

Net Gain Consultation
Department for Environment, Food & Rural Affairs
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Biodiversity Net Gain Consultation – Response from Horsham District Council

Thank you for the opportunity to comment on the ‘Biodiversity Net Gain’ Consultation. This response sets out the views of the Horsham District Council to the questions posed in the consultation document.

1. Should biodiversity net gain be mandated for all housing, commercial and other development within the scope of the Town and County Planning Act?

Yes. This would be particularly positive to Horsham District, a highly rural district with limited constraints and with high development pressure. A biodiversity net gain policy would provide some certainty that the quality of forthcoming development values biodiversity and intrinsic qualities of the landscape therefore maintaining what makes our district so special. The policy would also need to address the risk that the design of spaces for recreation or other uses become side-tracked in favour of delivering landscape biodiversity targets. Net gain will need to be delivered in conjunction with the other aims of place making.

2. What other actions could government take to support the delivery of biodiversity net gain?

Baseline habitat map rating embedded in Land Registry details or Local Land charges database.

Government should also ensure Natural England support and help fund Biodiversity Record Centres and that all ecological reports must be submitted to the appropriate Centre for the area within which a site lies so that records can be kept up to date.

3. Should there be any specific exemptions to any mandatory biodiversity net gain requirement (planning policies on net gain would still apply) for the following types of development? And why?

- a. House extensions
- b. Small sites
- c. All brownfield sites
- d. Some brownfield sites (e.g. those listed on brownfield, or other, land registers)

With the exception of a - no. The required level of biodiversity net gain within each site is proportional to its existing baseline. The number of small sites that would be potentially exempt could represent a large number of habitat loss which individually may not be representative but cumulatively amount to a significant loss. It could also mean that developers carrying out these smaller scale works would not have at the forefront of the design biodiversity net gain and possible avoidance/mitigation measures.

Notwithstanding, it is acknowledged that small sites such as 1 or 2 dwellings don't necessarily carry out a phase 1 habitat survey and therefore might be over onerous for self builds or small scale builders and impact housing delivery. As an alternative, small sites net gain requirement could be triggered in tandem with the need for a phase 1 survey at officer level.

Biodiversity net gain can include very simple measures which are not particularly costly – including bat boxes / swift boxes in buildings, and landscaping schemes. These can actively increase the desirability of developments and may be cost effective in any event. It should also be noted that some brownfield sites can be very biodiverse, particularly if a site has been left for some time – disused buildings may be nest sites for peregrine falcons for example. It is not safe to assume that because a site is brownfield that it has no biodiversity value and that enhancements cannot be provided if they are redeveloped.

4. Are there any other sites that should be granted exemptions, and why? For example, commercial and industrial sites.

No, as above the required level of biodiversity net gain within each site is proportional to its existing baseline. Commercial and industrial sites particularly, given its nature, should be required to provide some on site net gain irrespective of their existing baseline.

Consideration could also be given to contaminated land, e.g. the merits of decontaminating and putting in active use versus the biodiversity of the average contaminated site (however the biodiversity of some of these sites can be pretty unique so a mechanism to address this may be desirable).

5. As an alternative to an exemption, should any sites instead be subject to a simplified biodiversity assessment process?

Potentially if through a broad habitat map and/or checklist the low level of habitat present on the site could be confirmed and provided that the site is not within an area targeted for environmental benefits, i.e. important to the green infrastructure network, etc.

6. Do you agree that the Defra metric should allow for adjustments to reflect important local features such as local sites? Should the Defra metric consider local designations in a different way?

Would this not be captured by the 'Strategic significance' category?

If not than it is agreed that it should be adjusted to reflect important local features and local wildlife sites. There are sites in Horsham District which contain species which whilst common in say the north of England are rare in Sussex and should be preserved – and their presence is a genetic bank for those elsewhere in the country. Regard should also be given to Local BAP habitats and species; and, those listed on the Sussex Rare Species Inventory (e.g. those held by Sussex Biodiversity Record Centre).

7. Should local authorities be required to adopt a robust district level licensing approach for great crested newts, where relevant, by 2020?

National level would be more appropriate as otherwise there is a risk that you'd have 340 local authorities each doing something different, which is not helpful for developers either.

This should be maintained by Natural England and / or the Police who are charged with enforcing against harm to protected species – there should be a requirement for this information to be passed on to the appropriate local Biodiversity Record Centres. It is not considered this is a matter for local authorities.

8. For what species is it plausible to use district level or strategic approaches to improve conservation outcomes and streamline planning processes? Please provide evidence.

Red and Amber species should be protected at National level and the implementation carried out by the local Biodiversity Partnership in tandem with Natural England, the Police and the Local Authority (enforcement issues.)

