

Response to Consultation on Biodiversity Net Gain Regulations and Implementation

On behalf of South Oxfordshire and the Vale of White Horse District Councils

Note:

Please refer to the [consultation document](#) to understand the context of the response.

Question 1

Do you agree with our proposal to exempt development which falls below a de minimis threshold from the biodiversity net gain requirement?

a) for area-based habitat:

Yes (5m²) is considered practical – *50m² has potential to have impacts on important habitats.*

b) for linear habitat (hedgerows, lines of trees, and watercourses):

Yes (2m) *Gates and minor access etc not captured*

Question 2

Do you agree with our proposal to exempt householder applications from the biodiversity net gain requirement?

Other:

The majority of householder applications have little impact on biodiversity however, householder applications can include proposals to create swimming pools and changing areas/gyms, and menages within the curtilage of very large domestic properties which can contain important habitats. We have examples where these householder applications can cause significant habitat losses. We would suggest that there is a maximum size threshold for exemptions to ensure that these larger householder proposals do not result in net losses of biodiversity.

Question 3

Do you agree with our proposal to exempt change of use applications from the biodiversity net gain requirement?

Yes

Question 4

Do you think developments which are undertaken exclusively for mandatory biodiversity gains should be exempt from the mandatory net gain requirement?

Yes, also for some other environmental mitigation purposes: *Natures recovery at scale will require a variety of approaches including those not funded by net gain. For example, the River of Life projects on the Thames in South Oxfordshire required planning permission and were designed purely for biodiversity benefit. To impose a 10% gain requirement on these type of projects on top of their primary biodiversity purpose would create a perverse disincentive to undertake these projects and increase the costs which are often funded through charitable donations and grant funding. Projects that are purely aimed at delivering biodiversity outcomes requiring planning permission should be exempt from net gain requirements.*

Question 5

Do you think self-builds and custom housebuilding developments should be exempt from the mandatory net gain requirement?

No: *Self build and custom build projects can still cause habitat losses which would not be compensated for if they are exempted from the BNG requirement. Improvements in energy and sustainability merits do not override biodiversity losses. We would recommend that applications for individual self-build dwellings could be exempted from BNG but that it should apply to applications for multiple self-build/custom build developments.*

Question 6

Do you agree with our proposal not to exempt brownfield sites, based on the rationale set out above?

Yes

Question 7

Do you agree with our proposal not to exempt temporary applications from the biodiversity net gain requirement?

Yes

Question 8

Do you agree with our proposal not to exempt developments which would be permitted development but are not on account of their location in conservation areas, such as in areas of outstanding natural beauty or national parks?

Yes

Question 9

Are there any further development types which have not been considered above or in the previous net gain consultation, but which should be exempt from the biodiversity net gain requirement or be subject to a modified requirement?

No

Question 10

Do you agree with our proposal not to exempt development within statutory designated sites for nature conservation from the biodiversity gain requirement?

Yes

Question 11

Do you agree with the stated proposals for development (or component parts of a development) on irreplaceable habitats, specifically:

a) The exclusion of such development from the quantitative mandatory biodiversity gain objective?

Yes

b) The inclusion of a requirement to submit a version of a biodiversity gain plan for development (or component parts of a development) on irreplaceable habitats to increase proposal transparency?

Yes

c) Where there are no negative impacts to irreplaceable habitat, to allow use of the biodiversity metric to calculate the value of enhancements of irreplaceable habitat?

Yes

d) To use the powers in biodiversity net gain legislation to set out a definition of irreplaceable habitat, which would be supported by guidance on interpretation?

Yes

e) The provision of guidance on what constitutes irreplaceable habitat to support the formation of bespoke compensation agreements?

Yes

Question 12

Do you agree with our proposed approach that applications for outline planning permission or permissions which have the effect of permitting development in phases should be subject to a condition which requires approval of a biodiversity gain plan prior to commencement of each phase?

Yes

Question 13

Do you agree with the proposals for how phased development, variation applications and minerals permissions would be treated?

Yes

Question 14

Do you agree that a small sites metric might help to reduce any time and cost burdens introduced by the biodiversity gain condition?

Other: *Whilst we agree that a small sites metric could help simplify the process for net gain on small sites the current metric is not considered fit for purpose. The beta test version of the small sites' metric is as complicated to use as the main metric and does not in-fact simplify the process. It will need significant revision and testing before it can be introduced.*

Question 15

Do you think a slightly extended transition period for small sites beyond the general 2- year period would be appropriate and helpful?

