

TAKE FIVE

Your guide to
Biodiversity Net Gain
for developers.



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1. What is biodiversity net gain?

Changes to the Town and Country Planning Act 1990 as amended by the Environment Act 2021 creates legislation that will impose a standard planning condition for most planning permissions to deliver biodiversity net gain (BNG). The standard condition will require a biodiversity gain plan to be submitted and approved by the planning authority before development permitted by a planning permission¹ can lawfully commence. The Environment Act 2021 also creates a legislative framework for biodiversity net gain credits, which the government expects to generate a market for biodiversity units worth around £135 million. This will have important ramifications for developers who will now be required to deliver a 10% biodiversity net gain for at least 30 years.

2. What opportunities does BNG present?

The Government intends to introduce the requirements by November 2023 in respect all developments that require a grant of planning permission, with some limited exemptions.

Developers will need to forward plan and consider if they are able to deliver a sufficient gain in biodiversity on the site they plan to build upon. If this cannot be achieved, they need to explore delivery by creating the required biodiversity uplift on other land.

If neither is possible, they can purchase “biodiversity credits” from the UK Government in cases 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’.

3. How can I manage the changes?

Critically, it is important to read and if necessary, respond to the consultation on the detail of the implementation of the BNG legislation. The consultation closes on 5 April 2022 and can be found at <https://consult.defra.gov.uk/defra-net-gain-consultation-team/consultation-on-biodiversity-net-gain-regulations/> .

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You should act now to carefully assess what level of biodiversity net gain can be achieved on your site so that you integrate BNG into your project by the time the autumn of 2023. You may need to seek help from a specialist to gather this information and it must take into account the Biodiversity Metric Tool 3.0 published by Natural England.

When BNG is introduced then evidence of satisfactory discharge by the developer is likely to be required to enable the development to be lawfully implemented. At the date of the grant of planning permission the planning authority must approve the development's biodiversity gain plan and applicants for planning permission to include biodiversity gain information with their application. This core information will include:

- the pre-development biodiversity value (with 30 January 2022 as a baseline assessment date where activities do not have planning permission),
- the proposed approach to enhancing biodiversity on-site, and
- any proposed off-site biodiversity enhancements (including the use of statutory credits) that have been planned or arranged for the development.

Offsite and onsite BNG are likely to require a legal agreement to ensure delivery.

4. What's important for me as a developer?

Firstly, and most obviously, BNG is a new standard requirement which will require assessment, engagement and delivery to the satisfaction of the local planning authority. You will need representation to agree the terms of any onsite or offsite arrangement, including the amount to be paid and the length of the agreement, as negotiations can become complex.

Developers must take into account that the BNG requirement is to become a legal statutory minimum. That does not preclude local planning authorities or consultees formulating development plan policies that supplement or exceed the statutory BNG requirements for all or specific classes of development sites.

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5. Any pitfalls I should know about?

As with any land deal of legal agreement, it is vital to have good advice from experts who can see the bigger picture. For example, the delivery of BNG is additional to and not a substitution for the pre-existing planning policy requirements including those relating to habitat protection and mitigation.



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