

FARMING

Another step closer for the BNG market?

Land agent and surveyor expert **Hugh Townsend** provides an update on the Biodiversity Net Gain and Nutrient Neutrality schemes



THE devil is always in the detail, and this so often only comes at the eleventh hour. Biodiversity Net Gain (BNG) is no exception with the mandatory BNG marketplace now in a different place to where it was only a few weeks ago. As one query is answered another two appear in its place.

1. Biodiversity Gain Plan (BGP)

The BGP will be submitted as a post-permission document after planning permission has been granted, for approval by the Local Planning Authority (LPA). It is at this stage that a developer needs to show they are meeting their mandatory 10% net gain.

Last month the Government released further guidance on Biodiversity Net Gain and its role in the planning process. Of particular interest to developers will be the news that they may source their BNG after planning is approved as part of discharging this planning condition before implementation i.e. before works start.

A draft BGP template has been provided by Defra which, whilst still subject to change, shows what information may be required. A developer will have to submit a BGP as a post-permission document for approval by the LPA. The BGP must be approved in writing by the LPA before development can commence and if granted it will discharge the mandatory Biodiversity Net Gain condition. The BGP (and the outcome of the determination) will be required to be published on the LPA's local register.

This document and accompanying guidance provide further points of interest and some items of clarification:

- Developers must produce a minimum of 10% of their net gain onsite before looking elsewhere;
- An LPA may request that a developer produces less 'significant' onsite works (after the 10% minimum above) in favour of contributing to an offsite that has been identified as within an ecological network

with locally important species. This may mean that higher distinctiveness habitats are encouraged offsite in favour of low distinctive ones onsite although the wording suggests some flexibility in its interpretation;

- The landowner of an offsite Habitat Bank will agree the Habitat Management and Monitoring Plan with the LPA or Responsible Body, the developer should not need to get involved in this aspect;

- It appears that a BNG site will need to be registered on the Natural England register before it is included in a BGP;

- If an offsite is within an LPA's Local Nature Recovery Strategy (LNRS) it can qualify for an extra 15% bonus on top of units produced by the habitat gain, known as the strategic modifier. Likewise, a development site within an LNRS will have a 15% higher biodiversity value and so require more units than it otherwise would. This has been amended to only apply when producing specific relevant habitats rather than any type of BNG as previously implied. This means it is especially important to understand the LNRS of both the development site and offsite.

2. How much influence will the purchaser's LPA have on deciding what works are suitable on an offsite?

The current guidance suggests an LPA may give precedence to habitats that fit into their LNRS, but will they be able to reject a site if already approved by a responsible body including other LPAs? If a covenant or s.106 has been implemented on the offsite then the landowner may have committed the land to certain works without yet having sold the units. If an offsite used for a BGP is complying with the metric trading rules in terms of replacing habitats in accordance with distinctiveness and habitat condition, can approval be withheld?

One possible solution would be if a Habitat Bank were allowed to amend the works within it, subject to



> Biodiversity Net Gain intends to make sure that development has a measurably positive impact ('net gain') on biodiversity, compared to what was there before Richard McCarthy

appropriateness and no net loss of habitat. This would allow for the creation of a wider range of bespoke, ecologically valuable habitats as required. We wait to see what flexibility there might be with a Habitat Bank although so far, the emphasis has been on the commitment to a 30-year plan.

3. Enforcing another LPA's s.106

If a landowner is offsetting a development site in another LPA rather than their own, it will be interesting to see who enforces a Habitat Bank's objectives under a s.106. There is no reason to expect issues with a s.106's enforceability (there is legal precedent) across LPA borders but we will have to see how this plays out in practice and if there is any further guidance.

4. Another LPA creating one's Habitat Bank

In the voluntary market we have seen a range of preparedness among different LPAs. Certain landowners have been frustrated in their attempts to set up Habitat Banks due

to their LPA not having the processes in place to establish these. There is some question over whether an LPA may approve a site as a Bank when located outside their own area of authority. However, as guidance states that Responsible Bodies, which may cover multiple LPAs, may approve Banks, as indeed do National Character Areas (NCA), it suggests that they may be able to do this.

5. LPAs accepting Habitat Bank units from another LPA

Whilst at this point it remains to be seen whether any units from any offsite have to be accepted by an LPA if coming from a registered Habitat Bank. We await further details as to exactly how Banks will in practice operate on a national mandatory basis with the secondary legislation to be published imminently. One can increase the likelihood of receiving approval by considering a range of offsites and we have vendors across England with habitats that are reviewed to ensure that they can make the best use of any LNRS. If required we can also assist develop-

ers in reviewing their suitability based on the development site's LPA's plans before submitting the BGP, increasing the likelihood of its approval.

6. Option for sale-by-sale bespoke habitat creation

Of course there is still the option of a sale being agreed between a landowner and developer to meet the development's requirements which on November 15, Defra confirmed in their "Biodiversity Net Gain for land managers - step-by-step flowchart" could be done without the need to create a Habitat Bank in advance avoiding some of the associated risks.

