

# Biodiversity Net Gain

The detail...

The devil in the detail...

The devils yet to be detailed

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# Structure of the workshop

- Some visuals to whet your appetite for BNG.
- An overview of the mandatory BNG requirement and its delivery through the planning system.
- The relationship with Urban Greening policy, existing nature conservation policy and protected species legislation.
- Other considerations for local authorities in relation to BNG.

We will take a break for questions after each section. However, please don't hesitate to ask for brief clarifications as we go through each slide.



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# Caveats

- Although the framework and principles of Biodiversity Net Gain (BNG) have been set out in the Environment Act 2021, the operating rules are subject to secondary legislation and supporting guidance which has still to be published.
- BNG will be a mandatory requirement; but there is a relationship with planning policy and the interface between the two will, no doubt, be subject to legal argument and precedence, and further guidance.
- BNG is calculated and implemented with advice from ecologists - but it is delivered through the planning system, in tandem (or not) with other policy objectives.

# What is Biodiversity Net Gain (BNG)?

A legislative requirement which will:

- Help deter new development from damaging or degrading existing wildlife habitat.
- Encourage biodiversity to be considered from the outset of the development process.
- Require creation or enhancement of wildlife habitats on-site or off-site to compensate for any losses...  
... and achieve at least **10%** net gain.

# When does BNG become mandatory?

- November 2023 - for most development subject to the T&CPA 1990.
- April 2024 - for 'small sites':
  - Residential: < 10 dwellings on < 1ha, or sites of less < 0.5ha.*
  - Non-residential: floorspace of < 1000m<sup>2</sup> , or sites of < 1ha.*
- 2025 for Nationally Significant Infrastructure Projects (NSIPs).

Becomes effective from when planning permission is granted through attachment of a general planning condition<sup>1</sup>.

<sup>1</sup> *No development shall commence until a BNG Plan has been approved by the local planning authority.*



# Are there any exemptions from BNG?

- Permitted Development.
- Where biodiversity baseline is zero, or habitat covers < 25m<sup>2</sup>.
- Temporary development where site can be restored within 2 years.
- Householder applications (*definition not yet clear*).
- Small-scale self-build or custom housebuilding (*definition not yet clear*).

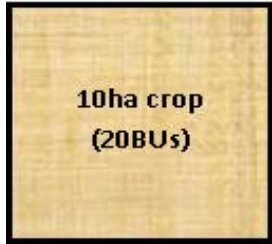
# How is BNG calculated (1)?

- It is the difference between the value of habitats on site<sup>1</sup> prior to development and the value of the habitats on-site or off-site after development<sup>2</sup>, plus at least 10%.
- The value is measured in terms of 'biodiversity units' which are calculated using a Defra approved Biodiversity Metric calculator.
- Developers will have to submit a Biodiversity Net Gain Plan based on the Biodiversity Metric calculations and evidence of the ability to deliver the required biodiversity units on-site and/or through an off-site offset or purchase.

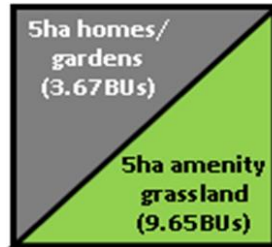
<sup>1</sup> *To avoid the potential for developers to minimise the biodiversity baseline, LPAs should check to ensure that there have been no significant changes to habitats on site since 30th January 2020.*

<sup>2</sup> *'After development', dependent on the habitats, may take years or decades.*

# How is BNG calculated (2)?



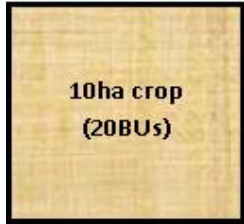
Broad habitat	Habitat type	Area (Ha)	Distinctiveness	Condition	Connectivity	Strategic Significance	Total Units
Cropland	Cereal crops	10	Low (2)	N/A – agri (1)	1	1	20
TOTAL							<b>20</b>



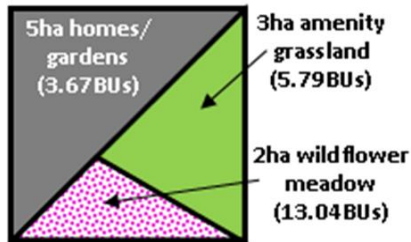
Proposed Habitat	Area (Ha)	Distinctiveness	Condition	Connectivity	Strategic Significance	Time to target condition (yrs)	Time to target multiplier	Difficulty to create multiplier	Total Units
Urban – developed land sealed surface (homes & roads)	3.1	Very Low (0)	N/A (0)	1	1	0	1	Low (1)	0
Urban – amenity grassland (gardens)	1.9	Low (2)	Poor (1)	1	1	1	0.965	Low (1)	3.67
Urban – amenity grassland (POS)	5.0	Low (2)	Poor (1)	1	1	1	0.965	Low (1)	9.65
TOTAL									<b>13.32</b>