Yes, a 12-month extension: *The timescale for introducing BNG is already very ambitious given the number of new burdens that will be required of Local Authorities and the uncertainty over how these burdens will be funded. A year's extension for*

small sites will help smooth the introduction of BNG, allow LPA staff to skill up and refine processes before the introduction of a large number of small sites applications.

Question 16

Are there any additional process simplifications (beyond a small sites metric and a slightly extended transition period) that you feel would be helpful in reducing the burden for developers of small sites?

No

Question 17

Are any targeted exemptions (other than that for irreplaceable habitat), reduced biodiversity net gain objectives, or other modified requirements necessary for the application of the biodiversity net gain requirement to NSIPs?

No

Question 18

Do you agree that the above approach is appropriate for setting out the biodiversity net gain requirement for NSIPs?

Yes

Question 19

Do you consider that the November 2025 is an appropriate date from which NSIPs accepted for examination will be subject to the biodiversity net gain requirement?

Yes: *Due to the significant lead in times for NSIP's 2025 is considered the earliest date that it would be possible to implement BNG.*

Question 20

Do you agree that a project's acceptance for examination is a suitable threshold upon which to set transition arrangements?

Yes

Question 21

Would you be supportive of an approach which facilitates delivery of biodiversity net gain using existing landholdings by requiring a lighter-touch registration process, whilst maintaining transparency?

Yes: We agree that it should be possible for NSIP net gain to be delivered from within an organisation's existing landholdings. This should however be subject to the same spatial hierarchy as for TCPA developments to penalise off site projects not delivered locally to the impacts.

Question 22

Do you consider that this broad 'biodiversity gain plan' approach would work in relation to NSIPs?

Yes

Question 23

Should there be a distinction made for NSIPs between on-site habitats (which are subject to the biodiversity net gain percentage) and those habitats within the development boundary which are included solely for environmental mitigation (which could be treated as off-site enhancement areas without their own gain objective)?

Yes: We agree that areas of NSIP projects that are required purely for mitigation of impacts should be treated as off-site enhancements however, it is important that these areas are clearly defined in the Biodiversity Gain Plan to ensure they are distinct from areas of impact.

Question 24

Is there any NSIP-specific information that the Examining Authority, or the relevant Secretary of State, would need to see in a biodiversity gain plan to determine the adequacy of an applicant's plans to deliver net gain (beyond that sought in the draft biodiversity gain plan template at Annex B)?

No

Question 25

Do you think that 30 years is an appropriate minimum duration for securing off-site biodiversity gains allocated to NSIPs?

Yes, but it should be reviewed after practice and biodiversity gain markets are evaluated

Question 26

Are further powers or other measures needed to enable, or manage the impacts of, compulsory acquisition for net gain?

Yes, to enable compulsory acquisition

Question 27

Is any guidance or other support required to ensure that schemes which straddle onshore and offshore regimes are able to deliver biodiversity net gain effectively?

No response provided

Question 28

a) Do you agree with the proposed content of the biodiversity gain information and biodiversity gain plan?

Yes

b) Do you agree with the proposed procedure for the submission and approval of biodiversity gain information and the biodiversity gain plan?

Yes

Question 29

We will continue to work with external stakeholders and industry on the form and content of the template. Do you agree with the proposed information to be included in a biodiversity gain plan as shown in the draft template?

No: *We agree with the majority of information requirements set out in the Biodiversity Gain Plan Template however, there are a number of areas where we believe it could be amended or improved:*

- *It is unlikely that the information required in section C will be available in all cases at the Biodiversity Gain Information submission stage. This section also seems to be in the wrong place in the template, it should come after section E.*

- *The way the question in Section F5 is worded does not allow the recording of the purchase of credits from the BNG market through brokers (it only mentions statutory credits). This will potentially be an important route for developers to meet their BNG requirements and it appears to be missing from the template. The Template needs to be amended to specifically include credits purchased through 3rd party brokers and evidence to support this.*
- *Section G – this information does not need to be recorded in the BGP as this would normally be provided through survey reports, EIA etc and does not relate to BNG (particularly G4).*
- *We believe that the completion of section I should be mandatory. All developers and consultants should follow best practice and biodiversity information should be shared with LRC's (where this is not sensitive).*

Question 30

Do you agree that further guidance is needed to support decision-making about what constitutes appropriate off-site biodiversity gains for a given development?

