

**FARMING**

# Market for Biodiversity Net Gain is confirmed

Land agent and surveyor expert **Hugh Townsend** sums up the latest Biodiversity Net Gain guidance issued by the Government



**T**HIS latest announcement on Biodiversity Net Gain (BNG) provides certainty that the mandatory BNG market will be starting in November and the marketplace will be left to existing independent selling agents with a hands-off approach from the Government. Local Planning Authorities' (LPA's) involvement in the market's operation will be restricted ensuring this new environmental credit will have a national marketplace throughout England.

This new source of income for landowners, making up for the loss of BPS payments is now real and without tax payer's money having to stump up for it, the BNG market is set to be around for a long time.

"One of the best devised Government schemes since milk quota."

"Our team of UK-wide ecologists, foresters, BNG metric surveyors and leading brokerage agents with over 37 years of experience provides the ideal "one-stop" environmental team to make the most of this new exciting national market with people you can trust."

"There is excellent news for those wanting to create BNG and Nutrient credits from the same land and same works (nature-based intervention). And stacking will be allowed pretty well everywhere and for everything else with some limitations."

Some key points from the new Government guidance on BNG (still subject to legislation):

- BNG statutory market will start this November;
- Government confirms there will be a national market throughout England;
- LPAs cannot restrict trade to within their own LPA or buy up and resell units;
- Stacking is possible with all credits and schemes and on most land but with some limitations;
- BNG and nutrient credits can be sold from the same land and from the same works (nature-based interventions);
- BNG can be sold from land creating carbon credits if there is extra enhancement on top of existing obligations or grant paid works i.e. on

new woodland above what is paid from for under the EWCO grant;

- You can sell BNG units at the same time as claiming BPS, Sustainable Farming Incentive (SFI), Countryside Stewardship (CS), Environmental Stewardship (ES) and Landscape Recovery (LR) and some existing woodland grants but again you need to create further habitat enhancements;

- Natural England will run a national register of units that have been sold together with their management and monitoring plans. A registration fee will be payable;

- However there will not be a national register for units being sold or a government marketing platform. Existing private independent agency is encouraged;

- Natural England will publish a template of the legal agreement needed;

- Planning obligations (S106s) or conservation covenants can be used;
- A new BNG Metric 4.0 is to be issued before November;

- The mandatory market in BNG is confirmed to start in November for new housing, industrial and commercial developments. The deadline though for smaller sites is to be delayed until April 2024 i.e. 1-9 homes on a site of less than 1ha or if number of homes unknown then on a site of less than half a hectare. This delay will apply also to non-residential sites where floor space to be created is less than 1,000 sqm or where the site area is less than 1ha;

- All self-build homes, permitted development and urgent Crown development are exempt;

- The Biodiversity Metric will allow for temporary impacts that can be restored within two years as being excluded from calculations. Existing sealed surfaces such as tarmac or existing buildings are given a zero score which effectively exempts them from the percentage gain requirement;

- A statutory credit scheme has been announced as a last resort option for developers who cannot find off-site BNG units;

- No news yet on tax but units sold will be subject to VAT;



**> Houses under construction on a new development. From November 2023, land agents and managers will be able to use a new online service to register land for Biodiversity Net Gain (BNG)** Joe Giddens / PA

- Government will issue England-wide standard procedures for LPAs to follow.

## NATURAL ENGLAND REGISTER OF SOLD UNITS

Biodiversity gain site register will be run by Natural England, this will not act as a market platform but merely register new BNG sites from November 2023. Sites will need to be registered probably within six weeks of a sale and it will need to be shown there is a legally binding agreement in place and that the works/enhancements proposed will achieve the expected net gain. Further guidance to be published on the creation of legal agreements.

Habitat management and monitoring plans will also need to be registered and be shown to be secured by the legal agreement. Natural England will be publishing a template. There will be a fee to register as yet undecided but expected to be between £100 and £1,000. Natural England will be able to issue fines to ensure the register contains accurate information. An appeal system will be available when applications for registration are refused or where a fine is issued.

