
Achieving Biodiversity Net Gain on Brownfields: Interactions with Land Use and Environmental Policies

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Biodiversity Net Gain



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Achieving Biodiversity Net Gain on Brownfields: Interactions with Land Use and Environmental Policies

- Brief recap – BNG
- Planning and Land Use policies – Brownfield sites
- BNG & Brownfield sites - Metric calculations & complexities
- Looking forwards – challenges, success & potential reform?



Biodiversity Net Gain – brief recap

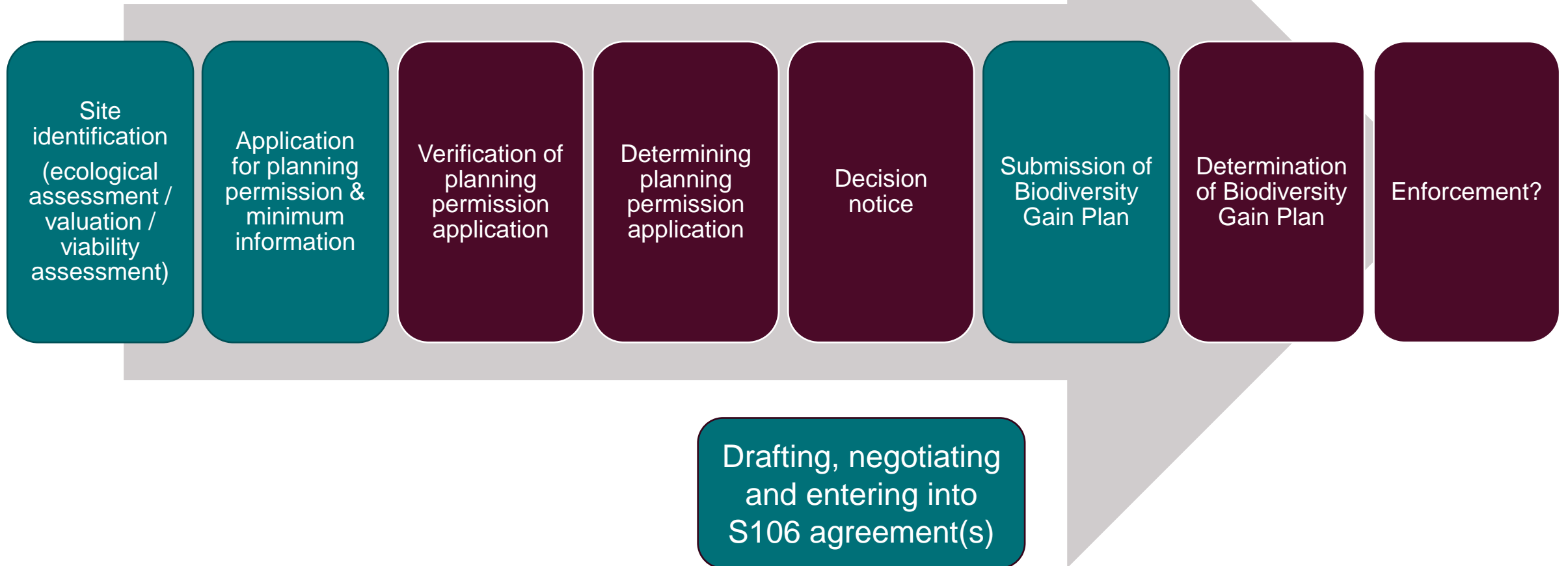
- Biodiversity net gain is **a concept which aims to leave the natural environment in a measurably better state**.
- Developers must deliver a biodiversity **net gain of (at least) 10%**, calculated in habitat units depending on things like the **size, quality, location and type of habitat**.
- The **statutory metric**, published by Defra, must be used. Competent person required.
- BNG now applies to **every grant of planning permission**; there are **exemptions** but these are limited.
- BNG can be achieved:
 - **onsite**,
 - **off-site**, or
 - by purchasing **statutory credits**.

Biodiversity Net Gain – brief recap

- Commenced 12 February 2024 (and 2 April 2024 for small sites)
- Environment Act 2021 + New secondary legislation
- Legal arrangements:
 - Conservation Covenants
 - Planning obligations
 - Planning conditions
 - Allocation agreements/commercial arrangements
- Metric calculations
- Different entities operating in different capacities: Developer, landowner, LPA, Register Operator, Responsible Bodies



BNG - Embedded in the planning process



Planning policies – Brownfield sites

- NPPF 123 and 124:

123 - Strategic policies should set out a clear strategy for reaching objectively assessed needs, in a way that makes as much use of brownfield land as possible.