Yes: *Further guidance should include a very clear steer towards local delivery (within the LPA area) discouraging distant delivery through the spatial risk multiplier. Compensation should be related to the impacts as a result of development, where possible.*

Question 31

How should the UK Government encourage or enable developers and landowners to secure biodiversity gain sites for longer than the minimum 30-year period?

It is likely that a large proportion of BNG projects in England will be delivered on private land. The only way to encourage private landowners to commit their land for periods longer than 30 years will be to include clear financial incentives to commit to periods in excess of 30 years. It is also possible that this could be incentivised through the metric by using appropriate multipliers for commitments to management in excess of 30 years.

Question 32

Do you agree with our proposals for who can supply biodiversity units and the circumstances in which they may do so?

Yes - *The forthcoming Government guidance needs to provide a strong emphasis on the need to demonstrate that all possible on-site and local off-site options have been fully explored before a developer considers purchasing units from further afield.*

Question 33

Do you agree that developers which are able to exceed the biodiversity gain objective for a given development should be allowed to use or sell the excess biodiversity units as off-site gains for another development, provided there is genuine additionality?

Yes

Question 34

Do you agree with the proposed scope of the UK Government's role in facilitating the market, as set out above?

Other: *We broadly agree with the scope of the Government's role set out in the consultation document. In addition to this, we believe that the Government should take a role in monitoring the implementation and outputs of BNG to ensure it is truly delivering Biodiversity Net Gain. We are concerned that LPA's won't be properly resourced to carry out their functions and this is a significant risk to delivery of statutory BNG in England. It is therefore important that the Government maintains a role in monitoring implementation so it can pick up early signs of problems.*

Question 35

Are the proposals outlined here sufficient to enable and encourage habitat banking?

No: *In addition to the measures outlined in the consultation document the Gov't should consider providing finance through loans or other mechanisms to allow the purchase of strategic areas of land identified through Local Nature Recovery Strategies on which Habitat Banks could be developed. In order to ensure the right habitats are delivered in the right places habitat banking cannot rely on the private sector alone, it is likely that NGO's and Local Authorities will need to take an active role in delivery of these strategic sites. To enable and incentivise this the Gov't could make finance available to suitable organisations to purchase land.*

Question 36

Do you agree with our proposal that to be eligible to supply biodiversity units for mandatory biodiversity net gain, habitat must be created or enhanced on or after a specified date, proposed to be 30 January 2020?

Yes

Question 37

Should there be a time limit on how long biodiversity units can be banked before they are allocated to a development? What would you consider to be an appropriate time limit?

No

Question 38

Do you agree that the eligibility criteria for adding sites to the biodiversity gain site register are sufficient?

No: *We are concerned that the requirement for all off site BNG to have to be subject to a either s.106 obligation or a Conservation Covenant to be included in the site register will place significant (and unfunded) new burdens on Local Planning Authorities. Mandatory net gain will mean that many small development proposals will be required to deliver net gain and a significant proportion of these will be require off-site credits. LPA's currently only use obligations to secure the infrastructure necessary to deliver large or otherwise complex developments. To extend this to a large number of very small developments with small credit requirements will place significant burdens on LPA's or those setting up Conservation Covenants. For habitat banking sites the covenant should be used to secure the whole site. The banks could then sell credits to many developers requiring small unit numbers without further legal impediment.*

Question 39

Do you agree that the register operator should determine an application within a maximum of 28 days unless otherwise agreed between both parties?

No: *All applications to the register need to be properly checked and verified. This will include the need to verify the claims by the applicant about the baseline habitats on their site and the likelihood of the new habitats proposed being appropriate and achievable. If applications are received outside of the appropriate survey season for habitats there is no way for the operator to verify that the claimed baseline habitats have been properly assessed. The timescale for determination therefore needs to be flexible to allow the operator to verify the claims about the baseline habitats.*

Question 40

Do you agree that this list of information requirements will be sufficient to demonstrate that a biodiversity gain site is legitimate and meets the eligibility criteria?

Yes

Question 41

Do you agree that the UK Government should require a habitat management plan, or outline plan, for habitat enhancement to be included on the register?

Yes

Question 42

Do you agree that the UK Government should allow the register operator to:

a) set a fee for registration in line with the principle of cost recovery?

Yes

b) impose financial penalties for provision of false or misleading information?

Yes

Question 43

Do you agree with our proposal to allow applicants to appeal a decision by the register operator where the applicant believes that the registration criteria have not been appropriately applied?

