



Consultation on Biodiversity Net Gain for Nationally Significant Infrastructure Projects

Q.1. Would you like your response to be confidential?

No

Q2. Do you agree that the proposed model text provides sufficient information on the biodiversity gain objective?

Disagree

In certain areas where the local evidence base supports it, higher percentages could and should be achieved. The wording should reflect this and be flexible so as to allow for these situations. We have included a recently adopted Maidstone local Policy LPRSP14(A) as an example:

“To enable Maidstone borough to retain a high quality of living, protect and enhance the environment, and to be able to respond to the effects of climate change, developers will ensure that new development incorporates measures where appropriate to: a. Deliver a minimum 20% biodiversity net gain on new residential development, having regard to Biodiversity Opportunity Areas and/or Nature Recovery Networks. Biodiversity net gain should be calculated in accordance with the latest Natural England/DEFRA biodiversity metric or equivalent. Where 20% biodiversity net gain is demonstrated not to be financially viable, together with other policy costs, then the statutory minimum net gain provision will be secured.”

Q3. Do you agree that the proposed model text provides sufficient information on irreplaceable habitat?

Disagree

Irreplaceable habitats

Irreplaceable habitats are habitats that cannot be replaced easily or at all. The wording ‘very difficult’ implies that it is not impossible to recreate. We disagree with this analogy. Irreplaceable habitats are often exclusive and distinctive with unique ecological characteristics, sustaining some of our most biologically valuable assemblages including those that are highly specialised, and consist of some of our most rare habitats, such as ancient woodland, veteran or ancient trees and wetlands, lowland fens etc. The loss of such habitats could have serious implications for biodiversity.

Even with the best resources and expertise to hand, time and effort, some irreplaceable habitats might never fully recover or may be lost completely. Therefore, we feel a better

and more accurate, technically correct description of irreplaceable habitats would include the word 'impossible' and read as follows:

“Irreplaceable habitats are those which would be technically very difficult if not impossible (or take a very significant time) to restore, recreate or replace once destroyed.”

How BNG applies to development on irreplaceable habitat

The inclusion of 'enhancement' to count towards 10% net gain has, in our experience, often been used as an easy win for developers. It is difficult to measure accurately especially if on irreplaceable habitat or nationally protected sites. The condition assessment's accuracy is impossible to check without a site visit and has to be accepted as read. Furthermore, the assessment is the view of one or two people and is therefore subjective. We would like to see the option of 'enhancement' removed from the proposed model text as an option to count towards 10% net gain.

Irreplaceable habitat evidence requirements

Any agreed compensation plan for any loss or deterioration to irreplaceable habitat should include time to target condition.

Under the para beginning The Secretary of State 'should'...we think the word 'must' would be more appropriate, add clarity and consistency.

The use of the word 'should' in this context implies something is not compulsory. The use of the word 'must' is a clear instruction that is mandatory.

Therefore, in the interests of clarity and consistency we suggest the following:

“The Secretary of State must not grant development consent for any development that would result in the loss or deterioration of irreplaceable habitats...”

Changing the word 'should' to 'must' would then be in line with the para below that says, *“The Secretary of State must be satisfied that any loss or deterioration is minimised...”*

We feel that no compensation strategy exists for irreplaceable habitat which as mentioned above, can be impossible to replicate.

Q4. Do you agree that the proposed model text, alongside the statutory metric user guide, provide sufficient detail on the process for calculating biodiversity net gain?

Agree

Q5. Do you think any additional guidance is required in the statutory metric user guide to clarify how it should be applied for NSIPs?

Agree

Q6. Do you agree with the proposal that all habitats within the development site boundary (i.e. the order limits) must be included in the pre-development biodiversity value?

Agree

Q7. Do you agree that the proposed model text provides sufficient information on:

a) What the pre-development biodiversity value consists of?

Agree

b) The relevant date for calculating the pre-development biodiversity value?

Agree

Q8. Do you agree that the proposed model text provides sufficient information on delivering biodiversity net gain on-site, off-site and using credits?

Disagree

The option being offered of providing BNG on or off-site in the first instance, would, we believe, lead to degradation and loss of biodiversity from the local area. The knock-on effect of losing the biodiversity from a local site is highly likely to result in habitat fragmentation/loss and in turn the loss of key species and possibly local extinctions. Whilst we would not wish to end up with isolated pockets of habitat on a site, we wouldn't wish to lose biodiversity from an area either. Therefore, any on site BNG should be considered first as a priority before any off-site provision is sought in line with the Town and Country Planning Act 1990. We would not wish to see an approach to BNG that differs for NSIPs from this.

For the acquisition of land for on-site BNG via compulsory purchase, exceptional circumstances are mentioned. What would constitute as exceptional circumstances? This needs clarification.

We realise 30 years is the recognised length of time for BNG, however, as NSIPs are highly likely to last in perpetuity, we would like the same afforded for the BNG and compensation or for at least the lifetime of the NSIP. This would not only protect the biodiversity going forward and provide security, but it would also mean the expense and investment in the habitat would not be in vain and would leave a positive legacy for the next generation.

Q9. Do you agree that the proposed model text provides sufficient guidance on how to determine what counts as a significant on-site enhancement?

Disagree

Non-significant on-site enhancements

The opening sentence states the following: “*Non-significant enhancements and retained habitats can be included in metric calculations to contribute to the post development biodiversity value.*”

Yet further back in the consultation on page 18 it is expected that non-significant on-site gains would not require a legal agreement to secure the same or higher biodiversity value for 30 years.