124, planning policies and decisions should

- *c) give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land*

- NPPF Greenbelt

146 - Before concluding that exceptional circumstances exist to justify changes to Green Belt boundaries, the strategic policy-making authority should be able to demonstrate that it has examined fully all other reasonable options for meeting its identified need for development [...] whether the strategy: a) makes as much use as possible of suitable brownfield sites and underutilised land;

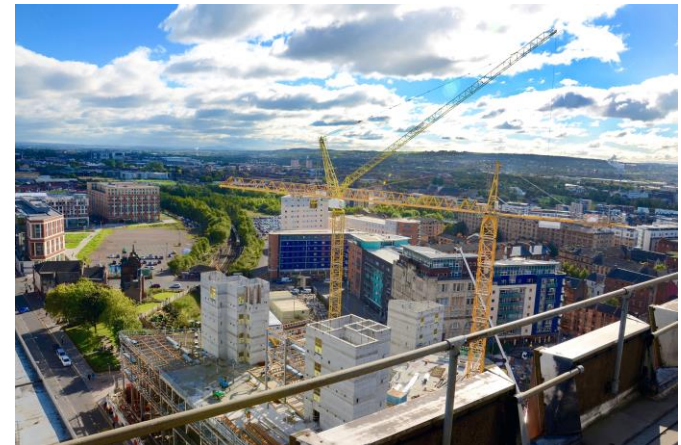
154 - A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are [...] limited infilling or the partial or complete redevelopment of previously developed land,

Planning policies – Brownfield sites

Government consultation, February 2024: **Strengthening planning policy for brownfield development** ([Strengthening planning policy for brownfield development - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/strengthening-planning-policy-for-brownfield-development))

a. first, a change to national planning policy that would expect local planning authorities to give significant weight to the benefits of delivering as many homes as possible, and to be flexible in applying policies or guidance on the internal layout of developments especially for proposals on brownfield land. This policy would apply to all authorities; and

b. second, the application of the presumption in favour of sustainable development in respect of previously developed land only for those 20 towns and cities subject to the urban uplift, where their Housing Delivery Test score falls to 95% or below.



Planning & Delivery considerations – Brownfield sites

- **Contaminated land & compliance with environmental regulations and requirements**
- **Ground conditions/Contingency costs**
- **Land ownership arrangements**
- **Housing need vs brownfield deliverability**
- **Type of housing**

- **Compliance with local planning policies**

- **All leads to viability**
 - **BNG is mandatory – so what else is lost?**

BNG & Brownfield sites

Exemption

Development that does not impact a priority habitat and impacts less than:

- 25 square metres (habitats such as hedgerows)
- A development 'impacts' a ha5m by 5m) of on-site habitat
- 5 metres of on-site linear habitat if it decreases the biodiversity value.

A site that has no habitat present (i.e concrete base) is exempt

A site with habitat below the thresholds set out above is exempt

...Otherwise, highly likely that BNG will need to be delivered on brownfield sites

BNG & Brownfield sites

- Consultation – Should BNG be exempt on Brownfield sites?
- Potential exemption for some Brownfield sites considered
- Defra’s consultation on BNG Implementation in 2022 - no exemption:
 - 86% of respondents agreed with the proposal **not** to exempt brownfield sites from the net gain requirements

Why was an exemption considered?

- Ecological and biodiversity value that can be present on brownfield sites



BNG & Brownfield sites - Ecological

“...despite not always being the most visually appealing, lots of brownfield sites harbour ecologically important habitats” ([An introduction to brownfield: the land that's ripe for recycling – CPRE](#))

“brownfield sites are typically made up of a mix of bare ground, short grassland, patches of weedy tall herbs, longer flower-rich grassland, scrub and temporary pools. This, combined with a lack of human intervention means that these sites are an essential source of nectar, sheltered warm areas, opportunities for burrowing and good foraging habitat for insects. Other species such as reptiles can also thrive in these habitats due to an abundance of food, basking sites and shelter...The importance of brownfield habitats is recognised by their listing as Priority Habitat on Section 41 of the Natural Environment and Rural Communities Act (2006) under the name “Open Mosaic Habitat on Previously Developed Land”...” ([Brownfield | The Wildlife Trusts](#))