Yes

Question 44

Do you agree with our proposals for additionality with respect to:

a) measures delivered within development sites?

Yes

b) protected species and off-site impacts to protected sites?

Yes

c) on-site impacts on protected sites, and any associated mitigation and compensation?

Yes

d) achievement of River Basin Management Plan Objectives?

Yes

e) the strengthened NERC Act duty on public authorities?

Yes

Question 45

Do you think that A) the non-designated features or areas of statutory protected sites and/or B) local wildlife sites and local nature reserves, should be eligible for enhancement through biodiversity net gain?

Yes, both A and B should be

Question 46

Do you agree that the enhancement of habitats, including designated features, within statutory protected sites should be allowed in the coastal, intertidal and marine environment as defined above?

No response provided

Question 47

Do you agree with our proposed approach to combining payments for biodiversity units with other payments for environmental services from the same parcel of land?

Yes

Question 48

Are these proposals for statutory biodiversity credits sufficient to:

a) Ensure, when supported by suitable guidance, that they are only used by developers as a last resort?

Yes

b) Mitigate the market risk associated with the sale of statutory biodiversity credits by the UK Government?

Yes

Question 49

Do you think there are any alternatives to our preferred approach to credit sales, such as those outlined above, which could be more effective at supporting the market while also providing a last resort option for developers?

Yes: *Accredited Brokers working within defined geographical areas (Counties) should be allowed to set a fixed tariff and sell credits to developers in advance of them securing the necessary habitat enhancement sites. Provided this system is properly regulated it would allow credits to be kept within the authority areas where they are generated. It would also allow credits to be combined to raise funding required for larger strategic habitat creation schemes aligned with LNRS. This approach could be regulated in a similar way to the Government's own provider of last resort scheme. The Trust for Oxfordshire's Environment currently operates a net gain credit sales scheme along these lines which has been proven to work and is popular with developers.*

Question 50

Do the principles for how we will set, and review credit price cover the relevant considerations?

Yes

Question 51

Do you agree with the proposed principles for credit investment?

Yes

Question 52

Do the above project-level management, monitoring, enforcement, and reporting proposals seem sufficient, achievable, and not overly burdensome on practitioners, developers, or planning authorities?

No, overly burdensome or not achievable

The project level monitoring and enforcement burdens fall very heavily on Local Authorities. The Enforcement functions in Local Authorities are already significantly under resourced and do not have the capacity to undertake proactive monitoring of compliance with conditions/obligations. LPA Enforcement functions are often unable to undertake effective enforcement to ensure landscaping schemes and existing net gain projects are delivered. Unless there is very significant and ongoing investment by Government in monitoring and enforcement this element of the project management proposals are not achievable. It is also unclear what happens if net gain sites are agreed outside of their LPA area? In this case the LPA's do not have powers to monitor or enforce adherence with the agreed net gain plan.

Question 53

Do you think earned recognition has potential to help focus enforcement and scrutiny of biodiversity net gain assessments, reporting and monitoring?

Yes: We believe that all bodies and individuals who are writing, assessing, or undertaking monitoring of net gain schemes should be required to have a minimum competency level to be involved. This could be through an earned recognition approach or some form of certification run by statutory body such as Natural England or, a professional organisation such as CIEEM. Repeatedly issuing incorrect or misleading assessments should be subject to sanctions.

Question 54

Do the above proposals for policy-level reporting, evaluation and enforcement seem sufficient and achievable?

No: *The proposals for reporting set out in Annex C are not achievable, in some cases not relevant and would place very significant additional burdens on Local Authorities.*

The level and complexity of data collection requirements, even if they can be automated to some extent will place very significant new burdens upon LPA's. LPA's have no guarantees that the extent of the ongoing new burdens will be appropriately funded by Government into the long term.

The reporting requirements should be simplified to a simple profit and loss account of impacts versus gains achieved through the application of net gain.

Question 55

Considering the data requirements set out above and in greater detail in Annex C:

a) is there any additional data that you think should be included in the Biodiversity Reports?

No

b) is there any data included here that should not be required as part of the Biodiversity Reports?

Yes: *We do not understand why the Government is seeking to collect information on Protected Species as part of this monitoring as there is often no link between impacts on protected species and net gain. Protected species will be impacted across the range of planning proposals including those excluded from net gain such as householder applications (i.e. bats). To include species in reporting places yet another significant burden on LPA's that has no direct link to net gain. We strongly believe that species considerations should be excluded from reporting requirements.*