

RTPI response to the Defra consultation on biodiversity net gain in England

February 2019

Summary

Development should support habitat conservation and enhancement, and deliver net gains for diversity. Legislation, guidance and metrics can help to achieve this, but must be complemented with proper resourcing for planners, including access to ecological expertise. This will enable the profession to fulfil its leadership function, bringing together public and private investment to create places which benefit the environment and society.

Before legislation is amended to introduce mandatory biodiversity net gain, there needs to be greater consideration of its impact in different parts of the country, including dense urban areas with limited biodiversity value, and places with marginal viability.

Decisions about biodiversity net gain at the development level should contribute to the wider objectives of the local authority. Alongside their Local Plan, local authorities should work collaboratively to develop strategic spatial plans for the environment, setting out objectives for biodiversity, green and blue infrastructure, natural capital, accessibility, and other priorities at a landscape scale.

Government should support this with new planning guidance and resources, empowering local authorities to collect and administer tariff payments for habitat creation and enhancement which reflect their strategic objectives.

1. Should biodiversity net gain be mandated for all housing, commercial and other development within the scope of the Town and County Planning Act?

Habitats and biodiversity underpin the provision of ecosystem services including air, water, noise and soil quality, climate regulation and environmental resilience, outdoor recreation, active travel, cultural benefits, energy and natural products. A strong and well-resourced planning system, which controls the use and development of land for the broader public interest, can help to ensure that biodiversity is conserved and enhanced. While current planning and regulatory arrangements work well for protected habitats with high biodiversity values, they can be less effective at reducing the cumulative negative impact to habitats and biodiversity that result from incremental land use change.

As such, we welcome the commitment from Defra to proactively explore options for addressing this challenge as part of their wider 25 Year Environment Plan. It represents a real opportunity to raise the profile of biodiversity across government, and to help planners,



ecologists, landowners, developers and other stakeholders to better integrate habitat conservation and enhancement into their decisions when purchasing land, allocating sites, and designing schemes. However, before we move into the detailed consultation response we have several concerns that should be noted.

Firstly, it is important that proposals to mandate biodiversity net gain (BNG) do not devalue the wider purpose of planning. There is a perception in some quarters that the role of planning should be to create a land market where all constraints are 'priced in' at the outset, providing certainty to landowners and developers, and enabling them to move through the system in a uniform way regardless of location. However, the real value of planning lies in *place-leadership*. This sees planning used to energise and coordinate public and private investment in specific contexts to create win-win situations. The emergence of combined authorities and proposals for the Cambridge-Oxford corridor show the importance of starting with the right strategic priorities and governance arrangements, before moving to the mechanics of achieving particular objectives like BNG.

Secondly, it should not be assumed that legislative amendments will have the desired result. The NPPF, which was only recently revised, already contains numerous links to legislation. These include a requirement for local planning authorities to prepare plans with the objective of contributing to the achievement of sustainable development (paragraph 16a, footnote 10) and to ensure that plan policy contributes to objectives of the Climate Change Act 2008 (paragraph 149, footnote 48). Meanwhile, other critical objectives of the NPPF, such as the need to deliver affordable homes and sustainable transport, do not benefit from any direct legislation. The ability to meet both legal and policy objectives, in balanced manner, requires professional training and skills, resourcing, monitoring and enforcement. While we recognise the desire to provide consistency and raise standards for biodiversity, legislation is not always the best way to achieve this, especially if it adds complexity to an under-resourced system.

Before BNG is mandated in legislation, existing practice in places like Warwickshire, Coventry and Solihull needs to be fully assessed and evaluated. Defra and MHCLG must also work together to conduct robust viability testing and stakeholder engagement on a range of sites across England, including in housing markets where the local authority has not set a CIL charging schedule or use S106 obligations (see Q35 for more details).

We recognise that the current situation represents a valuable opportunity to improve outcomes for biodiversity. With the above caveats in place, the remainder of this consultation response focuses on practical recommendations for implementing BNG and avoiding unintended consequences.

2. What other actions could government take to support the delivery of biodiversity net gain?

Paragraph 20 and 20d of the revised NPPF sets out a new requirement for local authorities to develop strategic policies which set out an overall strategy for the pattern, scale and quality of development, and the conservation and enhancement of the natural environment, including landscape and green infrastructure and climate change mitigation/adaptation. These should look ahead over a minimum 15-year period, and should be reflected in policies at the local and neighbourhood scale.



