

Biodiversity Net Gain Topic Paper

Planning is a technical process, driven by legislation and government policy and advice. This topic paper uses several technical terms, so the below definitions have been prepared to assist the reader.

The two principal concepts for this topic paper are:

- **Biodiversity Offsetting.** Biodiversity offsetting is a conservation activity designed to give biodiversity benefits to compensate for unavoidable losses - ensuring that when a development damages nature (and this damage cannot be avoided or mitigated), new nature sites will be created. Where appropriate, biodiversity offsetting is an option available to developers to fulfil their obligations under the planning system's mitigation hierarchy.
- **Biodiversity Net Gain.** Net gain is an approach to development which uses biodiversity offsetting to ensure that any unavoidable impacts on biodiversity are compensated for to a level that is over and above the value of the existing biodiversity being affected. Importantly net gain, as currently proposed by government, gives value to common unprotected habitats which have not previously been given a value in the planning system. Importantly, both offsetting and net gain do not undermine the strategic biodiversity policies which seek to ensure important habitats and species are protected from harmful development. They are used when development proposals comply with these policies, but will nevertheless lead to unavoidable impacts which would not otherwise be accounted for.

1. Background/ Context

This draft paper explores possible approaches for the scope of policy in the Design and Sustainability Development Plan Document (DPD) in setting requirements on Biodiversity Net Gain.

The topic paper is structured as follows:

- Background/ Context
- Legislative Requirements
- National Policy and Guidance
- Local Context
- Experience in other Authorities Elsewhere; and
- Discussion and Conclusions

Interest in biodiversity offsetting and net gain has grown in recent years as a way to mitigate against widespread biodiversity decline across the UK and respond to the inability of the planning system to account for cumulative environmental losses. Evidence for this is ubiquitous and specific evidence from Kent is considered below. Biodiversity net gain represents a significant change for managing biodiversity through the planning system.

The current system relies on ensuring no net loss to biodiversity by protecting designated sites and priority habitats and species from harmful development. We consider that this likely avoids the most severe impacts on biodiversity and protect the best sites for wildlife but is probably less effective at preventing the gradual erosion of lower value and more common habitats which benefit a broad range of flora and fauna. Cumulatively, even ‘insignificant’ losses of habitat at a development scale add up to significant rates of biodiversity loss overall. Evidence of continued biodiversity loss in England indicates that this policy is contributing to significant biodiversity losses occurring throughout England.

As proposed, biodiversity net gain gives value to all habitats, even common non-priority habitats (e.g. scrub, grassland, undesignated woodland arable fields etc.) which have not previously been recognised in the planning system and their loss not given any weight in decision making. Although the policy does not propose to protect these habitats, it does require that their losses are accounted and compensated for in a way which results in net gain.

2. Legislative Requirements

2.1 The Environment Act 2021

The Environment Act 2021 sets out the following key components of **mandatory biodiversity net gain (BNG)**:

- Amends Town & Country Planning Act (TCPA), most specifically Schedule 14 makes provision for biodiversity gain to be a condition of planning permission in England;
- Minimum 10% gain required, as calculated using the Biodiversity Metric and approval of a biodiversity gain plan;
- Habitat secured for at least 30 years via planning obligations or conservation covenants;
- Delivered on-site, off-site or via a new statutory biodiversity credits scheme; and
- National register for net gain delivery sites.

It does not change existing legal protections for important habitats and wildlife species. It maintains the mitigation hierarchy of avoid impacts first, then mitigate and only compensate as a last resort. It will apply to Nationally Significant Infrastructure Projects (NSIPs) but not marine development.

The mandatory requirement is to come into place in Winter 2023. The Government's response to the 2018 consultation on net gain sets out that there would be a 2-year implementation period for mandatory BNG once the Environment Bill received Royal Assent and became the Act (which happened on 9 November 2021). The Act includes provision for secondary legislation to set a date for the requirement to come into force.

The biodiversity gain plan is referred to in the Environment Act 2021. Planning applications subject to mandatory BNG will be required to submit a biodiversity gain plan for planning authority approval. The Environment Act 2021 sets out that the biodiversity gain plan should cover:

- How adverse impacts on habitats have been minimised
- The pre-development biodiversity value of the on-site habitat
- The post-development biodiversity value of the on-site habitat

- The biodiversity value of any off-site habitat provided in relation to the development
- Any statutory biodiversity credits purchased; and
- Any further requirements as set out in secondary legislation.

More information on what biodiversity gain plans will entail to be included in a forthcoming Defra consultation on BNG secondary legislation.

The Environment Act 2021 makes provision for the Secretary of State to set up a system of statutory biodiversity credits that will be invested in habitat creation. The credits can be bought by developers as a last resort when on-site and local off-site provision of habitat cannot deliver the BNG required. It is suggested that the price of biodiversity credits will be set higher than prices for equivalent biodiversity gain on the market. The intention is that this system will be run by a national body, not at the local level. We expect more information on the national biodiversity credits scheme to be included in the forthcoming Defra consultation on BNG secondary legislation.

