

NEW FOREST NATIONAL PARK AUTHORITY

PLANNING COMMITTEE MEETING – 20 FEBRUARY 2024

BIODIVERSITY NET GAIN (BNG) - UPDATE

Report by: David Illsley, Policy & Conservation Manager

1. Introduction

- 1.1 The Environment Act 2021 contains a statutory requirement for prescribed development to leave the natural environment in a measurably better state than it was beforehand. The Government has defined this ‘Biodiversity Net Gain (BNG)’ as ‘a way of creating and improving natural habitats. BNG makes sure development has a measurably positive impact (‘net gain’) on biodiversity, compared to what was there before development.’ Further information can be found at [Biodiversity net gain - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/biodiversity-net-gain) and [Understanding biodiversity net gain - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/understanding-biodiversity-net-gain).
- 1.2 This report summarises the main elements of the mandatory requirement for BNG which applies to certain developments from February 2024; and how BNG delivery can be achieved on-site, off-site or through statutory biodiversity credits. The report also recommends officers are authorised to secure the necessary overarching legal agreements to deliver BNG for qualifying developments in the National Park.

2. Biodiversity Net Gain – legal framework and what development is affected

- 2.1 The Environment Act 2021 amended the Town and Country Planning Act 1990 and established the following key components of BNG:
 - Minimum 10% BNG gain required, to be calculated using the Biodiversity Metric. The minimum 10% gain is mandatory and therefore there is no scope for local planning authorities to reduce the requirement based on viability or other issues.
 - BNG can be delivered on-site, off-site or via new statutory biodiversity credits.
 - Significant on-site habitat and all off-site habitat must be secured for at least 30 years via conditions, planning obligations or conservation covenants.
 - A national register for net gain delivery sites will be established.
- 2.2 The mandatory requirement for BNG came into force for planning applications submitted on or after 12 February 2024 - further details are set out in The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024. This requirement relates to ‘major developments’ (unless specifically exempted) and BNG will be required for non-major development from 2 April 2024. ‘Major development’ includes residential developments of 10 or more dwellings, or where the site area is greater than 0.5 hectares. BNG will be extended to cover Nationally Significant Infrastructure Projects from late 2025. Therefore for the majority of planning applications submitted within the New Forest National Park area the mandatory requirement to deliver BNG will commence for planning applications submitted from 2 April 2024 and we have provided information for applicants on our planning webpages – see [Biodiversity Net Gain - New Forest National Park Authority \(newforestnpa.gov.uk\)](https://www.newforestnpa.gov.uk/biodiversity-net-gain).

- 2.3 There are specific exemptions from biodiversity net gain for certain types of development. These exemptions include householder development; self-build and custom build developments which consist of no more than 9 dwellings and are carried out on a site which has an area no larger than 0.5 hectares; and development subject to the de minimis exemption (defined as development that impacts less than 25 square metres of habitat, or 5 metres of linear habitats such as hedgerows).
- 2.4 It is important to emphasise that the requirement for BNG set out in primary legislation does not need to be directly referenced within the local plans of planning authorities to be in effect. The minimum 10% requirement set out in legislation is mandatory and there is no scope for planning authorities to reduce the requirement based on viability or other issues. Government guidance also confirms that planning authorities may seek a higher percentage than the statutory objective of 10% biodiversity net gain, either on an area-wide basis or for specific allocations for development. Such an approach would need to be evidenced, including as to local need for a higher percentage and any impacts on development viability.

3. Measuring Biodiversity Net Gain

- 3.1 Natural England have developed a ‘Biodiversity Metric’ to calculate biodiversity value for the purposes of BNG. The metric can be used to calculate the biodiversity value of existing habitats, habitat enhancement and habitat creation. Further details on the latest version of the Biodiversity Metric (version 4.0, March 2023) can be found at [Statutory biodiversity metric tools and guides - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/statutory-biodiversity-metric-tools-and-guides).
- 3.2 The Metric 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.

4. Ways to achieve BNG: on-site units, off-site units & statutory biodiversity credits

- 4.1 The objective of primary legislation is to deliver at least a 10% increase in relation to the pre-development biodiversity value of the development granted permission. Incentives in the Biodiversity Metric encourage on-site gains to be considered first, followed by off-site biodiversity gains, and (as a last resort) national biodiversity credits. The Biodiversity Metric includes a ‘Spatial Risk Multiplier’ which reduces the biodiversity value of habitats delivered further away from the development.
- Onsite delivery: Developers can enhance and restore biodiversity within the red line of a planning application site. There are examples of where this has been achieved on application sites within the National Park (e.g. Whartons Lane, Ashurst).
 - Off-site delivery: If developers can only achieve part of their BNG on-site, they can make off-site biodiversity gains either on their own land outside the development site, or through buying off-site biodiversity units on the local open market. There are several BNG schemes coming forward in and around the New Forest area.
 - National statutory BNG credits: If developers cannot achieve on-site or off-site BNG they must buy statutory biodiversity credits from the Government. The price of the statutory biodiversity credits has been set by Government to be intentionally uncompetitive with the open market. Credit sales revenue will be received by Natural England and invested in habitat creation projects.