Many local authorities will already be meeting this requirement through a combination of strategies and plans for green infrastructure, landscape, wildlife and biodiversity, natural capital and ecosystem services, climate, open space, flood management, etc. These may exist at the local or strategic (cross-boundary) level, and are collectively referred to through this consultation as 'environment strategies'. The existence of environment strategies is critical to ensuring that individual BNG decisions contribute to wider objectives which have been subject to public consultation (see Q10, 13, 20 and 32). MHCLG should work with Defra and others to update Planning Policy Guidance (PPG), providing clarity about how different types of environment strategies can fulfil the NPPF's requirement for strategic policies and deliver BNG. Government should also ensure that environment strategies are aligned with emerging Local Industrial Strategies so that opportunities for investment can be identified and exploited.

The delivery of BNG through planning once again raises the need for sufficient resourcing and skills within the sector. The recent report from the National Audit Office describes a 37.9% net reduction in local authority spend on planning functions between 2010-11 and 2017-18, a 15% reduction in local authority planning staff between 2006 and 2016, and a 13% reduction in staff at the Planning Inspectorate between 2010 and 2018 (NAO, 2019). The RTPI is working to address these shortages through its bursary scheme and proposals for degree-level planning apprenticeships, however there must be recognition of the where additional resources are needed. This also applies to the supply of professional ecological expertise and resilience of the voluntary ecology sector, which bodies such as IEMA and CIEEM are addressing in their evidence.

We understand that mandating BNG through the Town and County Planning Act would cover all housing, commercial, industrial, institutional and leisure developments which require permission from a local planning authority. If the use of legislation is being pursued, then Defra and MHCLG should also consider whether mandatory BNG should be applied to nationally significant infrastructure through amendments to the Planning Act 2008, and to the cover the role of development corporations through amendments to the New Towns Act 1981.

Finally, the RTPI is very concerned about proposals to extend permitted development rights (PDR) to allow for the demolition and redevelopment of commercial sites to residential use, and for upward extension of buildings. Government should not take these proposals forward, and address the significant risks that have already resulted from PDR for office to residential conversions. These remove the ability of local planning policy to ensure that development makes appropriate contributions to design and infrastructure, including BNG.

3. Should there be any specific exemptions to any mandatory biodiversity net gain requirement (planning policies on net gain would still apply) for the following types of development? And why?

House extensions

Yes. While incremental changes to front and back gardens can have a significant impact on biodiversity, requiring householder extensions to comply with BNG requirements would be too onerous. Local approaches are more suitable to incentivise good practice.

**Small sites**

No. The NPPF requires local authorities to identify, through the development plan and brownfield registers, land to accommodate at least 10% of their housing requirement on sites no larger than one hectare. Small sites can play an important part of an ecological network, and given the increasing emphasis on housing delivery on such sites, should not receive a blanket exception. To avoid excessive burdens on developers, a simplified biodiversity assessment could be considered for minor schemes, or a cap on how much they should contribute.

All brownfield sites

No. The distinction between brownfield and greenfield sites is irrelevant to the concept of net gain, which focus on the biodiversity value of the land in question. Some brownfield sites have significant biodiversity value which needs to be conserved and enhanced.

Some brownfield sites (e.g. those listed on brownfield, or other, land registers)

No – see above.

4. Are there any other sites that should be granted exemptions, and why? For example, commercial and industrial sites.

No comment.

5. As an alternative to an exemption, should any sites instead be subject to a simplified biodiversity assessment process?

In addition to small sites, Defra and MHCLG should explore how PDR in areas of biodiversity value, or for major infrastructure projects, can be subject to a simplified biodiversity assessment. See Q2 for other comments on reducing the scope of PDR in general.

6. Do you agree that the Defra metric should allow for adjustments to reflect important local features such as local sites? Should the Defra metric consider local designations in a different way?

The additional weightings in the Defra metric should help to achieve more robust mitigation and compensation when development occurs within or near to Local Sites. The outputs of the Defra metric should inform but not replace the professional judgment of planners and ecologists as they respond to specific local circumstances and enforce the mitigation hierarchy.