Details of how the government intend to use the metric to achieve biodiversity net gain in secondary legislation and policy have not yet been finalised. The national 2018/19 consultation included a general introduction, and the government response in July 2019 provides more certainty, but there are still potential policy areas for adjustment. These policy areas are summarised below:

- **Threshold:** At what scale of development is it reasonable to require the policy be achieved? The government are not proposing to introduce broad exemptions beyond permitted development and householder development, but may introduce narrow exemptions for the most constrained development types, such as brownfield sites that meet certain criteria.
- **Maintenance:** The government has stated habitat enhancement should be maintained for a minimum of 30 years and will encourage longer term protection where acceptable to the landowner. Legislation for conservation is in the Environment Act.
- **Managing off-site enhancements:** The Biodiversity Metric scoring is onerous and many development sites may need to offset their impacts off-site, since to rely on on-site provision may reduce the developable area so significantly that development could become unviable. A process for identifying sites for off-site BNG would therefore need to be established to optimise benefits for biodiversity. The government have proposed a series of Local Nature Recovery Strategies (LNRSs) across England (expected to be prepared at a county or unitary authority level – these would help local plan policies set priorities for nature recovery and biodiversity enhancement, and positively influence BNG delivery).

The LNRS can thus be used as to determine the ‘strategic significance’ score, as part of the Biodiversity Metric scoring approach. The ‘strategic significance’ score is a landscape scale factor, which gives additional unit value to habitats that are located in preferred locations for biodiversity and other environmental objectives.

Prior to implementation of LNRS, local authorities may use tools such as Green Infrastructure strategies and biodiversity opportunity mapping (potentially prepared by a Local Nature Partnership (LNP), depending on what is available locally).

2.2 DEFRA Consultation on Biodiversity Net Gain Regulations and Implementation

DEFRA's consultation on BNG suggests that requirements will be relevant to development proposals that require planning permission under the Town and Country Planning Act 1990. This is typically development for which a planning application is made to a planning authority and will include most residential and commercial development and some (non-Nationally Significant Infrastructure Project) infrastructure development.

Page 15 of the DEFRA Consultation on Biodiversity Net Gain Regulations and Implementation January 2022 indicates the following approach to implementation, suggesting that going beyond 10% may be related to the aspirations of developers (rather than a policy requirement?)

"How will it be achieved?"

*Mandatory biodiversity net gain will be implemented through the planning system. Developers will be required to demonstrate that they will deliver a minimum 10% net gain of biodiversity units for area-based habitats and any relevant linear habitats (hedgerows, lines of trees, and watercourses). Prior to the commencement of a development, a biodiversity gain plan must be submitted to the relevant planning authority for approval. We maintain the view that 10% strikes the right balance between the UK Government's ambition for development and the pressing need to reverse environmental decline. **The 10% will be a mandatory requirement but should not be viewed as a cap on the aspirations of developers that want to voluntarily go further or do so in the course of designing proposals to meet other local planning policies.***

The biodiversity gains and losses of a development will be measured in 'biodiversity units', using a metric which uses habitats as a proxy for biodiversity and calculates units by taking account of the type, extent and condition of habitats. Natural England has recently published biodiversity metric 3 which, subject to further consultation and any further updates, is expected to be the metric specified for mandatory biodiversity net gain. Biodiversity net gain complements and works with the biodiversity mitigation hierarchy set out in the National Planning Policy Framework paragraph 180a. To achieve net gain in a way that is consistent with the mitigation hierarchy and reflecting the 'spatial hierarchy' preference for local enhancements, developers should follow these steps in order:

- 1. aim to avoid or reduce biodiversity impacts through site selection and layout*
- 2. enhance and restore biodiversity on-site*
- 3. create or enhance off-site habitats, either on their own land or by purchasing biodiversity units on the market, and*
- 4. as a last resort to prevent undue delays, purchase statutory biodiversity credits from the UK Government where they can demonstrate that they are unable to achieve biodiversity net gain through the available on-site and off-site options.*

Developers will set out on-site and off-site measures in a 'biodiversity gain plan'. We intend to align this plan submission process with the digitisation of the planning system when this is possible."

The requirement to show how at least a 10% biodiversity gain is to be achieved will be a condition which is to be for planning permissions granted in England (and also planning consents for nationally significant infrastructure projects).

However, the consultation suggests that even the 10% requirement will not apply to planning permissions granted by a development order including under the General Permitted Development Order and in respect of any urgent Crown development.

The consultation also proposes that an exemption from the requirement to provide the biodiversity net gain for:

- development proposals which result in negligible impacts or minimal impacts to low or medium ‘distinctiveness’ habitats such as agriculturally productive land;
- householder applications; and
- change of use applications.

The consultation is considering if exemptions should also be made for the creation of biodiversity gain sites, self-builds and custom housebuilding.

Based on the consultation, brownfield sites, temporary permissions and some permitted developments will be subject to the biodiversity gain requirement.

In relation to **smaller sites**, in the 2019 response to the 2018 net gain consultation, the UK Government committed to keeping minor development in scope of the biodiversity gain requirement, but pledged to consider whether minor developments should be subject to four themes of variation:

- a potentially longer transition period (than the general 2-year period, which means net gain would start in late 2023) for the commencement of the biodiversity gain condition
- a potentially lower percentage net gain requirement
- simplification of the net gain administrative process
- a simplified biodiversity metric

The 2019 net gain consultation response presented a narrower definition for ‘small development’ (than that for minor development) when determining whether the use of the simplified ‘small sites biodiversity metric’ would be appropriate: ‘Sites of fewer than 10 residential units or an area of less than 0.5 hectares for other types of development (unless priority or protected habitats are present).’

