Preliminary Ecological Assessment, including any ecological surveys for protected species for example. Government guidance recognises there is often a strong link between retaining or enhancing distinctive on-site habitats to support BNG and wider planning policies which conserve and enhance biodiversity and protect the environment, such as urban greening policies, and an integrated approach to the provision of information is encouraged.

### **16 Determination of the Biodiversity Gain Plan**

Determination of the Biodiversity Gain Plan however, via the discharge of the general biodiversity gain condition, will be the mechanism to confirm whether the development meets the biodiversity gain objective – of at least a 10% increase. It is the information provided in this document which will enable the Authority (and the LPA) to come to a conclusion as to whether the type and location of on-site habitat enhancements are appropriate, taking account of other policies to support biodiversity, and that an appropriate balance has been struck between on-site gains and off-site gains. The Authority would for example prefer to see development proposed within the Park accommodate

BNG on-site within the application site wherever possible in order to maintain and potentially improve the biodiversity of the Park. The Biodiversity Gain Plan would also identify any off-setting requirements on the Authority's landholding or on other land within the Park separate from the application site.

- 17 The LPA will require sufficient information to consider whether planning conditions are needed to secure any significant on-site habitat enhancements, including those relating to the 30 year maintenance requirements for enhancements and, whether prior to the determination, section 106 planning obligations are also required to secure off-site gains for the development. It may be appropriate for the LPA to ask for further information to assist the consideration of biodiversity net gain as part of the determination of the planning application, where they believe this would be material to the consideration of the application.
- 18 For the applicant, if significant on-site habitat enhancements are proposed as an integral part of the development, the planning application would be expected to include detailed proposals of these habitat enhancements as part of the plans accompanying the application. Information about any planning obligations that may be needed should also be provided, for example the provision of a draft Habitat Management and Monitoring Plan should be submitted where significant increases in on-site biodiversity is proposed to demonstrate how the long term maintenance of habitats will be secured.
- 19 Government Guidance encourages applicants to consider BNG early in the development process and factor it into site selection and design and indeed this would be necessary to ensure appropriate areas/habitats within a site are identified for retention and enhancement and new on-site habitat creation is factored into master planning from an early stage. This work would also identify the need for any off-site habitat requirement.
- 20 **No requirement to consult on Biodiversity Gain Plans**  
This integration of BNG early in the development process is important because the Biodiversity Gain Plan is not submitted until permission has been granted when the fundamental elements on which it is based will have largely already been determined – location of any new habitats, areas to be enhanced, balance between on-site and off-site provision etc. The BNG Guidance also states that “as with most applications to discharge conditions there are no statutory requirements to consult any statutory bodies on Biodiversity Gain Plans”.
- 21 **Proposed request to LPAs**  
It is therefore proposed to make a formal request to the relevant LPAs to:
  - a) involve the Authority in any early discussions regarding BNG and the Biodiversity Gain Plan where these are likely to affect the biodiversity of the Regional Park and/or require offsetting; and
  - b) ensure that the Authority is formally consulted on any Biodiversity Gain Plan relating to land within or adjacent to the Park boundary.

#### **AUTHORITY AS DEVELOPER / LANDLORD**

- 22 Where the Authority itself delivers a future project, any application for planning permission will be subject to the requirement to submit a Biodiversity Gain Plan providing for a 10% increase in BNG. The Authority would need to ensure the

BNG could be accommodated within the development site or on adjacent or associated land owned by the Authority. Project planning would need to factor the BNG requirements from the outset and consider the potential long term monitoring and management required. These measures would align with the Authority's remit in providing for nature conservation and the proposals set out within the PDF and BAP.

- 23 The Authority will also need to consider how to deal with this requirement in relation to any future projects it delivers in partnership with another party and where it leases land to third parties who will be applying for planning permission for a development. In the case of the latter, the obligation will be on the third party. It will, however, be critical to the likelihood of successfully obtaining planning consent and so will need to be considered at an early point in discussions with potential lessees.

### **AUTHORITY AS LANDOWNER**

- 24 The Authority owns land that could potentially be managed and enhanced in order to generate biodiversity units, to be used towards meeting its own or a developer's BNG requirements.

**25 Requirement for a binding agreement**

As noted above, the Authority would be required to enter into a binding agreement for a term of not less than 30 years setting out responsibilities for management of the land in the form of either a section 106 agreement or a conservation covenant agreement with a responsible body. The agreement would be registered as a local land charge and would be binding on any future purchaser of the land.

**26 Two ways of using land – (1) direct agreement with developer**

There are two ways in which the Authority could use its land to generate biodiversity units. The first is to enter into an agreement with a developer for the direct sale of biodiversity units. In this case, it would decide to commit its land and make enhancements only following conclusion of an agreement with a specific developer in respect of purchase of units. This has the advantage that funding from the developer can be secured to make the enhancements and to meet the costs of maintaining the habitat going forward as well as associated costs such as monitoring and reporting.

- 27 Purchasing developers may be identified either as a result of a direct approach to the Authority or through the use of a matching service such as those established by Hertfordshire County Council.