It should be noted that in two-tier authorities, the identification and management of local sites are dealt with by country councils, and requires additional resourcing to be carried out effectively.

7. Should local authorities be required to adopt a robust district level licensing approach for great crested newts, where relevant, by 2020?

Only if it can be demonstrated to have worked, and that the resources are in place for surveying, implementation, enforcement and monitoring.



8. For what species is it plausible to use district level or strategic approaches to improve conservation outcomes and streamline planning processes? Please provide evidence.

Defra should consider the cross-boundary approach in South Devon to provide landscape level protection for Greater Horseshoe Bats, and in Devon to provide protection for species such as dormice and slow worms. These approaches have been developed and implemented over time across multiple authorities and through effective partnerships between local planners and ecologists. Additional support and funding should enable other strategic approaches to be developed and evaluated before any blanket changes are made.

9. Are there wider elements of environmental net gain that could be better incentivised? If so, please specify which, and any benefits that such incentives could provide.

The NPPF provides the framework for local planning authorities to develop policies and shape development in a way that achieves economic, social and environmental objectives. We support measures to improve the monitoring and evaluation of planning, such as the Defra Eco-metric and the Natural Capital Planning Tool (NCPT) developed by Birmingham University. These should be fully developed and evaluated through pilot projects to understand how incentivising elements of ENG might impact upon other objectives within the NPPF, such as the need to provide affordable housing, sustainable transport and achieve carbon reduction targets. The NCPT website provides case studies showing how plans and developments have used the tool to model ENG.

Rather than incentivising elements of ENG, a more pragmatic approach might be to focus on the potential of planning authorities to achieve broader Sustainable Development Goals through the current system, by strengthening mechanisms for strategic planning, increasing the pace of fiscal devolution to combined authorities and other strategic partnerships, and ensuring that planning policies are upheld during inspection.

10. Is the Defra biodiversity metric an appropriate practical tool for measuring changes to biodiversity as a result of development?

Broadly, yes. The metric should also provide a useful tool for ensuring that agreed habitat standards are maintained even when land changes hands multiple times during the trading and development process.

It is understood that the metric is designed for measuring changes to biodiversity on sites where there is already some biodiversity value. However, the Defra metric is not appear suitable for sites with zero or little existing biodiversity value, and so may have limited value in areas like London where most development takes place on previously developed sites. Here, specific policies and tools like the GLA's Urban Greening Factor should clearly take precedence.

As stated in Q6, the metric outputs should inform but not replace the professional judgment of planners and ecologists as they respond to specific local circumstances and enforce the mitigation hierarchy, in accordance with the objectives of their environment strategy (see Q2).



A specific module or approach should be developed to make the metric appropriate for mineral developments and the restoration of extraction sites over the medium to long term.

11. What improvements, if any, could we most usefully make to the Defra metric?

The metric should be accompanied by guidance on when it should be used in relation to patterns of weather and the seasons, as extended cold or dry periods can have significant impacts on species and habitats. There will inevitably be some subjectivity involved in the metric, for example in assessing transitional areas between different habitat types.

Guidance should emphasise the need to use suitably qualified ecologists and landscape architects (e.g. members of a chartered institute) and provide sufficient training to ensure that good data informs each assessment.

There may be value in mandating the use of the Defra metric, or making it clear in planning guidance that it should be used in all but exceptional circumstances. This will help to avoid the proliferation of additional tools, and enable data to be collected in a consistent manner for local, regional and national monitoring of gains and losses. Natural England should also undertake regular samples or audits of metric use to check that outputs are consistent with professional ecological advice, and introduce penalties for misuse.

12. Would a mandatory 10% increase in biodiversity units be the right level of gain to be required?

A blanket percentage appears somewhat arbitrary and risks lowering the bar for sites which could achieve more. Local Plans should set out where higher gains are required, by reference to baseline habitat maps and environmental strategies (see Q2). This might include large greenfield or green belt sites which could easily achieve more than 10%, or areas where a combination of social deprivation and greenspace deficiency means that higher standards are required. It could also cover brownfield sites with limited biodiversity value in a dense urban setting, where a specific target for biodiversity units would be more appropriate than a percentage gain (see Q2 and Q10). Pilot studies will be needed to explore these options.