“Brownfield land often falls into the category of a biodiversity rich habitat or one that is very poor for biodiversity. The type of species and habitats found on brownfield land are often rarer than those found in the countryside, with evidence suggesting between 12% and 15% of all nationally rare and scarce insects are recorded on these sites (Lush.M., Kirby.P., & Shepherd.P. (2013) ‘Open Mosaic habitat survey handbook’” ([Open Mosaic Habitat Survey Handbook \(buglife.org.uk\)](#))

BNG & Brownfield sites - Ecological

- **Pre-development biodiversity value looks at the value of the site prior to development**
- Statutory metric – Open mosaic habitats (“OMH”) are recognised as a “High Distinctiveness” habitat. This will increase the biodiversity value of the site.

(Note:) Not all brownfield sites contain OMH, although many of them do. To constitute OMH a habitat must meet specific criteria set out in the UK Habitat Classification – a specialist ecologist is required to reach this conclusion.

- If a site isn't exempt, BNG is non-negotiable and is not subject to viability considerations.
- As a habitat of 'High Distinctiveness', any losses of OMH must be replaced with the same habitat type of the equivalent value (i.e. OMH lost to a development must be replaced with OMH). A developer must consider onsite, offsite or statutory credits.

BNG & Brownfield sites - Ecological

- **Onsite**: Can be difficult to retain, depending on specifics of site/project; can be difficult to create
- **Offsite**: Unusual conditions and scarcity of sites that can deliver this habitat means that it can be difficult and/or expensive to purchase units
- **Statutory credits**: £48,000 per credit for OHM, but you need to apply to spatial risk multiplier (two statutory credits are required for one habitat unit), bringing the total cost per OMH habitat unit lost to £96,000)

However: the development of private offsite market, use of brownfield sites for habitat banking, more experience in progressing and planning schemes may all have long term positive effects when delivery BNG on brownfield sites. Also, there is the potential for collaboration and partnership arrangements, and potential planning reform to address specific issues and balance priorities.

BNG, Brownfield sites & other environmental considerations

- Local Nature Recovery Strategies
- Nature Recovery Network
- Protected sites – SSSIs, SACs, SPAs, PSSs
- Protected species – GCN, bats, badgers etc



What challenges remain?

- Difficulties in securing offsite sites:
 - Delays or difficulties in entering into standalone S106 agreements
 - Limited Responsible Bodies
- Stacking, bundling, layering
- ELMS, LR schemes, agri-environment schemes and other government initiatives
- Interaction with protected sites, LNRs, PSSs, SCSs....

- Tax considerations: IHT, CGT, Income Tax
- Insurance considerations

- LPA capacity and delay
- Monitoring fees and costs
- Ecological capability

- Uncertainty – legal challenge, scrutiny and “wobble room”
- Unknowns – time, format, approach, impact on land value



IS BNG needed?

The remains a key question for Government to consider, especially when considering how it is delivered through the planning process, which itself is coming under scrutiny.

From an ecological perspective:

- *Whilst England is known for areas with stunning landscapes – the Lake District, North Yorkshire Moors, Cotswolds, the Norfolk coast for example – it is sobering to recognise that England is also widely considered to be one of the most nature-depleted countries in the world.*
- *The Natural History Museum reported in 2020 that Britain had lost a larger proportion of its natural biodiversity than almost anywhere else in western Europe - and the most of all G7 nations.*
- *The Environment Act 2021 has been described as one of the most important pieces of legislation for the natural environment, and reflects a significant shift from the embedding of “nature conservation” principles into legislation to now requiring and demanding more proactive “nature recovery”. BNG is central to this.*

What successes have we seen?

- It's here – despite some delay, BNG commenced in early 2024.
- LPAs are working to embed BNG into the planning process.
- Responsible Bodies are being designated.
- The market for offsite units is developing.
- There are opportunities to use land to contribute to nature recovery and generate income.
- Lessons are being learnt, knowledge is being shared.



What IS the future for BNG....?

Retain or reform? Minor changes or significant overhaul?

- Planning reform?
- Legislative changes?
- Robust market for sale of units?
- New exemptions?
- Policy changes or clarification?
- Changes to the statutory metric?
- More funding?
- Register of onsite and offsite BNG delivery?
- Investment of statutory credit money?

And:

- Impact of the general election...?



BNG

Any questions?

Browne Jacobson Team

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