If an enhancement, any enhancement, significant or not, that is contributing to the 10% net gain and needs to be monitored and managed for 30 years, then it should be included in any legal agreement, otherwise, there is every likelihood that there could be a net loss if the BNG site is not protected legally. The 10% BNG net gain is mandatory and therefore, any contributor to the mandatory net gain should be included in any legal agreement. The legal agreement ensures the ongoing management of the BNG site and protects it from development and/or degradation for at least 30 years.

Q10. Do you think there needs to be a bespoke policy on delivering BNG where land is temporarily used for construction of NSIP schemes?

Other

We agree that BNG should be applicable on temporarily used land for the purposes of construction. However, the difficulties of selling land on after use with 30 years BNG commitment should be reflected in the sale price and possibly in the initial purchase price too.

The stakeholders that have highlighted the possibility that landowners may not be open to having the use of their land restricted for 30 years could be unfounded. Have landowners been canvassed for their opinion in the event of? Some landowners may be very open to the idea.

However, we would be concerned about the ongoing care of the site once it has been sold or handed back to the landowners, and this is an area that would need clarification as to how the land would be transferred ensuring suitable management of any land is implemented accordingly.

Q11. Do you agree that the proposed model text provides sufficient information on the wider considerations for delivering biodiversity gains?

We agree that any BNG should be applied in conjunction with the mitigation hierarchy. However, we often find that sites are chosen with economics being a priority and no viable alternative considered, such as less ecologically damaging sites. We would like to see the justification of a chosen site included within the mitigation hierarchy.

The mitigation hierarchy exists to minimize the negative impacts on the environment prioritising actions in a specific order of avoid, minimise and restore and this hierarchy should begin with the careful choosing of sites to avoid harm.

The choosing of a site directly feeds into the 10% net gain as it is the baseline of the ecology on site that determines the achievability of net gain and therefore relevant in this context.

The LNRS when published should be consulted, however we feel that other strategies should also be consulted alongside the LNRS, such as Local Plans for the spatial hierarchy for local enhancements and strategic significance.

Q12. Do you agree that the proposed model text provides sufficient information on the following.

a) **Evidence for submission?**

Other

We are not against the implementation of BNG in phases in principal but are concerned about 'time to target' for habitat condition and that this should be considered during the phasing process. Whilst it is accounted for within the BNG Metric, if a phased approach is to be adopted for the purposes of NSIPs then time to target should be a key consideration in how and when phasing is implemented.

b) **Decision making?**

Agree

Q13. Do you agree with the proposal to allow updated biodiversity gain plans to be submitted to the relevant local planning authority for approval after consent is granted?

Other

It makes sense for any relevant Local Planning Authority (LPA) to approve any BNG plans once consent has been granted as they already do for the various parts of the DCO. However, the relevant LPA must be afforded the necessary resources and expertise to process the extra workload. Furthermore, we would expect any post-consent decisions made by the LPA concerning biodiversity gain plans to be upheld and respected, not routinely challenged and overturned on appeal.

An LPA may have several NSIPs at any one time and this on top of the usual planning applications can overwhelm even the best resourced LPAs. Therefore, specific funding

should be made available to pay for the necessary manpower and expertise such as a dedicated ecologist.

Q14. Do you have any evidence for us to consider as part of our final impact assessment on implementing BNG for NSIPs?

Yes

Stone Street Solar is an NSIP near Aldington in Kent which is now being considered by PINS.

According to the last BNG metric submitted by the developer, there were input errors/rules and principles not met. This needed attention.

Unit Shortfall by Tier/Module	
Tier	Unit Shortfall
A1	0.00
A2	0.00
A3	4.95 ▲
A4	0.00
A5	0.00
H	0.10 ▲
W	0.00

While we appreciated BNG was not mandatory in this case, we found it difficult to believe that a large site such as this had no hedgerow assessed as in good condition throughout and they are all assessed as either 'poor' or 'medium' in condition. The same can be said of the assessment of watercourses on site; none of them were assessed as good - they were all 'poor' or 'moderate' within the Metric. In fact, with the exception of other neutral grassland between fields 10 and 11, which had been assessed as 'good', all other habitat were assessed as either 'poor' or 'moderate' condition. We found this surprising on such a large site.

The BNG is further confused by the applicant's apparent indecision on how to manage the grassland, by grazing or wildflower seeding or a combination of both, *ie* grazing through the winter months. This needed clarification as any future management proposals were likely to make a significant difference to the BNG calculation.

Q15. Do you think the policy proposals and model text for the biodiversity gain statements outline in this consultation need amending for any specific NSIP?

No

Q16. Do you think there are any NSIP types or circumstances that should have different requirements or remain in a voluntary regime (noting this would continue to exclude them from buying registered off-site biodiversity gains and statutory biodiversity credits)?

No

Q17. Do you have any additional comments on the draft biodiversity gain statement or on the next steps that are not covered by the previous questions?

No

Q18. Do you think there are any other topics that should be covered in BNG guidance for NSIPs?

Other

We would like to reiterate that any phased implementation approach should consider time to target for habitat condition and that the choice of site should be justified using the mitigation hierarchy especially as it will directly affect the baseline biodiversity surveys for the purposes of BNG.