13. In clearly defined circumstances, should developers be allowed to pay through the tariff mechanism without fully exhausting on-site and local compensation opportunities?

Yes. The principle of the mitigation hierarchy should be upheld, with a sequential test in place and tariff rates generally set high enough to incentivise on-site habitat enhancement and local compensation. However, where there are clearly defined habitat/biodiversity gains that can be achieved at a strategic scale, identified in the relevant plans and strategies, then this should be considered. For example, the local authority may have a series of habitat schemes identified in an environment strategy or existing CIL schedule (see Q2), which can be funded as tariff payments become available. This may be more appropriate in places like London, where tariff payments from development on dense inner city sites can be used to fund BNG or ENG on communal land. Again, this will depend on the local and professional discretion, and occur at the local or sub-regional level (see Q20, 31 and 32).



It can also take many years for tariff funds to accrue to the level needed to deliver a strategic habitat scheme. Forward funding measures will need to be put in place.

14. Would this be an appropriate approach to directing the location of new habitat?

Yes – see Q31 and 32.

15. How could biodiversity assessments be made more robust without adding to burdens for developers or planning authorities?

Potential time and resource savings the metric will probably accrue over the medium to long term. To avoid any immediate burden developers and local authorities will need to have access to a sufficient supply of qualified planners, ecologists, landscape architects and monitoring/enforcement officers, along with access to the considerable expertise that has built up in the voluntary conservation sector. Chartered institutions like the RTPI, CIEEM and IEMA will need to play a central role in providing training and support, while Defra and Natural England can help to maintain the networks of support for the voluntary sector.

16. Should a baseline map of broad habitats be developed?

Yes. Baseline maps should be developed at the local or sub-regional scale to provide context and inform plan-making and decision-taking. It is not clear how this could be made robust at the national level.

17. Should this be applied, as a minimum baseline, to:

Net gain calculations for all development?

Yes.

Net gain calculations in cases of suspected intentional habitat degradation?

It is not clear how baseline maps could be detailed enough to provide a robust and defensible baseline to inform this judgement.

18. What other measures might reduce the risk of incentivising intentional habitat degradation?

Landowners and developers are already aware of the need to undertake ecological surveys prior to development, that planning policies will require application of the mitigation hierarchy, and where protected species legislation applies. If BNG can be demonstrated to be no more onerous than existing requirements, then the incentive to degrade land will not increase. However, the standard range of enforcement and penalty clauses will still be needed for proven cases of habitat degradation, including 'naming and shaming' bad practice, fines and even criminal convictions.

19. How can the risks of penalising landowners making legitimate land use change decisions before deciding to sell their land for development be mitigated?

Additional guidance could help by showing planners, landowners and developers examples of proportionate and unreasonable land use change prior to sale, and information on how



external forcing (e.g. extended cold or hot periods) can impact upon marginal species and habitats. This could be drawn from existing cases, for example where landowners who are participating in offset schemes will have had to demonstrate that land has been unchanged for a certain number of years.

It should be noted that there the 'decision to sell' is not easy to identify when land has been optioned for development.

20. The provision of compensatory habitats will need to be guided by habitat opportunity maps. At what scale should these maps be developed?

Locally (e.g. local authority or National Character Area)

Yes. These should be developed at the local or sub-regional scale, and integrated with existing plans and strategies from local and combined authorities (see Q2). Field by field mapping is a good starting point, such as the interactive biodiversity GIS work openly available for Solihull, Coventry and Warwickshire. However, this does not automatically mean that the land is available for offsetting.

Nationally (i.e. England) as a national framework to be refined, updated and amended locally

21. What other measures should be considered to identify biodiversity and natural capital priorities?

In addition to support for local authorities to develop environment strategies (Q2), it should be noted that significant resources, officer time and local expertise is required to engage with landowners and identify suitable habitat land. Owners of suitable compensation sites may well be promoting them for housing, or wish to realise full residential value for that site. National support will be needed in terms of funding and expertise.

The timescales required to deliver biodiversity and natural capital priorities should be set out, so that habitat creation and enhancement can – wherever possible - be carried out in advance of any loss that is being compensated for.

22. Would mandating net gain through the planning system be enough to stimulate the growth of a market for biodiversity units?

