

Joint Development Control Committee – Update on Biodiversity Net Gain

Planning Committee Date: 17 April 2024

Report to: Joint Development Control Committee

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Ward/parishes affected: All

1. Executive summary

- 1.1 With the passing of the Environment Act in November 2021, and a two-year transition period now over, with few exceptions, all Major planning applications are (as of 12/02/2024) required to provide a mandatory 10% uplift in Biodiversity Net Gain (BNG) over baseline. Minor applications (above the de-minimus thresholds) will also require this as of the 02/04/2024.
- 1.2 This report provides an update on the activity that has been undertaken over the last two years and in preparation for mandatory BNG and also provides Members with some guidance on what to expect from BNG to help inform future consideration of planning applications.
- 1.3 To support the regulatory change, Greater Cambridge Shared Planning Service (GCSPS) has been busy preparing for the new statutory obligation and has advanced our work in this area through a number of initiatives including training and briefing on BNG for planners and parish councils/community groups and agents and with reports to Members and Committees, hiring of an additional ecology officer and the procurement of additional software and systems all in support of BNG, as well as numerous other service improvements. The Service has also negotiated and agreed new Section 106 Agreements with offsite providers for the establishment of offsite habitat banks locally that will act as important resources for those developments which cannot attain full onsite BNG,, and offers a bespoke pre-application advice service to help applicants and agents with BNG.

2. Recommendation

- 2.1 The Joint Development Control Committee is asked to note this update report and guidance provided on Biodiversity Net Gain to help inform the consideration of future planning applications.

3. Background and considerations.

- 3.1 The statutory framework for BNG involves the discharge of the biodiversity gain condition following the grant of planning permission to ensure the objective of at least 10% net gain will be met for a development. The determination of the Biodiversity Gain Plan under this condition is the mechanism to confirm whether the development meets the biodiversity gain objective. Development may not be begun until the Biodiversity Gain Plan is approved.
- 3.2 As 10% BNG is now a mandatory requirement on all eligible applications, it is a valid reason for refusal if insufficient information has been submitted. It is also a reason for invalidation if no information has been submitted.
- 3.3 Decision makers should consider whether the biodiversity gain condition is capable of being successfully discharged. Matters for consideration may include the following:
- The appropriate balance expected between onsite gains, off-site gains and the use of statutory biodiversity credits for the development, taking account of the Biodiversity Gain Hierarchy;
 - Whether the type and location of any significant onsite habitat enhancements proposed for onsite gains are appropriate, taking into account other policies to support biodiversity (including local nature recovery strategies) and other wider objectives (for example policies for design, open space and recreation, and retention of trees)
 - Any planning conditions which need to be imposed to secure any significant onsite habitat enhancements, including any conditions requiring the maintenance of the enhancement for at least 30 years after the completion of the development.
- 3.4 Greater Cambridge Shared Planning Service (GCSPS) has been applying the BNG principle to eligible applications since the adoption of the Biodiversity SPD in 2022, and as such there are more than 200 developments that have been asked to provide BNG through condition discharge and Section 106 agreements (S106) with BNG deliverable on or offsite. Wherever possible the emphasis is for BNG to be provided onsite. The principal of onsite provision first and wherever possible is set

out in the technical guidance note members of both South Cambridge District Council and Cambridge city Council agreed in 2022 [GCSP Interim Offsite BNG Protocol \(greatercambridgeplanning.org\)](https://www.greatercambridgeplanning.org/).