Natural England published a beta version of the Small Sites Metric in July 2021, together with a short consultation on the metric and its scope. The biodiversity metric to be used for small sites would be subject to further consultation before being published as a biodiversity metric for use in mandatory biodiversity net gain.

The Consultations suggests that DEFRA will take forward a simplified biodiversity metric for developments on small sites, as defined in the 2019 consultation response. They do not consider a lower percentage gain appropriate, as all sites should make a proportionate contribution to biodiversity net gain. Additionally, for smaller sites, the UK Government have been seeking feedback on whether a longer transition period (up to 12 months longer) would be of practical benefit to planning authorities and developers.

3. National Policy and Guidance

3.1 National Planning Policy Framework

The starting point for considering this issue is National Policy in the NPPF:

Para 179 of the NPPF says that:

To protect and enhance biodiversity and geodiversity, plans should:

- a) Identify, map and safeguard components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity⁶¹; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation⁶²; and*
- b) promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify **and pursue opportunities for securing measurable net gains for biodiversity.***

Para 180 sets out the National policy approach to securing gains in relation to planning applications.

180. When determining planning applications, local planning authorities should apply the following principles:

- a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
- b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;*
- c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and*
- d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, **especially where this can secure measurable net gains for biodiversity** or enhance public access to nature where this is appropriate.*

Although the NPPF raised the issue of BNG, it is far from definitive, and confined to pursuing opportunities for achieving BNG.

3.2 National Planning Policy Guidance

National Planning Practice Guidance (PPG) does not add anything further on BNG. Additionally, the advice on planning applications does not yet reflect the Environment Act 2021, given the Act requires secondary legislation anticipated for Winter 2023.

Nonetheless, it does set out guidance in relation to matters of: biodiversity, geodiversity and ecosystems; green infrastructure; landscape, agricultural land, soil and brownfield land of environmental value.

Biodiversity and geodiversity. Development plans and planning decisions have the potential to affect biodiversity or geodiversity outside, as well as inside, relevant designated areas. The PPG notes that, to achieve opportunities to conserve and enhance biodiversity and geodiversity and contribute to the wider area (as part of the Nature Recovery Network), it is useful to consider the following¹:

- the latest government policies that are relevant, including the commitments in the 25 Year Environment Plan
- the contents of existing up-to-date plans and strategies for biodiversity and nature recovery
- the potential effects of a development on the habitats or species on the Natural Environment and Rural Communities Act 2006 section 41 list
- whether an ecological survey is appropriate
- opportunities to restore or enhance local ecological networks, including those that contribute to the wider Nature Recovery Network
- **how to secure net gains for biodiversity as part of green infrastructure provision;** and
- opportunities to work strategically in order to streamline development decisions: for example, by establishing a ‘zone of influence’ around protected sites.

The PPG also provides evidence² which is relevant to the identification and mapping of local ecological networks. It also highlights that local ecological networks can make a significant contribution to developing a Nature Recovery Network.

Within plan-making, the PPG outlines opportunities to map local ecological networks and set out policies identifying appropriate levels of protection and opportunities to create, restore or enhance habitats or improve connectivity within local ecological networks.

The PPG also includes the following guidance for planning policy and decisions related to biodiversity net gain:

- Plans can set out approaches to encouraging biodiversity and wider environmental net gain, including how it will be achieved, and which areas present the best opportunities to deliver gains. These areas could be those identified in: natural capital plans; local biodiversity opportunity or ecological network maps; local green infrastructure strategies; strategic flood risk assessments; water cycle studies; air quality management plans; river basin management plans; and strategic protected species licensing areas³. PPG states that consideration may also be given to local sites including where communities could benefit from improved access to nature⁴.

¹ PPG Paragraph: 010 Reference ID: 8-010-20190721

² PPG Paragraph: 012 Reference ID: 8-012-20190721

³ PPG Paragraph: 021 Reference ID: 8-021-20190721

⁴ PPG Paragraph: 021 Reference ID: 8-021-20190721

- Biodiversity net gain delivers measurable improvements for biodiversity by creating or enhancing habitats in association with development⁵.
- Biodiversity net gain can be achieved on-site, off-site or through a combination of on-site and off-site measures⁶. While there is flexibility in the balance of on or off-site provision, approaches need to ensure that any benefits will lead to ‘genuine and demonstrable gains for biodiversity’⁷.
- Planning conditions and obligations can be used as a mechanism to require net gains⁸.
- When assessing opportunities and proposals to secure biodiversity net gain, local authorities must have regard to all relevant policies, especially those on open space, health, green infrastructure, Green Belt and landscape.
- Off-site measures can sometimes be secured from ‘habitat banks’, which comprise areas of enhanced or created habitats which generate biodiversity unit ‘credits’⁹.
- Using existing biodiversity values, the Biodiversity Metric 3.0¹⁰ can be used to demonstrate the impacts of development and the net gain that can be achieved¹¹. This enables calculation of losses and gains by assessing habitat, in terms of distinctiveness, condition and extent.
- New or improved habitat needs to be located where it can best contribute to local, national and international biodiversity restoration, including the Nature Recovery Network, locally identified ecological or green infrastructure networks and biodiversity opportunity areas¹².
- It is good practice to establish a detailed management plan to ensure appropriate management of the habitat in the long term, and to arrange for regular but proportionate monitoring on how the habitat creation or enhancement is progressing, indicating any remedial action necessary¹³.