Mandating BNG through planning may assist in the long-term growth of this market, but this is not the role of the planning system, and additional mechanisms will undoubtedly be required. Closer alignment with emerging Local Natural Capital Plans and Local Industrial Strategies could help to identify other ways to stimulate this market.

23. What further measures would help to ensure that the market provides:

Sufficient biodiversity units for development?

Cost-effective biodiversity units?

Evidence from existing examples to provides certainty that the investment is worthwhile and will provide adequate income.

**24. Should there be a minimum duration for the maintenance of created or enhanced habitats?**

Yes.

25. If so, what should the minimum duration be?

Less than 25 years

25 to 30 years

Longer than 25-30 years

Permanent

Previous experience suggests that a minimum 25-30 years provides a reasonable balance, and will help to incentivise those with a long-term interest and capacity for land management. However, the critical factor is ensuring that long-term management plans are in place, and can adapt over time in response to changing priorities for land management. Pilots can establish a practical way forward.

26. Would conservation covenants be useful for securing long term benefits from biodiversity net gain or reducing process and legal costs?

Probably, although the covenants would need to cover both management costs and the preparation of a management plan to guide whoever assumes the liability. They need to be clearly operated in the public and environmental interest.

27. What safeguards might be needed in the implementation of conservation covenants?

Resources for monitoring and enforcement will be important, as councils do not currently have the funding or remit to pursue this over the long-term.

28. Does this proposed range for tariff costs fit with the principles set out in this section?

No comment.

29. Would this proposed range for tariff costs provide opportunities for cost-effective habitat banks and compensation providers to compete?

No comment.

30. Do you agree with the proposed principles for setting the tariff rate, as set out in this section? Please suggest any other factors that should be taken in to account.

No comment.

31. How should the tariff revenue be collected?

Locally (e.g. through a local authority)



Nationally (e.g. through Natural England or another national body)

Other, please specify

Tariffs should be collected at the local or sub-regional scale through existing planning mechanisms.

32. How should the tariff revenue be spent?

Locally (e.g. through a local authority)

Nationally (e.g. through Natural England or another national body)

Through a blended model, allowing spending at both levels

Other, please specify

Tariffs should be spent at the local or sub-regional scale, possibly with the local authority acting as the broker, and with spend linked to the objectives of relevant environmental strategies as described in Q2. Pragmatically, investments which increase sales value – such as offset sites with strong amenity value and a greater variety of green infrastructure - are likely to be favoured by developers. However, the emergence of combined authorities and other strategic partnerships provide an avenue for pooling and investment according to strategic priorities at the city-region level. To support democratic engagement, BNG should be visually depicted on locally published LPA maps linked to any overarching environmental strategy.

A strategic approach to tariff payments could work effectively for dense urban areas, where much of the development will be on small brownfield sites. It could also help to address social inequalities by targeting spend on areas which have a green space deficiency and/or high levels of deprivation, but where little new development is expected. A strategic approach could also prioritise spend according to an environment strategy which addresses access to green space by public and active transport, and moves away from defining local compensation according to political and administrative boundaries, or crow-flies proximity. For example, it could assist users of the Defra metric to adjust weightings to account for compensation in a green space which is close to the site in question, but located across a busy road which limits access.

Existing tariff arrangements which cover multiple authorities, such as the Exe Estuary in South Devon, have taken many years and significant resources to implement. Democratic input is also essential, especially if people are being asked to accept local habitat loss in exchange for strategic enhancement some distance away. As such, the sub-regional scale is probably the broadest scale at which to spend the tariff.

It is unclear how a national approach is not favoured would be compatible with the regulatory requirements for CIL contributions, which say that a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is a) necessary to make the development acceptable in planning terms, b) directly related to the development; and c) fairly and reasonably related in scale and kind to the development.

Guidance may also be provided for planners on the use Grampian conditions for local compensation sites and tariff spend.



33. If tariff revenue is collected and spent nationally, should spending prioritise areas which have contributed the most through biodiversity net gain tariff payments?

No comment.