‘Post’ units minus ‘Pre’ units (13.32 – 20.0) = minus 6.68 units = loss of **33.42%**

# How is BNG calculated (3)?



Broad habitat	Habitat type	Area (Ha)	Distinctiveness	Condition	Connectivity	Strategic Significance	Total Units
Cropland	Cereal crops	10	Low (2)	N/A – agri (1)	1	1	20
<b>TOTAL</b>							<b>20</b>



Proposed Habitat	Area (Ha)	Distinctiveness	Condition	Connectivity	Strategic Significance	Time to target condition (yrs)	Time to target multiplier	Difficulty to create multiplier	Total Units
Urban – developed land sealed surface (homes & roads)	3.1	Very Low (0)	N/A (0)	1	1	0	1	Low (1)	0
Urban – amenity grassland (gardens)	1.9	Low (2)	Poor (1)	1	1	1	0.965	Low (1)	3.67
Urban – amenity grassland (POS)	3.0	Low (2)	Poor (1)	1	1	1	0.965	Low (1)	5.79
Grassland – other neutral grassland (wildlife meadow)	2.0	Medium (4)	Fairly good (2.5)	1	1	12	0.652	Low (1)	13.04
<b>TOTAL</b>									<b>22.5</b>

‘Post’ units minus ‘Pre’ units (22.5 – 20.0) = plus 2.5 units = gain of **12.5%**

# How can a developer deliver BNG?

Submit a Biodiversity Net Gain Plan showing delivery<sup>1</sup> through a combination of:

- On-site – through protecting and enhancing existing habitat or creating new habitat on the basis of ‘like for like’ or ‘like for better’.
- Off-site – through purchasing habitats created by a registered supplier (either directly or through a broker)<sup>2</sup> or creating and registering new habitats - again ‘like for like’ or ‘like for better’ - on other land under the control of the developer.
- Statutory credits – where neither on-site or off-site solutions are available the developer can purchase credits from Government<sup>3</sup>.

<sup>1</sup> *Habitats managed and maintained for at least 30 years.*

<sup>2</sup> *The BNG legislation aims to create a market in the supply of suitable off-site habitats.*

<sup>3</sup> *This is envisaged a temporary mechanism of 'last resort' until the market is established and the price of credits is expected to be high to avoid undercutting the market in units*

# Does BNG have to be delivered locally?

The legislation does not require local delivery, but:

- The Biodiversity Metric includes a ‘spatial penalty’ for units delivered beyond the LPA boundary.
- Local Plan policy can encourage local delivery – but cannot mandate it.

Local delivery will be dependent on:

- How many units can be delivered on site.
- The availability of off-site biodiversity units via registered providers.
- A cost-benefit analysis by the developer as to whether to bear the cost of delivery beyond the LPA boundary by buying additional units to compensate for the impact of the spatial penalty.

# How does the planning authority give approval?

- Review the BNG Plan. If the Plan clearly demonstrates that the developer will achieve at least 10% BNG, and includes the relevant monitoring and reporting, the LPA must discharge the general condition which will be attached to all planning applications<sup>1</sup>.
- The actual delivery can be subject to a Section 106 or a new type of 'Conservation Covenant', i.e. a private legal agreement between a landowner and a 'responsible body'<sup>2</sup> to manage their land for a conservation purpose for the public good.

<sup>1</sup> *If Local Plan policy stipulates a % BNG higher than the mandatory requirement this will have to be determined in light of other planning policy objectives.*

<sup>2</sup> *To be determined by the Secretary of State in secondary legislation but which could be a local authority, an eNGO, or even a private sector organisation.*

# What about phased development?

- Applicant should provide a BNG Strategy for the whole site.
- This should include a target for each phase of the development to demonstrate how at least 10% BNG can be achieved overall.
- BNG Plan should be submitted for each phase.

Phased development will be a matter that will be covered in more detail in secondary legislation and guidance as there are potential complications and conflicts – not least how to ensure enough front-loading of BNG to provide some certainty of overall delivery.