An important consideration for management plans is whether provisions for biodiversity net gain will be resilient to future pressures from further development or climate change¹⁴.

- Where landscapes have a particular local value, it is important that policies identify their special characteristics and are supported by proportionate evidence such as assessment criteria or mitigation measures (e.g. design principles) for development¹⁵.

⁵ PPG Paragraph: 022 Reference ID: 8-022-20190721

⁶ PPG Paragraph: 022 Reference ID: 8-022-20190721

⁷ PPG Paragraph: 023 Reference ID: 8-023-20190721

⁸ PPG Paragraph: 023 Reference ID: 8-023-20190721

⁹ PPG Paragraph: 023 Reference ID: 8-023-20190721

¹⁰ Natural England (2021) The Biodiversity Metric 3.0 <http://publications.naturalengland.org.uk/publication/6049804846366720>

¹¹ PPG Paragraph: 025 Reference ID: 8-025-20190721

¹² PPG Paragraph: 027 Reference ID: 8-027-20190721

¹³ PPG Paragraph: 027 Reference ID: 8-027-20190721

¹⁴ PPG Paragraph: 023 Reference ID: 8-023-20190721

¹⁵ PPG Paragraph: 036 Reference ID: 8-036-20190721

3.3 Other National Guidance - Natural England's Biodiversity Metric

As referenced in section 3.2, at the heart of BNG is Natural England's Biodiversity Metric. This is a tool that measures the biodiversity value of a habitat parcel on the basis of its area and quality.

The metric measures habitat:

- Distinctiveness
- Condition
- Strategic significance; and
- Habitat connectivity

The metric works by applying a score to each of these elements, then multiplying these together to give a number of biodiversity units that represents the biodiversity value of that habitat parcel. The initial calculation determines the 'baseline' or 'pre intervention' value in biodiversity units. The process is then repeated using a 'post development' or 'post intervention' scenario to account for the impact of the development or intervention (including any on-site measures to retain, enhance or create additional biodiversity within the development site).

At this point, additional risk factors associated with creating, restoring or enhancing habitats are considered. These risk factors include:

- Difficulty of creating or restoring a habitat;
- The time needed to restore or create the habitat and interim environmental losses; and
- Spatial risk.

The relative value in biodiversity units 'post development' is then deducted from the 'baseline' to give a value for the extent of change. If a 'net gain' is achieved on-site, there is no need to consider off site measures. However, if the calculation does not result in a sufficient 'net gain' in biodiversity units, the development proposal can be revisited to improve the number of biodiversity units obtained or, if there is no scope for additional on-site compensation or enhancement, off-site measures will need to be considered.

If off-site measures are required, a similar process is undertaken to establish biodiversity unit values on the off-site land 'pre intervention' and 'post intervention' to calculate how many units that land can contribute as compensation. The change in biodiversity units on-site is then added to the change in units off site to provide a total change in biodiversity units for the development. The total change in units needs to be sufficient to ensure a 'net gain' is achieved.

The Biodiversity Metric lists the different types of habitats that can either be present within the application site, or that could be provided as measurable BNG. This includes locally important habitats such as lowland calcareous grassland, broadleaved woodland and mixed scrub.

The Metric also lists a variety of habitats that are specifically found or could be provided as BNG within an urban context. This includes allotments, biodiverse green roofs, green walls, shrubs, urban trees and sustainable urban drainage features. Some of these habitats and measures may be more achievable for proposals situated within the built-up area of Maidstone. The assumption is that all proposed measures should be appropriate to the development, site location and surroundings.

Although species-based measures such as swift bricks do not count as measurable BNG, these types of measures are still important for biodiversity and should be provided where possible.

4. Local Context

4.1 Emerging Local Plan Review

The Regulation 19 Draft Local Plan Review (LPR), currently at the early stages of Examination, already proposes several requirements in relation to BNG. A summary of the main policy references in the draft LPR are given below.

Proposed draft LPR Policies currently at Examination

POLICY LPRSP14A – NATURAL ENVIRONMENT

a. Deliver a minimum 20% on site Biodiversity Net Gain on new residential development, having regard to Biodiversity Opportunity Areas and/or Nature Recovery Networks. Biodiversity Net Gain should be calculated in accordance with the latest Natural England biodiversity metric or equivalent.

POLICY LPRSP4(A) – HEATHLANDS GARDEN SETTLEMENT

c) 20% biodiversity net gain will be expected to be achieved on-site;

POLICY LPRSP4(B) – LIDSING GARDEN COMMUNITY

b) A minimum of 20% biodiversity net gain will be expected to be delivered on-site;

POLICY LPRSA146 - MAIDSTONE EAST, MAIDSTONE TOWN CENTRE

Having regard to the site's size, measures for positive biodiversity net gain shall be incorporated into the scheme

POLICY LPRSA303 – EIS OXFORD ROAD, MAIDSTONE

Any on-site landscaping shall incorporate specific measures to enable biodiversity net gain.