- 3.5 What we have found is that typically, the smaller the development, the higher the likelihood that BNG may not be viable onsite, and so credits may be sought offsite. As such, a nascent market for offsite biodiversity credits has appeared locally as providers setup advance habitat creation sites where biodiversity units are created and sold as mitigation for development.
- 3.6 Members should note that Local Planning Authorities (LPA) are prohibited from influencing the market in BNG credits (through specific reference within the Environment Act 2021). As such, market forces shape the cost of units in any given area of England.
- 3.7 LPAs can setup S106 agreements with landowners who wish to provide BNG credits to secure long term provision and monitoring arrangements but cannot dictate where developers purchase their offsite credits. To date, GCSPS has agreed a S106 agreement with County Farms at Lower Valley Farm, have sealed two agreements with The Wildlife Trust for Flack Field and Fleam Dyke, and are in advanced negotiations with two other landowners at Yen Farm (West Wrattling) and a site at Coploe Hill (Ickleton). In addition, we are in early talks with Cambridge Past Present and Future (Coton) and The University of Cambridge (own estate). Cambridge Council Council is also considering what it can do with its estate and wildlife site and has under taken the baseline studies which is an important necessary first step.
- 3.8 Challenges have arisen concerning the availability and cost of BNG credits below one unit, however, as multiple suppliers come online within the district, the market should change to facilitate this need. In addition, following legal advice, GCSPS is now including obligations to sell <1 BNG units within all new S106 agreements.
- 3.9 Prior to the determination of the planning application, decision makers will also want to discuss with the applicant whether any section 106 planning obligations are required to secure either significant onsite habitat enhancements or offsite gains for the development.
- 3.10 For some planning applications (for instance, applications for outline planning permission where landscaping and layout are reserved matters), the implications for existing onsite habitats and the contribution to onsite gains may be uncertain at the time of the determination of the application. In these cases, decision makers may want to consider what subsequent approvals will be necessary to ensure significant onsite habitat enhancements are appropriately secured.
- 3.11 Onsite habitat enhancements to support the biodiversity gain objective may

have positive implications for other policy objectives which may need to be taken into account as part of the determination of the planning application. For example, such as delivering wider benefits to landscaping, amenity, and climate change adaptation.

- 3.12 It would be inappropriate for decision makers to continue to give weight to aspects of existing local policies related to biodiversity gains which are inconsistent with the statutory framework for biodiversity net gain. The statutory provisions are an important material consideration that in many cases will take precedence over local planning policy. The statutory framework represents the appropriate national approach towards, and benchmark for, biodiversity gains.
- 3.13 Decision makers should be aware that enclosed private gardens (whether before or after development) can only be assessed as a *vegetated garden* regardless of its proximity to other habitats, or the contents within the boundary. Individual elements (specifically single trees) should be assessed and included within baseline calculations over and above the area of vegetated garden; however, new trees cannot be included in post intervention assessments if within a private garden boundary.
- 3.14 Considering the above, small developments (single dwelling plots for example) will struggle to find enough BNG credits within their redline boundary to meet the mandatory 10% requirement, and thus will need to seek offsite BNG credits from a registered local provider.
- 3.15 Larger applications however should seek to find as much BNG within their boundary as possible. Paradoxically though, as much of this will be created as public open space, likelihood that its condition as quality natural habitat after 30 years might be quite low.
- 3.16 For example, grasslands are unlikely to be of moderate or higher condition after 30 years, due to (but not exclusively) footfall, dog fouling, litter, and excessive management.
- 3.17 Offsite provision will allow District Councils to direct where and what habitats are to be created. Through mechanisms such as LNRS, strategically important landscapes can be improved/expanded, and specific "umbrella species" catered for. Where the Councils have indicated significant landscapes and habitats, the Metric will increase the value of such habitats, encouraging landowners and developers to harmonise with local policies and initiatives (Doubling Nature or the Cambridge Biodiversity Strategy for example).
- 3.18 We are at the beginning of this new process and new regulatory framework for planning, as are all the other English LPAs and so getting all of the pieces in place will require some transition, learning and guidance.
- 3.19 As things change and become clearer, officers will continue to provide updates and training to Members, but more detail about BNG and how LPAs should work with it can be found at the UK Government's website setting out the guidance [here](#).

4. Implications

Financial Implications

- 4.1 BNG has required more ecology specialists in-house in order to meet the needs of the new obligation, which to date has been funded in part by transitional funding offered by Defra, and also cost recovery from our Pre-application and Planning Performance Agreement services. GCSPS has also been piloting a chargeable service offer to other LPA where no such resource exists, but where the need to provide accurate assessments of BNG as a result of developments. In addition GCSPS has also been successful in securing funding from DLUCH Proptech innovation Fund to provide and develop software to monitor BNG in Greater Cambridge.

Staffing Implications

- 4.2 Staffing to support the full and fair servicing of this new statutory obligation is under review and we are in the process of hiring an additional Senior Ecologist in order to meet the new burdens that BNG is bringing.

Equality and Poverty Implications

- 4.3 None anticipated

Environmental Implications

- 4.4 None anticipated.

Procurement Implications

- 4.5 Underway and funded by central government for initial two years

Community Safety Implications

- 4.6 None anticipated.

5. Consultation and Communication Considerations

- 5.1 No formal consultation is required, but reasonably communications (as news items) to residents about how the Councils' are progressing BNG is advised.

6. Background Papers

- 6.1 None.

7. Report Author

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