QUESTIONS?



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# What about nature conservation planning policy?

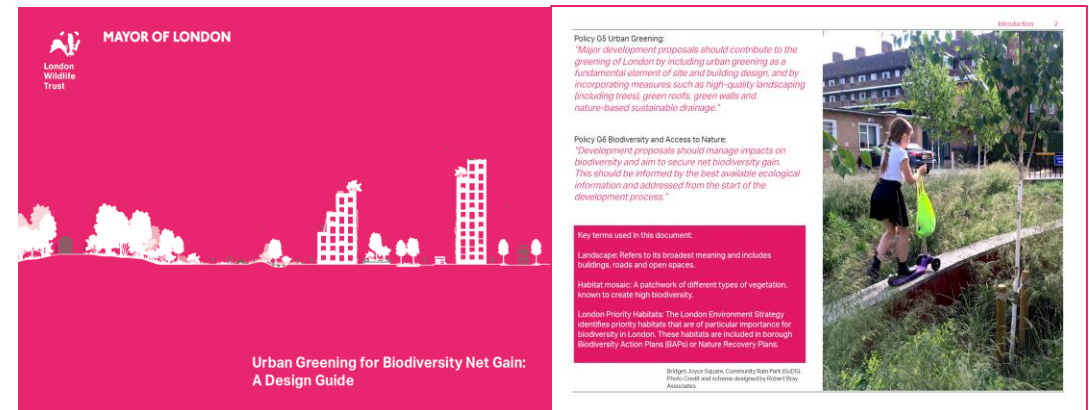
- Existing planning policy promotes the ‘mitigation hierarchy’ (NPPF para 175) which encourages development to first **avoid** any valuable wildlife habitat, then to **minimise** potential harm **and mitigate** the harm, and finally, as a last resort, **compensate** for unavoidable loss.
- Development projects should adhere to the mitigation hierarchy during early project development. But BNG legislation itself does not require this, so the local planning authority will be reliant on NPPF and Local Plan policy to discourage developers from arguing for an acceptable loss of good quality habitat by delivering the required BNG.

# What about protected species legislation?

- The BNG metric applies to habitats only.
- Protected species legislation (for the protection of bats, great crested newt, reptiles, breeding birds and badger) will still apply in addition to BNG. A local planning authority will still need to be sure that protected species issues have been properly addressed, irrespective of the quality of the Biodiversity Net Gain Plan.
- Compensatory features such as alternative bat roosts or bird nesting boxes are not factored into the BNG calculation; however, habitat that is created (or restored) to conserve protected species on site can contribute to the BNG calculation.

# What about the Urban Greening Factor?

- A London Plan policy requirement, expected to be reflected in Local Plans.
- Its purpose is to challenge the developer and design team to employ ‘nature-based solutions’ to address issues and problems associated with the site.
- No specific environmental outcome is required other than urban greening has been integrated into the development to a sufficient degree.
- However, in most cases, if a development proposal meets the UGF target score it is also likely to achieve at least 10% BNG (unless the development proposal would result in the loss of high-quality habitats).



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# What is the relationship between BNG and LNRS?

- A Local Nature Recovery Strategy (LNRS) is a document identifying priorities for nature's recovery through a map showing the most valuable existing areas for nature; and a map showing specific proposals for creating or improving habitat.
- There is a legal requirement under the Environment Act for a London LNRS to be produced by the GLA as the 'Responsible Authority'.
- There is no legal requirement for boroughs to produce a LNRS. However, boroughs can produce LNR Plans that help inform and support delivery of a London LNRS.
- These should identify where delivery of off-site BNG should be targeted. However, actual delivery will be dependent on existing land-use and the willingness of land-owners to become registered BNG providers.

# Will BNG provide my council with new resources for nature conservation?

The market in off-site biodiversity units is intended to generate new resources for habitat enhancement and creation. However, to access these resources councils:

- Will have to set aside land on which to enhance existing habitats or create new habitats and manage and maintain these for at least 30 years.
- Will need to become a registered provider (probably through creation of a special purpose vehicle<sup>1</sup>) to be in the position to sell biodiversity units to a developer.
- Will not be able to 'buck the market'.

<sup>1</sup> *To avoid any conflict of interest between the LPA function and the council as a land-owner and land-manager.*

QUESTIONS?



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If you would like to find out more about how we might be able to help you, please email: [jllewellyn@wildlondon.org.uk](mailto:jllewellyn@wildlondon.org.uk)