POLICY LPRSA366 – SPRINGFIELD TOWER, ROYAL ENGINEERS ROAD

Any proposal shall respect any existing trees on site and should be accompanied by an arboricultural assessment. The removal of any existing trees shall be fully justified and accompanied by a replacement planting scheme. Such a scheme shall include measures to incorporate biodiversity net gain.

POLICY LPRSA266 - LAND AT WARE STREET, MAIDSTONE

A minimum of 0.7 ha of natural/semi-natural open space shall be provided and dedicated to habitat creation/biodiversity net gain in accordance with national and local targets.

POLICY LPRSA265 - LAND AT ABBEY GATE FARM, SOUTH WEST OF MAIDSTONE

Semi/natural open space of no less than 3.0 ha shall be provided, the function of which will focus upon habitat creation and biodiversity net gain.

POLICY LPRSA270 - LAND AT PESTED BARS ROAD, SOUTH OF MAIDSTONE

Development will be subject to a site-wide strategy to incorporate an appropriate level of biodiversity net gain in accordance with national and local policy.

Semi/natural open space of no less than 5.0 ha shall be provided, the function of which will focus upon habitat creation and biodiversity net gain.

POLICY LPRSA172 - LAND NORTH OF SUTTON ROAD (WEST OF RUMWOOD COURT), SOUTH EAST OF MAIDSTONE

Development will be subject to a site-wide strategy to incorporate an appropriate level of biodiversity net gain in accordance with national and local policy

POLICY LPRSA362 – MAIDSTONE POLICE HQ, SUTTON RD, MAIDSTONE

Development should incorporate a level of biodiversity net gain in accordance with national and local policy.

POLICY LPRSA310 – MOTE ROAD, HEADCORN

Development will be subject to a site-wide strategy to incorporate an appropriate level of biodiversity net gain in accordance with national and local policy.

Provision shall include no less than 1.9 ha of semi/natural open space the principle focus of which shall be to contribute to biodiversity net gain. The location and layout of such areas shall be designed to avoid conflict with accessible residential amenity spaces.

POLICY LPRSA260 – ASHFORD ROAD, LENHAM

Development will be subject to the incorporation an appropriate level of biodiversity net gain in accordance with national and local policy.

POLICY LPRSA295 - LAND AT COPPER LANE & ALBION ROAD, MARDEN

Development will be subject to a site-wide strategy to incorporate an appropriate level of biodiversity net gain in accordance with national and local policy.

Provision of new open space on site in accordance with Policy LPRSP13 & LPRINF1. Provision shall include not less than 1.25 ha of open space, with typologies in accordance with Policy LPRSP13. The strategy shall ensure that areas designed to support biodiversity net gain shall not be publicly accessible.

POLICY LPRSA066 - LAND EAST OF LODGE RD, STAPLEHURST

Development will be subject to a site-wide strategy to incorporate an appropriate level of biodiversity net gain in accordance with national and local policy.

POLICY LPRSA114 - LAND AT HOME FARM, STAPLEHURST

Development will be subject to a site-wide strategy to incorporate an appropriate level of biodiversity net gain in accordance with national and local policy.

POLICY LPRSA312 - LAND NORTH OF HEATH RD – BEACON PARK

Development will be subject to a site-wide strategy to incorporate an appropriate level of biodiversity net gain in accordance with national and local policy.

Provision shall include no less than 1.3 ha of semi/natural open space the principle focus of which shall be to contribute to biodiversity net gain.

POLICY LPRSA204 - LAND SOUTH EAST OF BRICKFIELD'S CLOSE, EYHORNE STREET, EYHORNE ST (HOLLINGBOURNE)

Development will be subject to a site-wide strategy to incorporate an appropriate level of biodiversity net gain in accordance with national and local policy.

POLICY LPRSA078 – LAND AT HAVEN FARM / SOUTHWAYS, SUTTON VALENCE

Development will be subject to a site-wide strategy to incorporate an appropriate level of biodiversity net gain in accordance with national and local policy.

The development shall deliver no less than 0.9ha of semi/natural open space the principle focus of which shall be to contribute to create new woodland and biodiversity net gain. The location and layout of such areas shall be designed to avoid conflict with accessible residential amenity spaces.

POLICY LPRSA248 - LAND NORTH OF KENWARD ROAD, YALDING

Development will be subject to a site-wide strategy to incorporate an appropriate level of biodiversity net gain in accordance with national and local policy.

4.2 Local Plan Review Evidence Base on BNG

Underpinning the LPR stance, there are three pieces of documentary evidence:

- The Kent Nature Partnership Biodiversity Strategy 2020 – 2045
- Justification for a Biodiversity Net Gain target of 20% in Kent, September 2020; and
- Viability Assessment of Biodiversity Net Gain in Kent, June 2022.

The **Kent Biodiversity Strategy** provides a guiding framework for the delivery of biodiversity net gain, the LNRS and Nature Recovery Networks within the county as a whole. In doing so, it sets out the clear context of need and opportunity for BNG. However, it does not set any specific targets beyond the general promotion of BNG.