5. Purchase of off-site BNG units - agreement in principle

- 5.1 Government guidance recognises that not all developments will be able to deliver on-site BNG. In such cases the developer can deliver off-site units outside the red line boundary of the site. As outlined above, the biodiversity metric incentivises off-site gains close to the development site, so that communities local to the development benefit from increases in biodiversity. There is a clear preference for off-site units to be delivered within the same local planning authority or [National Character Area](#).
- 5.2 Off-site BNG units may be provided by landowners, a trading platform, or on local authority-owned land and there are examples of all these routes potentially coming forward in and around the New Forest. Such BNG schemes are usually secured through a legal agreement setting out who will manage the BNG units over the required 30-year time period; and how monitoring (and enforcement if required) will be undertaken to ensure legal compliance. Further details of these overarching legal agreements are available at [Legal agreements to secure your biodiversity net gain - GOV.UK \(www.gov.uk\)](#) and the agreements are expected to cover the following key areas:
- Detailed information on the planned biodiversity habitat enhancements for the site.
 - Details of who is responsible for creating or enhancing the habitats.
 - Arrangements for the management and monitoring of the habitats. If the habitat gains are not maintained the local planning authority can take enforcement action.
- 5.3 By having an overarching legal agreement in place to access off-site BNG units it allows a simpler approach for individual planning applications, as the key BNG principles have already been established. The amount of BNG units required for each development will still need to be agreed by the National Park Authority through the Biodiversity Metric calculations as part of the planning application process.
- 5.4 Given the role of off-site BNG units in the Government's overall approach to enhancing biodiversity, this report recommends members endorse the principle of Authority officers working with landowners (and, where necessary, neighbouring planning authorities) to agree the legal framework to enable the off-site delivery of BNG units. The priority will always be to deliver BNG within the application site, but it is recognised that off-site units form part of the overall package of available measures to enhanced biodiversity.

6. Conclusions

- 6.1 The Environment Act 2021 establishes the legal requirement for development to enhance the natural environment and leave it in a better state than before development. Although delayed, the mandatory requirement for a minimum of 10% biodiversity net gain in most major developments was introduced on 12 February 2024, with applications for non-major development covered by the requirement from April 2024.
- 6.2 We have provided BNG information online for applicants within the National Park area and this will continue to be updated as further details become available. The legal requirement for BNG set out in primary legislation is mandatory for qualifying developments. Through the forthcoming review of the New Forest National Park Local Plan we will consider the scope and supporting evidence for setting a BNG target in excess of the national minimum of 10%.
- 6.3 The 'Biodiversity Gain Hierarchy' emphasises that on-site biodiversity gains should be considered first, followed by registered off-site biodiversity gains and – as a last resort –

national statutory biodiversity credits (which will be the most expensive option). This report therefore seeks delegated authority for officers to enter into legal agreements with BNG providers to enable the delivery of off-site BNG units within or adjacent to the National Park. These legal agreements will secure a gain site for BNG and set out who will do the BNG creation, enhancement and management work for 30 years. Once an off-site BNG scheme is registered and the legal agreement is completed, the process for individual applications accessing and securing the available BNG units is simplified. Such an approach will support the delivery of planned development to meet local needs arising within the New Forest National Park, as well as contributing to the enhancement of biodiversity in the area.

- 6.4 In time it is expected that the Local Nature Recovery Strategies being prepared by Hampshire County Council and Wiltshire Council for their respective areas will be used to help inform how and where biodiversity net gain should be delivered. In particular, Local Nature Recovery Strategies will be able to be used to target off-site BNG so that it contributes to the Nature Recovery Network.

Recommendations:

It is recommended that:

- (i) The current position on delivering Biodiversity Net Gain (BNG) as part of new development within the National Park be noted;**
- (ii) members endorse the principle of working with landowners and neighbouring planning authorities on the delivery of Biodiversity Net Gain schemes; and**
- (iii) authority be delegated to the Executive Director for Strategy & Planning to take all action as necessary to put in place the legal framework to secure BNG schemes allowing the off-site purchase of units to support development, including the negotiation and execution of legal agreements as necessary.**

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Papers: **PC 449/24** – cover paper

Equality Impact Assessment: No impacts have been identified.