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Guide to BNG Regulations



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Environment Bank **Guide** to **BNG Regulations**

The draft Planning Practice Guidance is the first interpretation of Biodiversity Net Gain (BNG) policy we have seen from the Department of Levelling Up, Housing and Communities. Until now, all publications, including guidance and consultations, have been published by Defra.

BNG is administered through planning policy in England, which is set under the National Planning Policy Framework (NPPF). The NPPF is supported by various Planning Practice Guidance notes which are published to assist decision-makers in their interpretation of the NPPF.

In this document, we will cover the important legal and practical details published in the secondary BNG legislation. For more information, please see the government's [Planning Practice Guidance](#).



Key aspects of the draft Planning Practice Guidance on BNG

How will the regulations impact local plan-making for BNG?

Ensuring consistency between local plans and national policy will bring welcome clarity for key stakeholders, such as developers, landowners, land managers and habitat bank operators.

Local authorities should:

- ✓ Highlight the statutory framework for BNG in your local plan.
- ✓ Include policy that complements the BNG statutory framework e.g. a requirement for more than 10% BNG where there is local need and opportunity.

Local authorities shouldn't:

- ✗ Duplicate the detailed provisions of the BNG statutory framework in your local plan.
- ✗ Include policies or guidance which is inconsistent with the BNG statutory framework, such as apply BNG to exempt categories, or require the use of an alternative biodiversity metric.

See Paragraph: 005 Reference ID: 74-005-2023 of the draft BNG [Planning Practice Guidance](#).

What information needs to be submitted with a planning application?

The Town and Country Planning (Development Management Procedure) (England) Order 2015 sets the statutory minimum of what needs to be supplied with a planning application. Local authorities may require further information in their local list of requirements.

Local authorities should:

- ✓ Consider whether any relevant BNG planning obligations should be included on your local list of information requirements.

Local authorities shouldn't:

- ✗ Duplicate the statutory minimum information requirements in your local list.
- ✗ Include information requirements that are not relevant to how the BNG objective is to be met.

Statutory minimum information required on submission of planning permission:

- ✓ Statement as to whether the planning permission is subject to the BNG condition.
- ✓ The pre-development biodiversity value of the on-site habitat (including the metric calculation tool).
- ✓ Baseline date for the metric calculation tool. This should be the date of the planning application. If earlier, provide reasons for proposing that earlier date.
- ✓ Statement confirming whether any degradation of habitats has taken place reducing the biodiversity value, with supporting evidence.
- ✓ Description of any irreplaceable habitat (set out in column 1 of the Schedule of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations [2024]).
- ✓ Scale plan (showing direction of North) showing existing onsite habitat as at the baseline date (date of application, or earlier where justified).

See paragraph: 010 Reference ID: 74-010-2023 of the draft BNG [Planning Practice Guidance](#).

How will existing local policies apply following the introduction of mandatory BNG?

The BNG statutory framework is an important material consideration that takes precedence over local planning policy.

Decision makers should:

- ✓ Treat the BNG statutory framework as an important material consideration that takes precedence over local planning policy.
- ✓ Recognise the statutory framework as representing the appropriate national approach towards, and benchmark for, biodiversity gains in planning.
- ✓ Give weight to local policy that requires a gain greater than 10%, as this may still be justified due to the statutory biodiversity gain objective being for at least a 10% gain.

Decisions makers shouldn't:

- ✗ Give weight to inconsistent aspects of existing local policies.
- ✗ Give weight to local policy which requires biodiversity gains for types of development which would now be exempt under the statutory framework.

See Paragraph: 017 Reference ID: 74-017-2023 of the draft BNG [Planning Practice Guidance](#).

How will any pre-development habitat degradation impact landowners and developers?

Developers or landowners could face penalties for any unauthorised habitat degradation carried out any time after the statutory cut-off date of 30 January 2020 and prior to the submission of a planning application.