7. The Government is finally serious about launching mandatory BNG

The Government have released Environment Act 2021 (Commencement No.7) Regulations 2023, backdated to November 2. This brings into force provisions of the Environment Act 2021, notably s.98 (biodiversity as a condition of a planning application), s.100 (biodiversity gain site register)

Fresh cohort of ambitious ambassadors

ELEVEN young farmers have been named as the NFU's new Student & Young Farmer ambassadors for the 2023/24 cohort.

They fought off a number of quality candidates to gain a position on the industry's coveted programme which will see them attend events at parliament, learn more about the industry and undertake training days.

With a forthcoming general election and an ongoing need to keep food and farming front of mind amid a busy political and media agenda, the Student & Young Farmer ambassadors will play a vital role in telling the story and value of British farming to members of the public.

NFU president Minette Batters said: "Huge congratulations to the successful ambassadors who are taking part in this year's programme. It is absolutely fantastic to have such a vibrant and enthusiastic group of people wanting to work with the NFU and tell our positive farming story to the public, opinion formers and politicians, locally and nationally.

"Farming is undergoing huge change, from the complete transition in farming support payments underway and inflationary costs of production impacting farm businesses to the impacts of climate change and more regular adverse weather events, it's arguably never been a more important time to be able to tell the positive story of British agriculture and showcase the massive show of support we are so fortunate to have from the public.

"We have a fantastic range of regions and agricultural roles represented by this cohort and it is remarkable to see how much they have all already achieved. I can't wait to see what what impact they have in the coming year."

Representing the South - stretching from the northern Cotswolds to the Isles of Scilly - will be ambassadors Sian Grove and Sophia Ashe. Sian is a new entrant shepherdess where she farms on the Isle of Wight. She first got into farming through her YFC and is looking forward to learning more about the industry.

Meanwhile Sophia, from Tetbury in Gloucestershire, is a new entrant livestock farmer who studied agriculture at the Royal Agricultural University (RAU) and spent three months working on a cattle ranch in Argentina. She looking forward to learning more about the policy behind farming.



and Part 1 of Schedule 14 of the Act. This allows further regulations to be enabled from the Town and Country Planning Act 1990 (c. 8) to be laid before Parliament and to enable the biodiversity metric (defined in paragraph 4(1) of that Schedule) and the making of regulations to provide for a biodiversity gain site register.

We seem to be drawing closer, if rather painfully, to the mandatory BNG market after what was a nervous moment following the Government's attempts to remove the current Nutrient Neutrality market.

It will be interesting to see if LPAs still having to deal with the voluntary market applications (for those planning applications submitted but not granted before the January deadline) will start adopting mandatory procedures as they are issued in the meantime.

8. Autumn Statement - Nutrient Neutrality (NN) Funding

The 2023 Autumn Statement featured a series of measures to 'unlock' housebuilding. The most relevant one to the environmental credit mar-

ket was the announcement of a £110 million fund to deliver "high-quality nutrient-mitigation schemes", over the next two years. Whilst this gives some comfort to those looking to create their own nutrient mitigation projects as the NN market is likely to stay with us in the immediate future, this fund may also be available to LPAs looking to develop their own mitigation projects. This Local Nutrient Mitigation Fund allows LPAs to set up 'offsetting schemes' via costed expressions of interest for projects or strategies delivering mitigation. Whether this would involve an LPA buying land and completing their own works and producing credits or setting up a process for landowners to supply credits from their own projects directly to developers remains to be seen as it seems in the wording that there is potential for both types as long as mitigation to unlock housing development is the outcome. The former would provide direct competition to an open market, whilst the latter may encourage it.

9. NN market competition from

Natural England (NE)'s own Mitigation Scheme

Whilst currently only able to acquire units from land owned by wildlife trusts/NGOs for their own Mitigation Scheme offerings, NE are looking at the possibility of buying from private landowners. Only active so far in the Tees with these offerings, NE are carrying out feasibility studies to roll this out in other catchment areas (Stodmarsh, Kent, Wensum Catchment area, Norfolk, and Norfolk Broads wider area).

Effectively NE's scheme is/will be in competition with those selling in these markets. This suggests that those in these catchment areas, which might be affected in due course, should consider pushing on now with any sales before this competition arrives. There is clear demand in the relevant catchment areas and more vendors are now waking up to the idea that the market for these units will be continuing "as is" for the time being. Furthermore, maybe well past the next general election, there could be further threats to this market with more

attempts to introduce policy changes. So far this was avoided when the Lords voted against a removal of the need for developers to mitigate and buy units. There is a feeling that the current opportunity of a "double whammy" using the same land in the same way for NN mitigation and BNG maybe too good to ignore.

There have now been further developments following Defra publishing guidance: "Legal agreements to secure your Biodiversity Net Gain" on November 29, a further update on the impact of this guidance will follow.

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