

In October 2019, the UK government is due to publish the Environment (Principles and Governance) Bill to be laid before Parliament.

This bill will introduce mandatory biodiversity net gain requirements for most planning applications (with only a few exceptions). This is a major change with potentially significant implications for development going forward.

On 23 July 2019, the Department for Environment, Food and Rural Affairs (Defra) and the Ministry of Housing, Communities and Local Government (MHCLG) published the government response to its December 2018 consultation on mandatory biodiversity net gain in development. This was swiftly followed, on 29 July 2019, by Natural England publishing the beta version of the "biodiversity metric 2.0", an update to the biodiversity metric published by Defra in 2012.

Detailed explanatory notes and guidance are expected to be published with the bill, but the government response to the consultation and the new biodiversity metric do provide an insight into the anticipated direction of travel in relation to the application of biodiversity net gain.

Mandatory Net Gain Requirement and Exemptions

The current planning position (established in the National Planning Policy Framework and supporting planning practice guidance) is that biodiversity net gain should be provided where possible, although it does not represent a mandatory requirement.

The bill will introduce a mandatory net gain requirement of an increase of 10% in habitat value when compared to the pre-development baseline. The figure of 10% will not represent a cap on developer aspirations, but will represent a threshold to be met on development sites. This figure will be calculated using a biodiversity metric, which is explained in further detail below.

As noted, the biodiversity net gain requirement is intended to apply to most development. The types of development that are proposed (as it stands) to be exempt from such requirements are:

- Nationally significant infrastructure projects
- Marine development
- Development for specific types of ownership that could be disproportionately impacted by the rules (e.g. residential self-build)
- Brownfield sites that meet specific criteria, such as where they do not include priority habitat and face genuine difficulties to deliver viable development
- Permitted development
- Sites that do not contain any habitat to start with

The requirement will apply to smaller sites, but (as per the consultation response) the government will actively consider whether minor residential developments should be subject to longer transition arrangements or a lower net gain requirement than other types of development. The government also proposes to introduce process simplifications for minor developments.

Calculating Net Gain

The primary method of calculating net gain will be through a biodiversity metric. The biodiversity metric 2.0 has initially been released as a beta version in order to seek feedback on its real-world application, in order that improvements can be made and bugs fixed, with further enhancements expected over the course of 2019.

The purpose of the metric is to make it as easy as possible for decision-makers to consider biodiversity when making planning decisions. It should also offer robustness and uniformity, which will undoubtedly be needed in what could potentially be an area of dispute.

The initial calculation represents the "baseline" or "pre-intervention" value in biodiversity units. The calculation is then repeated for the post-intervention (either development or land management change) scenario.

To measure the biodiversity value of habitats, it is first necessary to define the site boundaries and then (if needed) divide it into appropriate parcels (being distinct portions of each habitat type present). The habitat type and size of these parcels, as well as the condition of the habitat it contains, should then be recorded in the metric.

The metric quantifies the value of a site by assigning "biodiversity units" to a habitat based on its size and quality.

The assessment of quality is based on four components:

- Distinctiveness
- Condition
- Strategic significance
- Connectivity

Not all habitats can be measured under the assessment due to difficulties of assessing habitat size. A supplementary calculation is used for these types of habitat, which include hedgerows, lines of trees, rivers and streams, and street trees.

When an estimate of future habitat value is made, there are three more areas in which assessment is carried out to ensure that risks of developing that new habitat are considered:

- The difficulty of creating or restoring habitat
- Temporal risks due to the difference in time between losing and gaining habitat
- Offsite risks looking at the proximity of compensation land to the damaged site

To get the best outcome from the net gain calculation, steps need to be taken to minimise these risks.

The change in biodiversity is worked out by subtracting the site's baseline biodiversity

unit value from the sum of post-intervention values for retained, created and enhanced parcels of the same habitat type. This is then combined with any offsite gains or losses to

give a final biodiversity unit value from which net gain or loss for the scheme can be assessed.

The design can be revised to improve the number of biodiversity units obtained. Using the metric calculator, a developer can assess different development proposals to see which offers the best opportunity for meeting mandatory net gain requirements.

The metric itself acknowledges that it will not always lead to a completely accurate result. It is noted that "while the scoring of habitats is informed by ecological reasoning and the available evidence, the outputs of biodiversity unit calculations are not scientifically precise or absolute values". The metric and its outputs should, therefore, be "interpreted, alongside ecological expertise and common sense, as an element of the evidence that informs plans and decisions". Ultimately, the "metric is not a total solution to biodiversity decisions". So, the metric will likely be used in conjunction with input from statutory consultees and the applicant's own environmental consultants.

Net Gain Compensation

Where the biodiversity gain cannot be met onsite and offsite compensation is required, the government does not intend to introduce a new tariff on loss of biodiversity. Instead, local authorities will be able to review developers' plans to deliver compensation through local habitat creation projects. Where local projects are not available, there will be the option for investment in nationally strategic habitats through a government offering of "statutory biodiversity units".

As one would expect, any local spending should be transparent. The government will establish a publicly available habitat register of compensatory habitat sites.

The focus, it would seem, is for local habitat investment opportunities, identified and maintained with the help of local organisations.

The government has stated that it will require net gain outcomes delivered through mandatory biodiversity net gain to be maintained for a minimum of 30 years, and will encourage longer-term protection where this is acceptable to the landowner.

Concluding Thoughts

The changes to biodiversity net gain will place ecological requirements at the core of the planning process.

The calculation matrix itself acknowledges that it is not perfect, which immediately offers scope for disputes. Yet, the government appears unwilling to propose any formal means of dispute resolution. According to the government response to the consultation, it will instead "work with the planning system to make sure it is properly resourced to deliver what is needed. This will include training and guidance".

One of the core principles of planning is that the impact of the development should be mitigated through onsite conditions and section 106 contributions used to finance projects in the locality. Investment in "nationally strategic habitats" would seem to fly in the face of this.

Equally, concerns will naturally arise as to whether this represents a further obstacle to development. Indeed, from a viability perspective, how would this fit in with competing social requirements such as the provision of affordable housing?

As with any new policy, the real test will be in its application. A two-year transition period has been proposed, supported by "clear and timely guidance", which clearly shows that the government is aware of the need to approach this with care. As always, time will tell.

We will, of course, endeavour to keep you updated as matters progress.

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