This is because the baseline biodiversity value of the development site will be taken as the site's biodiversity value prior to that degradation taking place.

If there is insufficient evidence as to that prior biodiversity value, then the development site is assumed to have the highest possible biodiversity value for the habitat types most likely to have been present at the site.

This means that unauthorised habitat degradation could lead to significantly increased costs for landowners or developers to achieve the mandatory 10% gain post-permission.

Landowners should:

- ✓ Keep accurate records of baseline biodiversity values for potential development sites.
- ✓ Continue their normal authorised use of their land prior to submitting a planning application, or selling land for development.

Landowners shouldn't:

- ✗ Carry out any actions on potential development land that would degrade habitats unless those actions are permitted by a planning permission.

See Paragraph: 012 Reference ID: 74-012-2023 of the draft BNG [Planning Practice Guidance](#).

What are 'significant' on-site habitat enhancements?

Paragraph 9 of Schedule 7A of the Town and Country Planning Act 1990 requires 'significant' on-site habitat enhancement to be secured under a planning condition, section 106 agreement, or conservation covenant.

It is for the planning authority to decide whether the increase is 'significant' relative to the

pre-development biodiversity value. If the increase is deemed to be 'significant', then a planning condition, section 106 agreement, or conservation covenant for the full 30-year management period will be needed. Defra has produced [guidelines](#) on what counts as 'significant' on-site enhancements.

'Significant' on-site habitat enhancements:

- ✓ Habitats of medium or higher distinctiveness.
- ✓ Habitats of low distinctiveness that create a 'large' number of biodiversity units relative to the pre-development baseline.
- ✓ Habitat creation or enhancement where distinctiveness is increased relative to the pre-development baseline e.g. increasing grassland from low distinctiveness to medium distinctiveness.
- ✓ Areas of habitat creation or enhancement which are significant in area relative to the size of the development.
- ✓ Enhancements to habitat condition, for example, from poor or moderate, to good.

'Non-significant' on-site habitat enhancements:

- ✗ Habitats of low distinctiveness (unless they create a 'large' number of biodiversity units).
- ✗ Habitat creation or enhancement that does not increase distinctiveness relative to the pre-development baseline e.g. the creation of medium distinctiveness grassland to replace lost medium distinctiveness grassland.
- ✗ Private gardens which have a low distinctiveness value.
- ✗ Container planting.

See Paragraph: 018 Reference ID: 74-018-2023 of the draft BNG [Planning Practice Guidance](#).

Significant on-site habitat enhancements are likely to form an integral part of the development, and so an application for planning permission would be

expected to include detailed enhancement proposals as part of the plans, drawings, and supporting information accompanying the application.

What is the new 'biodiversity gain hierarchy'?

New Article 30A of the Town and Country Planning (Development Management Procedure) (England) Order 2015 creates the 'biodiversity gain hierarchy', which is distinct from the mitigation hierarchy that is set out in the NPPF.

Developers should:

- ✓ Follow the biodiversity gain hierarchy from the earliest stage possible when considering a site and considering development proposals.
- ✓ Follow the National Planning Policy Framework mitigation hierarchy for all habitat types, as this is intended to apply alongside the new 'biodiversity gain hierarchy'.
- ✓ Consider maximising high quality off-site options for medium and low distinctiveness habitats at an early stage to inform scheme lay-out and design.

Developers shouldn't:

- ✗ Adversely impact high distinctiveness habitats unless necessary.

See Paragraph: 007 Reference ID: 74-007-2023 of the draft BNG [Planning Practice Guidance](#).