The **justification** document suggests the following:

- There are pressures on land use which are specific to Kent's location, such as its proximity to London and as a gateway to Europe, through road, rail, sea and air links. Of these, the most significant pressure is the unprecedented levels of growth. In 2018, the Kent and Medway Growth and Infrastructure Framework identified the need for 178,600 additional homes, to accommodate 396,300 additional people by 2031 (amounting to 24% and 23% of growth respectively), along with associated transport, education, health and social care, utilities and community facilities.
- The Kent Habitat Survey 2012 showed that land covered by development in Kent had increased from 10.7% in 1961 to 17.3% in 2008. A recent study by the Centre for Ecology & Hydrology (2020) also found that Kent had the largest net rise in urban land cover in terms of geographical area (136km² between 1990 and 2015)
- This continuous growth in development and urbanisation means the county now has a highly fragmented landscape with small pockets of habitat supporting rare and vulnerable species. Fragmentation impairs species movement and migration, meaning these isolated populations are less able to survive or adapt to changing climate conditions and are put at further risk.
- An assessment of Kent's wildlife in 2011 reported that in the last century there have been major losses in Kent's wildlife with 30 species of wild plant, eight species of butterfly, one amphibian, one reptile, 10 bird species, and two species of bat all becoming extinct in the county. In addition to this, many of the remaining species have experienced significant population declines including many species of butterflies and moths, birds and wildflowers of farmland, wetland plants, adders and common toads. In response, ecological emergencies have been declared across the county.

With these exceptional pressures for the county, the justification considers that a 20% biodiversity net gain target is a proportionate response and one that illustrates the county's commitment to tackling the ecological crisis that faces Kent. Furthermore, it suggests the scale of previous biodiversity losses require aspirational levels of gain as compensation.

The **Viability Assessment of Biodiversity Net Gain in Kent** provides an independent assessment of the potential effect of a 15% or 20% BNG target on the viability of residential-led development

in Kent. The purpose of this assessment was to determine if an uplift from the mandatory 10% BNG will materially affect delivery of development in the county from a viability perspective.

The key headline findings are as follows:

- A shift from 10% to 15% or 20% BNG will not materially affect viability in the majority of instances when delivered onsite or offsite.
- The biggest cost in most cases is to get to the mandatory minimum of 10% BNG. The increase to 15% or 20% BNG in most cases costs much less and is generally negligible.
- As BNG costs are low when compared to other policy costs, in no cases are they likely to be the factor that renders development unviable.
- Nonetheless, developers are already having issues delivering BNG on some of their sites, which demonstrates the importance of considering BNG from the outset during masterplan stage to efficiently provide BNG on-site.
- The above conclusion reflects the viability position where BNG requirements have been considered and factored in throughout the land acquisition and planning application process. In the short term, BNG policy changes may cause greater levels of disruption and viability impact where the cost and land take requirements of increased levels of BNG provision have not been factored into existing proposals.
- As a consideration for local authorities, on-site BNG provision could have implications on land take. Three typologies tested in the assessment required additional land – these were all greenfield sites and comprised 500, 100 and 25 unit scenarios. As such, increasing land take may result in the lowering of average housing densities and so more land may be required to deliver housing. However, the majority of this burden relates to reaching the mandatory 10% BNG and so may not be a reason for local authorities to go beyond the mandatory 10% BNG.
- In certain situations where the starting biodiversity baseline is low (i.e. on cleared brownfield sites), it might prove easy for developers to provide considerably larger increases over 20%. LPAs may wish to consider this when developing new policy and could, for example, consider a minimum threshold for BNG applied in absolute terms, in addition to a percentage increase. This may allow them to capture even more BNG where appropriate.

Overall, the three documents add up to a coherent evidence base, now being considered through the LPR Examination. If Maidstone Borough specific evidence is sought, this could take the form of a viability assessment, given values are likely to vary across Kent and the assessment could be more specific to context. This may assist planning decisions since the issue of BNG does not appear to have been considered in the adopted Local Plan viability study undertaken by Aspinall Verdi.

Nonetheless, putting costs to BNG measures may also be challenging and may be better suited to a specific site by site assessment undertaken in partnership with site promoters. The potential for BNG could also be used at an earlier as site selection criteria, which may also have the effect of incentivising commitment by site promoters.

5. Experience in other Authorities Elsewhere

From our review of other Local Planning Authorities, we are not aware of other authorities that have taken a target higher than 10% BNG in planning policy through Examination¹⁶.

However, there are examples of where 20% has been agreed in relation to specific developments. Moreover, Lichfield are pursuing 20% BNG on the basis of an SPG and Swindon are proposing 20% in draft local plan policy. These two cases are considered further below.

In 2019 **Lichfield District Council** won the Local Government *Changing the Way We Work* award for its biodiversity net gain model. The judging panel recognised that Lichfield District Council's work on biodiversity net gain has been instrumental in demonstrating that gains could be delivered through development and has shown how local planning policy could be designed to enable this. And in doing so has played a significant role in influencing the introduction of a mandate for biodiversity net gain in England.