**28 Two ways of using land - (2) Banking of biodiversity units**

The second is to begin enhancement of a habitat prior to identifying a purchaser and to look to "bank" those units. These units could then be sold to a developer or used to support its own planning applications at a later date. This would require the Authority to invest itself in making and maintaining the enhancements required to generate biodiversity units because there would be no agreement with a developer in place.

**29 Potential benefit of BNG**

The potential advantage of committing land to generation of biodiversity units is that it provides a potential source of income that can be used to enhance habitats within the Park.

**30 Considerations in committing land**

There are, however, many important factors to consider before the Authority commits its land to the generation of biodiversity units and any sale of biodiversity units to a third party including:

- understanding the other potential uses of the land – this is essential because any land being used for generation of biodiversity units will be tied up for 30 years;
- ensuring sufficient financial resources are secured and set aside to maintain the land over a 30 year period, either through a funding agreement with a developer or from Authority budget in the case of banking units; and
- understanding what land the Authority needs to have available to meet BNG requirements for its own development and projects.

**31 Timing**

It is also important to consider when is the right time for the Authority to engage as a landowner. The market for biodiversity units is at a very early stage; although there has been some creation and trading on a voluntary basis and in response to policy requirements of LPAs, this has been relatively limited. A Cartas Jonas report in April 2022 suggests that demand for land for BNG is expected to remain high and supply pressures could increase over forthcoming years, which potentially increases value over time.

**WORK TO DATE**

- 32 Officers have commissioned a number of habitat surveys this year as part of existing site management and project development work. Within these the requirement for a BNG baseline calculation and concept plan was included within the scope to provide an idea of the type of current value and potential areas for enhancement. The reports are yet to be finalised but it is likely that there is good potential for uplift on many sites within the Park; the strategic significance of the habitats within the Park should enhance their value.
- 33 Officers are also benchmarking the Authority's emerging approach with a number of other organisations to understand how they are preparing. Initial discussions have shown that both LPAs and landowners are currently undertaking similar baseline assessments. Officers have been undertaking continuing professional development to ensure a full understanding of the new legislation and the opportunities it presents for the Authority.

**NEXT STEPS**

**BNG baseline assessment of Authority landholdings**

- 34 In order to inform the Authority's position (consultee, developer and as landowner) in relation to BNG a baseline BNG assessment is in the process of being commissioned for the Authority's landholdings. This assessment will provide a robust evidence base of the baseline unit value and potential for opportunities for BNG uplift across the Authority's landholdings. This methodology aligns well with the approach being taken by other organisations and officers will continue to engage with comparable landowners and others

engaged in the BNG market to develop our understanding of BNG opportunities and potential structures for realising those opportunities.

- 35 The assessment will take place in two stages. The first stage will review existing data, undertake site assessments using remote technologies such as aerial imagery and include some ground truthing to provide a baseline unit value of the habitats present. The strategic importance and overall condition of habitats will also be assessed as this is a key factor in calculating the unit value using the metric. This will result in sites being identified which have the potential to be used for BNG.
- 36 The second stage will require more in-depth investigations to provide a BNG baseline unit value for each identified site, an assessment of their condition and more detailed enhancement opportunities and the potential for unit uplift. Some sites may be scoped out of this stage two assessment, the criteria for scoping out sites is to be considered and agreed.
- 37 Using the outputs from this assessment the Authority can align the BNG opportunities alongside existing operational requirements and future priorities outlined within the Business Plan. This will enable the development of a position statement for Authority landholdings which will help guide responses to external BNG enquiries and any future internal land management decisions.

#### **Approach in the Interim**

- 38 In the interim period until the assessment outlined above is finalised the Authority will respond to any approach for BNG offsetting on a case by case basis with due consideration of the potential future management of sites. In addition, before carrying out habitat enhancements in the future, consideration will be given to the potential opportunities for BNG to be incorporated into the enhancement project.

#### **ENVIRONMENTAL IMPLICATIONS**

- 39 The environmental implications are set out in the body of the report.

#### **FINANCIAL IMPLICATIONS**

- 40 There are no financial implications arising directly from the recommendations in this report.

#### **HUMAN RESOURCE IMPLICATIONS**

- 41 There are no human resource implications arising directly from the recommendations in this report.

#### **LEGAL IMPLICATIONS**

- 42 The legal implications arising from the recommendations in this report are set out within the body of the report.

#### **RISK MANAGEMENT IMPLICATIONS**

- 43 There are no risk management implications arising directly from the recommendations in this report.

## **EQUALITY IMPLICATIONS**

- 44 There are no equality implications arising directly from the recommendations in this report.
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## **BACKGROUND REPORTS**

Environment Act 2021

## **LIST OF ABBREVIATIONS**

<b>BNG</b>	<b>Biodiversity Net Gain</b>
<b>LPA</b>	<b>Local Planning Authority</b>
<b>PDF</b>	<b>Park Development Framework</b>
<b>BAP</b>	<b>Biodiversity Action Plan</b>