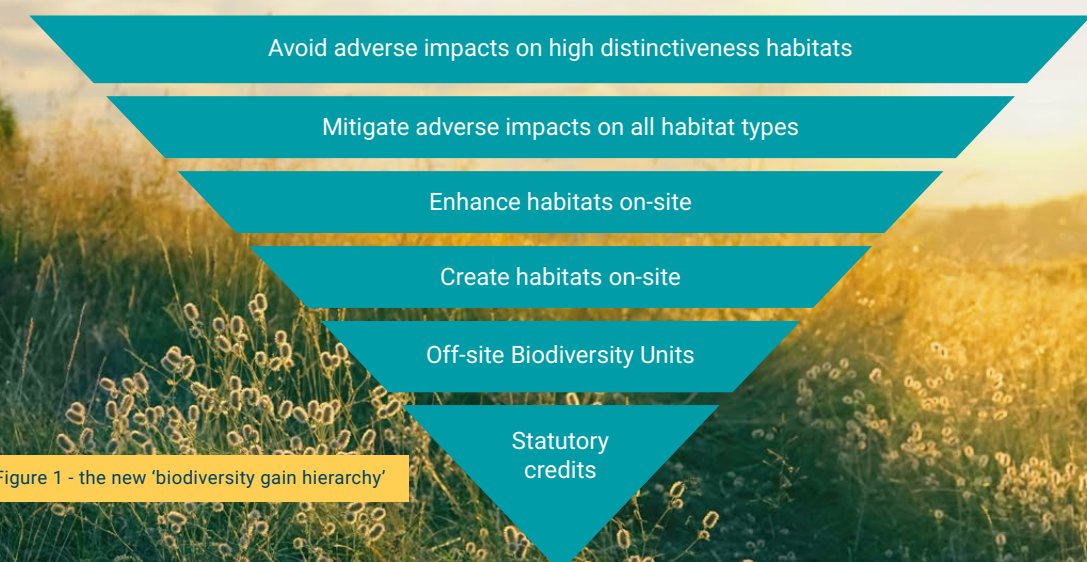


Figure 1 - the new 'biodiversity gain hierarchy'

Applying for planning permission

For more information, see Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015.

How will the regulations impact Local Authorities when determining planning applications?

While Local Authorities should generally be satisfied at planning determination that the BNG condition is capable of being successfully discharged, they should not refuse an application on the grounds that it would not be met.

Decision makers should:

- ✓ Be generally satisfied that the BNG condition is capable of being successfully discharged.
- ✓ Be confident that the type and location of any significant on-site habitat enhancements are appropriate.
- ✓ Consider any planning conditions which need to be imposed to secure any significant on-site habitat enhancements, including conditions requiring the maintenance of the enhancement for at least 30 years after the completion of the development.
- ✓ Discuss with the applicant whether any section 106 planning obligations are required to secure either significant on-site habitat enhancements or off-site gains for the development.

Decision makers shouldn't:

- ✗ Refuse an application on the grounds that the biodiversity gain objective will not be met. This should instead be dealt with later, on discharge of the BNG condition.

See Paragraph: 016 Reference ID: 74-016-2023 of the draft BNG [Planning Practice Guidance](#).



Are there any exemptions from the general biodiversity gain condition?

The exemptions to the general biodiversity gain condition are set out in paragraph 17 of Schedule 7A Town and Country Planning Act 1990 and the Biodiversity Gain Requirements (Exemptions) Regulations [2024].

Developments that are in scope for general biodiversity gain condition:

- ✓ **(From 12th February 2024*):** All residential developments for 10 or more dwellings or on a site having an area of more than 0.5 hectares.
- ✓ **(From 12th February 2024*):** All developments of buildings where the floor space to be created by the development is 1,000 square metres or more.
- ✓ **(From 12th February 2024*):** Non-residential developments on a site having an area of 1 hectare or more.