Lichfield's approach includes a policy in the 2016 Adopted Local Plan and a SPD. The policy NR3 is reproduced below¹⁷ Although the policy supports BNG the specification of a 20% target in in SPD¹⁸ rather than the adopted plan. The approach set out in para 6.33 of the SPD is specified as follows:

“6.33 On site compensation and biodiversity offsetting schemes must produce habitats of measurably greater biodiversity value than will be lost through the development. Lichfield District Council considers the minimum increased amount or ‘replacement percentage’ to be set at 20% above the biodiversity unit value of the habitats lost. Hence habitats to be lost valued at 10 biodiversity units, must be compensated for by the creation of habitats valued in total at no less than 12 biodiversity units. This is the minimum that would be accepted and the replacement percentage may be increased if for example: ecological networks have to be maintained or to avoid fragmentation of important existing habitats.”

In adopting this approach, no specific evidence is evidence for 20% is provided although the general justification seems to be similar to Maidstone's Draft Local Plan. Lichfield were an early adopter of such an approach. Interestingly the requirement has not been explicitly translated into policy in the local plan review¹⁹ where BNG is listed in explanatory text as a requirement for masterplanning (see page 70).

Overall, the approach seems to be being implemented in development proposals as reflected in the award that the Council received. It is a common approach to use SPD to specify standards, but such an approach cannot carry the full weight of policy.

¹⁶ There may also have been other research by MBC which we have not seen

¹⁷ [Lichfield District, Local Plan Strategy 2008 - 2029 \(lichfielddc.gov.uk\)](https://www.lichfielddc.gov.uk/Local-Plan-Strategy-2008-2029)

¹⁸ [Biodiversity and Development SPD \(lichfielddc.gov.uk\)](https://www.lichfielddc.gov.uk/Biodiversity-and-Development-SPD)

¹⁹ [local-plan-2040-publication-document \(lichfielddc.gov.uk\)](https://www.lichfielddc.gov.uk/local-plan-2040-publication-document)

Policy NR3: Biodiversity, Protected Species & their Habitats

Development will only be permitted where it:

- Protects, enhances, restores and implements appropriate conservation management of the biodiversity and/or geodiversity value of the land and buildings;
- Minimises fragmentation and maximise opportunities for restoration, enhancements and connection of natural habitats (including links to habitats outside Lichfield District); and
- Incorporates beneficial biodiversity and/or geodiversity conservation features, including features that will help wildlife to adapt to climate change where appropriate
- Delivers a net gain for biodiversity and /or geodiversity in the district

Proposals should particularly seek to contribute towards the United Kingdom Biodiversity Action Plan (UK BAP) priority habitats and species in Lichfield District, and any additional Staffordshire or National Forest Biodiversity Action Plan species.

Development proposals that would have a direct or indirect adverse effect on local designated sites, non-protected sites and priority protected species that are considered to have geological and biodiversity value, will not be permitted unless:

- They cannot be located on alternative sites that would cause less or no harm;
- The benefits of the development clearly outweigh the impacts on the features of the site and the wider network of wider habitats; and
- Prevention, mitigation and compensation (biodiversity offsetting) measures are provided which ensure there is no net loss of such sites.

Development proposals where the principal objective is to conserve or enhance biodiversity or geodiversity and deliver a net gain for such objectives will be supported in principle where this accords with other policies in the Local Plan.

This Policy must be read in conjunction with Policy BE1: High Quality Development.

The Swindon Reg 19 Draft Local Plan²⁰ (reproduced below as DM32) adopts a similar approach to Maidstone in seeking a 20% gain as below – and recognises the role of legislation. The Council has not so far published any evidence, but the broad justification in the plan appears to be similar to Maidstone. The Swindon Plan has yet to be submitted for Examination.

Policy DM 32

Biodiversity

1. All development shall minimise its impact upon and must secure measurable net gains for biodiversity, including protecting, restoring, and establishing coherent ecological networks that are more resilient to current and future pressures.
2. The effect of development proposals on the sites and species identified in the table below must be assessed and protection commensurate with their designation or status (identified in the table below) and in accordance with national policy will be given.
3. National policy and applicable legislation on habitats and biodiversity – including the 'mitigation hierarchy' of avoid, mitigate, compensate – will be applied in the determination of planning applications. Irreplaceable habitat should not be lost unless there are wholly exceptional reasons and a suitable compensation strategy exists.
4. All developments must secure a minimum of 20% measurable net gains for biodiversity or as set out in legislation, whichever is the greater.
5. The ecological, landscape and recreational value of watercourses will be protected and enhanced. Development proposals that are likely to have an adverse impact on the functions (including across their catchments) and settings of watercourses and their corridors will not be permitted.

Note: the data sources below are not exhaustive and applicants should seek appropriate professional advice.

Internationally/European designated sites	There are no such sites within the Borough, but the potential cross-boundary and in-combination impacts on sites outside of the Borough should be considered. These sites include:
	<ul style="list-style-type: none"> i) Special Protection Areas and Special Areas of Conservation ii) potential Special Protection Areas and possible Special Areas of Conservation iii) Listed or proposed Ramsar sites iv) Sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas and possible Special Areas of Conservation, and listed or proposed Ramsar sites.
Nationally designated sites	The location of sites can be found on DEFRA's MagicMap: https://magic.defra.gov.uk/MagicMap.aspx
Irreplaceable habitats or ecological features	Sites of Special Scientific Interest as shown on the DEFRA's MagicMap: https://magic.defra.gov.uk/MagicMap.aspx
Protected and priority species and priority habitats	Include ancient woodland which is mapped in DEFRA mapping https://magic.defra.gov.uk/MagicMap.aspx and species-rich grassland, ancient and veteran trees, hedgerows derived from ancient woodland, wood-pasture and parkland. Also refer to the Woodland Trust website https://ati.woodlandtrust.org.uk
Locally designated sites	European protected species and UK priority species and habitats ⁽¹¹⁾ .
Other sites	County Wildlife Sites and Local Nature Reserves as shown on the policies map
	Existing green infrastructure where this could constitute an ecological network, wildlife corridor, nodes and stepping stones for wildlife. Green infrastructure corridors are shown on the policies map (see Policy DM28 Green Infrastructure).