9. Are there wider elements of environmental net gain that could be better incentivised? If so, please specify which, and any benefits that such incentives could provide.

Current SuDS delivery could be incentivised through 'extra points' for environmental net gain to move away from the engineered solutions that we often see proposed and described as sustainable drainage. The requirement to achieve green field run-off rates for surface water with SuDS and for properties to meet a given flood resilience standard would go some way to contribute to this but also a percentage of the site's biodiversity requirement to be allocated for delivery within the basins.

Green spaces as carbon sinks which helps to offset global warming – tree planting can mitigate noise as well – there should be joining up with wider ecosystem services considerations.

10. Is the Defra biodiversity metric an appropriate practical tool for measuring changes to biodiversity as a result of development?

Yes.

11. What improvements, if any, could we most usefully make to the Defra metric?

There needs to be a metric introduced to factor in the deterioration of the retained habitat by virtue of its inclusion in a development site.

12. Would a mandatory 10% increase in biodiversity units be the right level of gain to be required?

Yes. Based on the background information provided, it seems a reasonable amount. This margin however should also be applied to sites that score zero biodiversity units and thus all development would provide or contribute to the overall national net gain.

13. In clearly defined circumstances, should developers be allowed to pay through the tariff mechanism without fully exhausting on-site and local compensation opportunities?

Subject to clearly defined circumstances and only if these clearly benefit and are of the interest of the local ecological context. Otherwise there is a high risk this would be taken as the preferred route by the developer where a simple flat fee would be added to the viability plan without fully exploring on site net gain and compromise the mitigation hierarchy.

14. Would this be an appropriate approach to directing the location of new habitat?

Yes, this seems appropriate.

15. How could biodiversity assessments be made more robust without adding to burdens for developers or planning authorities?

Create a new independent body to manage and monitor assessments and act as arbitrators.

16. Should a baseline map of broad habitats be developed?

Yes. That would assist all parties in having a better understanding of the area or site at a glance but also how these evolve with time. (See Q 2 – information embedded in Land Registry or Land charges.) However, it will be necessary to undertake consultation / further work as to how this could be managed as there may be sensitivities with ownership of data or identification of very sensitive habitats which could be targeted by plant / egg collectors or encourage more unscrupulous land owners to plough up land.

It is also thought that the cost of maintaining such mapping needs to be addressed by National Government so that it can be updated as appropriate.

The baseline habitat map could also be used to inform the development of planning policies / other advice which sets out the key aims of a particular area – i.e. Sussex biodiversity is likely to focus on a different set of habitats than in an upland area in the north of England, but the overall picture should link together.

17. Should this be applied, as a minimum baseline, to:

- a. net gain calculations for all development?
- b. net gain calculations in cases of suspected intentional habitat degradation?

This should be applied to a. and b.

18. What other measures might reduce the risk of incentivising intentional habitat degradation?

Perhaps incentives to developers in possession of high quality habitats could be offset against the obligations.

For example if a site has a good level of biodiversity and through good design development is capable of retaining its biodiversity by enhancing existing, the percentage of biodiversity increase required could be reduced.

Another suggestion may be the need for 'site clearance / habitat alteration' to be subject to planning permission.

As a last resource a fining system, with reinstatement percentage rate considerably higher than the existing baseline conditions and a halt on development or other covenants on the land for a period of time considered reasonable subject to the level of habitat degradation incurred. Baseline conditions would have to be estimated based on the broad baseline map although this relies on the maps being duly updated.

19. How can the risks of penalising landowners making legitimate land use change decisions before deciding to sell their land for development be mitigated?

By ensuring that all land use and its habitat value is captured in the June Agricultural and Horticultural census – and any deviations from previous submissions are explained and justified.

20. The provision of compensatory habitats will need to be guided by habitat opportunity maps. At what scale should these maps be developed?

- a. Locally (e.g. local authority or National Character Area)
- b. Nationally (i.e. England) as a national framework to be refined, updated and amended locally

a. Locally or there is a risk these would become too broad and not representative when looking at individual sites. Wildlife Trusts can also be involved here – they have identified opportunity areas at a Sussex level and have greater expertise / understanding than LA officers.

21. What other measures should be considered to identify biodiversity and natural capital priorities?

Local Biodiversity Record Centres and potentially also other local groups need to be more proactively involved in the creation of Planning Policy in particular with regard to Green and Blue Infrastructure – and greater use of GIS – especially in the public domain for use by developers and local officers.

22. Would mandating net gain through the planning system be enough to stimulate the growth of a market for biodiversity units?

Yes. Need to ensure safeguards against fraudulent trading of credits (units) as per Carbon Emission fraud.

23. What further measures would help to ensure that the market provides:

a. Sufficient biodiversity units for development?

b. Cost-effective biodiversity units?

Nothing to suggest.