Developments that are exempt from the general biodiversity gain condition:

- ✗ Planning permissions granted (or varied) for planning applications made *before* 12th February 2024*.
- ✗ Retrospective planning permissions made under section 73A Town and Country Planning Act 1990.
- ✗ De-minimis sites, being development that does not impact a priority habitat, and impacts less than 25 square metres (e.g. 5m by 5m) or habitat, or 5 metres of linear habitats such as hedgerows.
- ✗ (Until April 2024) residential developments for fewer than 10 dwellings or on a site having an area of less than 0.5 hectares.
- ✗ (Until April 2024) development of buildings where the floor space to be created by the development is less than 1,000 square metres.
- ✗ (Until April 2024) non-residential developments on a site having an area of less than 1 hectare.
- ✗ (Until 2025) nationally significant infrastructure projects.
- ✗ Householder developments (i.e. permission for the development of an existing dwelling).
- ✗ Permitted development under section 59 of the TCPA.
- ✗ Local development orders.
- ✗ Neighbourhood development orders.
- ✗ Successful enforcement appeals.
- ✗ Deemed planning permission.

See Paragraph: 003 Reference ID: 74-003-2023 of the draft BNG [Planning Practice Guidance](#).

* The precise date has not yet been confirmed by Defra, but most recent announcements suggest that the regulations will apply date from 12th February.

How will the regulations impact phased development?

Phased development can occur over a long period of time where full details of all phases may not be known at the time of planning permission.

For the purposes of BNG, a phased development takes place in each of the following two scenarios:

- a) **Reserved matters requiring or enabling phased development:** the grant of outline planning permission where the reservation of matters for subsequent approval requires or permits development to proceed in phases; or
- b) **Planning conditions requiring or enabling phased development:** the grant of any kind of planning permission where the grant is subject to conditions which require or permit development to proceed in phases.

“An example of a phased development would be a large-scale urban extension for residential or commercial development where an outline planning permission has been granted and the permission identifies clear phases for development where subsequent reserved matter approvals would grant consent for the detailed design of a phase.”

Developers should:

- ✓ Submit an “Overall Biodiversity Gain Plan” prior to commencement of development on a phased development.
- ✓ Ensure the Overall Biodiversity Gain Plan sets a clear upfront framework for how the biodiversity gain objective of at least a 10% gain is expected to be met across the entire development.
- ✓ Submit a more detailed “Phase Biodiversity Gain Plan” prior to commencement of development of any particular phase of a scheme.
- ✓ Ensure the Phase Biodiversity Gain Plan sets out a phase’s contribution to the overall BNG, and tracks progress towards the overall biodiversity gain objective.
- ✓ Prepare Phase Biodiversity Gain plans alongside the application for reserved matters approval.

Developers shouldn’t:

- ✗ Assume all outline planning permissions will meet the definition of “phased development” for BNG purposes. For instance, a small-scale residential development where appearance and landscaping are the only reserved matters for later determination would not satisfy the definition of “phased development.”

See Paragraph 049 Reference ID: 74-049-2023 of the draft BNG [Planning Practice Guidance](#).

What is the appeals process for a Biodiversity Gain Plan?

Developers have a right to appeal under section 78 of the Town and Country Planning Act 1990 if an application for approval of the Biodiversity Gain Plan is refused, or if the local planning authority does not make a decision within 8 weeks (or such other timeframe agreed in writing).

Developers should:

- ✓ Make any appeal under section 78 of the Town and Country Planning Act 1990 within 6 months of the decision date (or within 6 months of the date the decision was due).
- ✓ When making an appeal, ensure the relevant application documents are included as set out in Article 30E of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Developers shouldn’t:

- ✗ Make an appeal without first seeking to engage with the local planning authority to see whether any changes to the plan would make it more acceptable.

Further resources:

[Information on Biodiversity Net Gain](#)
[Planning practice guidance](#)
[Statutory biodiversity metric calculation tools, draft user guides and condition assessments](#)
[Regulations for irreplaceable habitats](#)

[The biodiversity gain site register](#)
[Regulations for exemptions](#)
[Modifications and amendments introduced in the secondary legislation](#)
[Natural England’s habitat management and monitoring plan template](#)



Environment Bank are the **leading provider of high-integrity off-site Biodiversity Units.**

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