²⁰ Swindon Borough Council - C- Swindon Borough Local Plan Submission Draft - 7.9 Landscape and Biodiversity (objective.co.uk)

6. Discussion and Conclusions

6.1 Implications of legal, policy and Local Plan precedent review

Beyond additional viability work specific to Maidstone, we do not think there is any additional biodiversity type evidence that is needed to support the incorporation of BNG into the DPD.

The emerging Local Plan Review policies (as listed in section 4) takes the approach of setting an overarching biodiversity requirement for residential development and allocation-specific requirements. It also goes beyond the mandatory 10% BNG requirement, requiring 20% BNG.

It is likely that some amendments to draft LPR policy will occur through the Examination process to improve consistency with the Environment Act 2021, although there is no obvious need to repeat statutory requirements. If this consistency is deemed necessary, this probably includes: clarifying the types of development that are subject to BNG requirements, setting out the hierarchy of means to deliver the gain, and allowing viability considerations for requirements in excess of the mandatory 10% prescribed in the Environment Act 2021. It may also be necessary to redraft policy to suggest that the minimum 20% is an aspirational target rather than mandatory minimum for reasons given below.

The justification for this is broadly (a) the fact that the Environment Act is a minimum, (b) the scale of biodiversity loss in Kent (and Maidstone), and (c) the fact that is viable to deliver 20%, particularly as the Kent viability study found that the cost of 20% was not significantly greater than 10%. We assume the Examination Inspector will give their thoughts on the validity of this in due course which may act as a steer for the DPD²¹. At this stage, we assume the DPD would restate the requirement agreed in the LPR, albeit the policy might be more broadly specified and address more detail in relation to the preferred approach.

More generally, our review of other plans and precedents suggests that there are opportunities to develop policy towards achieving biodiversity more broadly. This might include specific policy topics for which there are other plan precedents and which could be relevant to Maidstone such as:

- **Nature Conservation and Nature Recovery**, including the role of development in restoring a coherent ecological network, (alongside achieving Biodiversity Net Gain and contributing to environmental net gains).
- **Multi-functional Green and Blue Infrastructure**, supporting the integrity and connectivity of the strategic green and blue infrastructure network and ensuring it will be maintained, protected, enhanced and restored as part of BNG.
- **Achieving Biodiversity Gains and the Mitigation Hierarchy** (consideration of delivery on-site, offsite biodiversity gain or biodiversity credits.)
- **Meeting Standards for Green and Blue Infrastructure**, including perhaps open space standards and mix of uses, allotments/community gardens/local food growing requirements and use of water features
- **Retention/provision of Trees, Shrubs and Hedgerows**

²¹ There is also a remote possibility of a conflict with CIL Reg 122 in that the policy is seeking mitigation that is not specific to the development or covered by other Acts(?)

- **Development adjacent to waterways and waterbodies** (from an ecological perspective)
- **Development of Private Outdoor Spaces** including private residential gardens and balconies

Our suggested approach would be to use precedents, existing material such as the Kent Nature Partnership Biodiversity Strategy 2020 – 2045 (and policies in the LPR) to draft a set of policies and their justification for consideration by Members and through the Reg 18b consultation. Ultimately it depends upon objectives of the Council. Most of the policy issues suggested above are broadly addressed in the draft LPR, so the issue is also one of being more specific.

6.2 Conclusions for DPD policies

On balance, there are compelling reasons for pursuing net gain within the D&S DPD, so long as there is built-in flexibility to accommodate the provisions of secondary legislation and any future updates to national policy.

For the DPD policies, to build on the Local Plan Review approach and remain consistent with National Policy, it should set out:

- The development for which net gain will be sought – it is recommended that BNG is sought from all major development proposals (except those defined as exempt in secondary legislation)
- The preference of BNG delivery to be on-site, then off-site and then as a contribution in-lieu. Lower preference delivery routes should only be allowed where a more preferential option is not possible or that evidence demonstrates the contribution will deliver greater environmental benefit
- Natural England's Biodiversity net gain metric will be used to calculate enhancements
- Minimum maintenance period expected for enhancements; and
- Off-site enhancements will need to be carefully controlled including controls over any independent landowner.

Although DPD policy should set the above framework of requirements, it is recommended that detailed guidance of how net gain will be calculated and delivered is left to a supplementary planning document which can be updated independently of the DPD.

Additionally, biodiversity compensation should be planned for a sustained Net Gain over the longest possible timeframe. For development in the UK, the expectation quoted by professional bodies is that compensation sites will be secured for at least the lifetime of the development (e.g. often 25-30 years or more) with the objective of Net Gain management continuing in the future.