24. Should there be a minimum duration for the maintenance of created or enhanced habitats?

Yes, as a minimum for the lifetime of development it's mitigating.

25. If so, what should the minimum duration be?

a. Less than 25 years

b. 25 to 30 years

c. Longer than 25-30 years

d. Permanent

b. 25-30 years. However the quality of the habitat should be assessed regularly and extended should the quality of the net gain not achieve the required standard.

26. Would conservation covenants be useful for securing long term benefits from biodiversity net gain or reducing process and legal costs?

If enhancement habitats are off site, then it's agreed that some conservation covenants as suggested could provide the long term assurance that these will be maintained.

27. What safeguards might be needed in the implementation of conservation covenants?

Ensure all relevant information is captured in Land Registry and Local Charge databases.

28. Does this proposed range for tariff costs fit with the principles set out in this section?

Yes.

29. Would this proposed range for tariff costs provide opportunities for cost-effective habitat banks and compensation providers to compete?

Uncertain at this stage.

30. Do you agree with the proposed principles for setting the tariff rate, as set out in this section?

Please suggest any other factors that should be taken in to account.

Nothing to suggest.

31. How should the tariff revenue be collected?

- a. Locally (e.g. through a local authority)
- b. Nationally (e.g. through Natural England or another national body)
- c. Other, please specify

As we suggest that the money should be spent both locally and nationally (see Q32), we would suggest that the revenue is probably best collected locally (along the lines of how London Boroughs collect CIL on behalf of the London Mayor and pass to him), and then the money could be passed to a National body if required.

32. How should the tariff revenue be spent?

- a. Locally (e.g. through a local authority)
- b. Nationally (e.g. through Natural England or another national body)
- c. Through a blended model, allowing spending at both levels
- d. Other, please specify

c. through a blended model that allows in first instance for the revenue to be spent locally where most needed. However, arrangements as to how this would be managed would need to be set out as the scheme is implemented.

33. If tariff revenue is collected and spent nationally, should spending prioritise areas which have contributed the most through biodiversity net gain tariff payments?

Yes, as these are probably the ones most affected by development and with a bigger biodiversity deficit.

34. What further measures will help to prevent burdens on local authorities increasing?

Use of independent third parties.

35. How could the proposals be refined to manage any negative impacts on the scale and delivery of other developer contributions (e.g. through Section 106 or Community Infrastructure Levy payments)?

The only negotiable developer contribution mechanism is Section 106. It is important that the imposition of mandatory net gain does not lead to protracted negotiations relating to the requirements of a Section 106, and result in delays to the planning process.

36. Would you, as a planning authority stakeholder, prefer any net gain tariff revenue to be paid through:

a. local authority administration?

b. a nationally managed funding scheme (which could then reinvest in local habitat schemes best aligned with national strategic environmental priorities)?

a. local authority

37. How could the proposed net gain process be improved for developers?

To be incorporated as part of the developers ecological survey by their provider.

38. What other steps, considerations or processes in environmental planning could be integrated within a net gain approach?

Integrated in BREAAAM / HQI as a mandatory requirement.

39. Would any particular types of development (e.g. commercial, industrial, public sector, local infrastructure) be disproportionately affected by a mandatory biodiversity net gain requirement?

Commercial and industrial may struggle to provide onsite mitigation – and would be forced to pay the tariff.

40. Do you agree that the proposal for staggered transitional arrangements would help to ensure smooth implementation of biodiversity net gain policy?

Yes – but ensure ‘land banked’ sites are protected from habitat removal by implementing the biodiversity baseline map first.

41. Would the existing dispute resolution process provide the best way to overcome any disagreement over whether net gain is achieved?

If there are other issues to the appeal than yes this would be reasonable however if the net gain is the only reason for refusal or non-determination of the application a separate body dedicated to check the calculations would most likely speed up the process.

42. Would an additional arbitration or approval process be necessary? If so, please specify why.

Yes, an independent 3rd party to check the calculations would speed the process up rather than relying on the appeal process which is already overloaded.

43. Are there any issues or measures, other than those outlined, that we should take into account when considering how to monitor biodiversity net gain?

Regular biodiversity baseline map updates and monitoring of development site habitat decline / improvement to fully understand the effect on the quality of retained areas post occupation. This may mean that the metric calculation and biodiversity units awarded to existing habitats need to be adjusted to account for this in future developments.

44. Should local authorities be required to provide information about habitat losses and gains?

It may not be required as the biodiversity map - if regularly updated - will illustrate loss and gains.

45. What technological or other innovative mechanisms could facilitate the delivery and monitoring of biodiversity net gain?

GIS maps and online access for stakeholders. Also reliant on close working partnerships between LPA, Local Biodiversity partnerships and any third parties involved in the delivery of the scheme.