Land managers and land agents will be able to use an online service to register land for BNG, which will be available from November 2023.

Biodiversity gains can be secured

by planning conditions, planning obligations or conservation covenants or a combination of the same. The cost for monitoring enforcement activities under conservation covenants are expected to be reflected in the price of BNG units. The Government will provide clear guidance to planning authorities to set specific and proportionate requirements as part of planning conditions and obligations to secure significant off-site or on-site enhancements. LPAs and other eligible organisations can apply to become responsible bodies and use conservation covenants in securing and enforcing land management obligations. Conservation covenants will bind the land and therefore if sold will apply to new landowners. Further guidance will be issued on what should be included in a conservation covenant or a BNG planning obligation. Guidance will be issued on what should be included in biodiversity reports.

## STACKING

BNG units and nutrient credits can be sold if created from the same nature-based intervention but credits for other eco-system services (such as carbon credits) cannot be sold from the same nature-based intervention if they are used also for selling BNG units and/or nutrient based credits. However BNG units

may be sold if generated on top of an existing obligation or grant payment if a further enhancement of a habitat can be achieved and a clear and verifiable baseline from what the existing payment or obligation covers can be established. This will need specialist, land agency, ecological and metric surveying input to achieve this.

The Government will encourage selling more biodiversity units once the habitat creation/enhancements have been achieved before the end of the existing legal agreement. You can receive BPS, Sustainable Farming Incentive (SFI), Countryside Stewardship (CS), Environmental Stewardship (ES) and Landscape Recovery (LR) and use the same land to sell biodiversity units and nutrient credits. However you need to create further habitat enhancements on top of the agri-environment agreements. The baseline will have to take into account what will be achieved under the agri-environment agreement and the BNG units or nutrient credits must be created as a result of new works.

You can choose to end your CS, ES and LR agreements early and sell BNG units and nutrient credits instead. You can sell BNG units and nutrient credits from the same land you use to sell carbon credits, if you can do this by further enhancement of the habitat and it does not impact





the carbon value i.e. you need to make sure that the baseline takes into account what the voluntary scheme paid for. Creation and enhancement of habitat sold to a private company as part of their corporate social responsibility (CSR) payments cannot be used for BNG or nutrient credits other than if there is further creation or enhancement of the habitat.

Confirmation has been given that BNG cannot be sold from anything that is already required to create or enhance habitat for restocking trees, environmental impact assessment compensation or marine licensing.

#### STATUTORY BIODIVERSITY CREDITS

Natural England will sell statutory biodiversity credits on behalf of the Government but this will be a last resort and they will be phased out once the BNG market has matured.

Statutory biodiversity credits will have an indicative credit price published six months in advance (i.e. May 2023) of BNG becoming mandatory. The price will be intentionally uncompetitive with the market and may vary according to habitat type.

The Government will not actually need to provide habitat for the statutory biodiversity credits although the sale proceeds will be invested by Natural England in strategic habitat creation and enhancement projects in England.

It will be interesting to see where this offer price is pitched and of course will be at the very top end.

#### PUBLIC GRANTS

If you're selling biodiversity units and nutrient credits, you can receive an environmental public grant to:

- Help get your project ready for investment - this could mean preparing the land to sell biodiversity units or nutrient credits on an otherwise unsuitable site or project;
- Access funding which is repaid in full on sale of the biodiversity units or nutrient credits;
- Pay for a specific aspect of the project, which is not part of the habitat creation or enhancement.

These notes do not attempt to provide a full account of the new guidance issued on February 21, and note there will be further consultation and legislation to follow. This however answers a lot of questions about how the BNG market will work. We believe every landowner in England should be considering the use of some of their land for BNG offsetting now we know for certain the mandatory market is going to be created.

■ **Hugh Townsend, FRICS, FAAV, FCI-Arb. is the land agent/surveyor expert of the WMN Farming supplement and he may be contacted on 01392 823935 or [htownsend@townsendchartered-surveyors.co.uk](mailto:htownsend@townsendchartered-surveyors.co.uk).**