34. What further measures will help to prevent burdens on local authorities increasing?

It should be acknowledged that introducing this system and a new requirement for net gain is likely to increase the burden on local authorities and developers, and unlikely to reduce the amount of survey effort required in the short term. It is essential that the Defra metric and associated requirements are easy to apply and interpret, and that sufficient resources and support is provided through finance, training and guidance to local authorities. This must address the complexity of incorporating BNG into assessments of viability at plan-making stage, the challenges with monitoring and enforcement, and the need for sufficient access to professional ecological expertise as described in Q2. There is precedent for this when central resourcing was provided to support the establishment of Lead Local Flood Authorities.

35. How could the proposals be refined to manage any negative impacts on the scale and delivery of other developer contributions (e.g. through Section 106 or Community Infrastructure Levy payments)?

Experience suggests that the cost of achieving BNG may become part of the overall viability of the development, rather than coming off the land price as assumed in the Impact Assessment. While the costs of achieving policy compliance are not assumed to be particularly onerous, there is still a risk that mandatory BNG could lead to reductions in other (non-mandatory) developer contributions which might be more critical within a particular setting, or impact upon the delivery of developments with marginal viability (e.g. where a developer has already over-paid for a site).

As land will have already been traded without the costs of BNG factored in, lead-in times and transitional arrangements will be needed to ensure there is no adverse impact. Defra and MHCLG should provide worked examples to demonstrate the impact of BNG on viability and other developer contributions in different parts of the country, including those which have not adopted CIL. However, in many areas S106 and CIL will already be being used to direct developer contributions towards environmental objectives. It is not clear whether mandatory BNG simply provides a stronger model for collecting and enforcing this process, or something additional.

In addition, MHCLG could also explore the value of harmonising the 300+ Local Validation Lists in respect of their requirements for ecology assessments, landscaping, green infrastructure and open space delivery.

36. Would you, as a planning authority stakeholder, prefer any net gain tariff revenue to be paid through:

Local authority administration?



Yes. See Q31 and 32.

A nationally managed funding scheme (which could then reinvest in local habitat schemes best aligned with national strategic environmental priorities)?

37. How could the proposed net gain process be improved for developers?

The Defra metric will provide standardised information which should facilitate discussions about habitat creation and enhancement with the local authority or local providers during the pre-application stage. Over time, this should help to reduce the need for expensive individual assessments, and allow more time and resource to work with planners, ecologists and landscape architects on detailed scheme and habitat design.

Clear guidance should be provided to developers, setting out how to comply with BNG and showing worked examples of using the Defra metric to calculate off-site compensation payments. A recognition is needed that current timelines may be lengthened for developers in terms of ensuring that ecological surveys are done at the right time of the year. Developers should also be provided with good practice case studies such as Barrett's partnership with the RSPB at Kingsbrook, Homes England's use of voluntary offsets at Northstowe, and the wide-ranging ecological package provided by Pinewood Studios.

38. What other steps, considerations or processes in environmental planning could be integrated within a net gain approach?

No comment.

39. Would any particular types of development (e.g. commercial, industrial, public sector, local infrastructure) be disproportionately affected by a mandatory biodiversity net gain requirement?

No comment.

40. Do you agree that the proposal for staggered transitional arrangements would help to ensure smooth implementation of biodiversity net gain policy?

Yes. There is a need for transitional arrangements of over one year to avoid adverse impacts on viability and to fit with the long and varied timescales for the review and preparation of local plans.

41. Would the existing dispute resolution process provide the best way to overcome any disagreement over whether net gain is achieved?

As far as rights of appeal are concerned, the idea of having an independent ecological assessor might be considered, alongside planning inspectors with suitable training in biodiversity.

42. Would an additional arbitration or approval process be necessary? If so, please specify why.

No comment.



43. Are there any issues or measures, other than those outlined, that we should take into account when considering how to monitor biodiversity net gain?

Consideration should be given to the assessment, implementation and monitoring of BNG over the course of a phased, long-term development.

44. Should local authorities be required to provide information about habitat losses and gains?

If can be done without excessive burden, for example through providing a standardised mechanism for data entry into a central database. The example of the London Development Database and Greenspace Information for Greater London might provide a useful example.

45. What technological or other innovative mechanisms could facilitate the delivery and monitoring of biodiversity net gain?

Defra should explore, with the Future Cities Catapult and MHCLG Digital team, opportunities for standardising data collection and reporting for BNG with other planning objectives.