

# Biodiversity Net Gain Guidance for Developers in North Tyneside

February 2024

*This is initial guidance based on draft regulations and statutory guidance. It will be reviewed and if necessary updated once final regulations and statutory guidance have been published.*



North  
Tyneside  
Council

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## Introduction

The Environment Act (2021) introduces the mandatory biodiversity net gain (BNG) requirement for new development, marking significant changes to the way ecology matters are addressed through the planning system. This guidance note has been prepared to highlight some of the key issues and requirements in relation to the delivery of BNG at the local level and to help developers and consultants understand how it will apply to planning applications.

This guidance is likely to be updated on a regular basis to take into account any updates or changes to guidance introduced by Government. It is, therefore, advised that the North Tyneside Council Planning website ([North Tyneside Council](#)) is checked for any updates to this guidance and to view the current version.

## Commencement dates

BNG will become mandatory for applications for major development submitted on or after **12 February 2024** and for applications for minor development submitted on or after **2 April 2024**. Minor development includes:

- Residential sites of no more than 9 dwellings or sites of less than 0.5ha where number of dwellings is unknown
- Non-residential schemes where the floorspace is less than 1000 m<sup>2</sup> or the site is less than 1ha in size

## Exemptions

The following types of development are exempt from the BNG requirement:

- Householder development.
- Permitted development.
- Development subject to the *de minimis* exemption - defined as development that does not impact a priority habitat and impacts less than 25m<sup>2</sup> of habitat, or 5m of linear habitats such as hedgerows.
- Self-build and custom build development - development which:
  - consists of no more than 9 dwellings, *and*
  - is carried out on a site which has an area no larger than 0.5ha, *and*
  - consists exclusively of dwellings which are self-build or custom housebuilding as defined in [section 1\(A1\) of the Self-build and Custom Housebuilding Act 2015](#).
- Development of a biodiversity net gain site, where that requires planning permission.

Variations and reserved matters are exempt if the original or outline application was submitted prior to the relevant commencement date above.

The [GOV.UK website shows the full list of exemptions](#).

## The BNG process

The Town and Country Planning Act has been amended to make every grant of planning permission deemed to have been granted subject to the following planning condition:

The development may not be begun unless—

- (a) a biodiversity gain plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

The purpose of the condition is to secure the biodiversity objective, which is that the biodiversity value attributable to the development exceeds the pre-development biodiversity value of the onsite habitat by at least 10%. This can be achieved through habitat creation or enhancement onsite; the provision or purchase of biodiversity units from a habitat bank; or as a last resort through the purchase of statutory credits; or a mixture of these.

However, although final information may only be required through the discharge of a pre-commencement condition, BNG is a material consideration when determining applications. [Paragraphs 015-016 of the draft Planning Practice Guidance for Biodiversity Net Gain](#) makes it clear that the Local Planning Authority (LPA) needs to understand how the BNG requirement is to be met prior to determining the application. This is necessary so that planning conditions can be imposed and/or S.106 Agreements signed. Accordingly, extensive information is still required at the application stage, as set out below.

## National validation requirements

The following national validation requirements have been imposed:

- A statement as to whether the applicant believes the development is subject to the biodiversity gain condition (on application form);
- A biodiversity metric showing the pre-development biodiversity value of the onsite habitat on the date of application;
- A statement confirming whether the biodiversity value of the onsite habitat is lower on the date of application because of the carrying out of activities ('degradation');
- A description of any irreplaceable habitat on the land to which the application relates (as set out in [The Biodiversity Gain Requirements \(Irreplaceable Habitat\) Regulations 2024](#)); and
- A plan showing onsite habitat existing on the date of application, including any irreplaceable habitat; and drawn to an identified scale showing the direction of North.

If this information has not been provided, the local planning authority **must** refuse to validate the application.

## Local information requirements

A Biodiversity Net Gain Assessment will be required outlining how the biodiversity gain objective will be met and 10% BNG achieved. The assessment should include details of:

- The proposed methods of delivery of the biodiversity gain objective including onsite gains, off-site gains and the use of statutory biodiversity credits;
- How the Metric Principles and Good Practice Principles are being adhered to;
- How the mitigation hierarchy has been followed;
- How the BNG hierarchy has been followed if you have any habitats of medium distinctiveness or higher on site;
- Information about any potential planning obligations required to deliver the biodiversity gain objective connected to the planning application;
- How any need for offsite units will be met.

A draft Metric must be submitted using the statutory version of the tool and should include completed sections for onsite pre-and post-development habitat delivery as a minimum. The following supporting information should also be submitted alongside the Metric:

- Completed statutory biodiversity metric condition assessments for baseline habitats;
- Predicted habitat condition assessments for created/enhanced post-development habitats;
- Pre- and post- development site plans using UK Habitat Classification symbology.

This must be prepared by a professional ecologist with suitable qualifications and experience and be in accordance with the British Standard BS8683 '*Process for designing and implementing biodiversity net gain – specification*'.

The North Tyneside Local List ('Validation of Planning Applications in Tyneside') is currently being updated to include these requirements. Until formally approved, these are advisory; however, without this information the Council may be unable to determine the application and it may be refused on the grounds of insufficient information.

## **The decision notice**

Because the general biodiversity gain condition has a separate statutory basis to other planning conditions and is deemed to apply to all planning permissions other than specifically exempted ones, LPAs have been instructed not to include it in the list of conditions imposed in the decision notice. Instead, the decision notice will include information about BNG, for which the [Department for Levelling Up, Housing and Communities](#) (DLUHC) will provide model paragraphs.

## **Discharging the BNG condition**

Development cannot be commenced until the mandatory BNG planning condition has been discharged. To discharge the condition, the following information must be submitted:

- A completed biodiversity metric.

- A Biodiversity Gain Plan setting out how the biodiversity gain objective of at least a 10% gain will be met for the development.
- For habitat being created on the development site, a Habitat Management and Monitoring Plan (HMMP) setting out how the habitat will be managed for at least 30 years, and how this will be monitored.
- Pre-development and post-development plans showing the location of on-site habitat.
- If the developer is purchasing units from a Habitat Bank - the reference number from the Biodiversity Net Gain Register.
- If the developer is purchasing statutory credits – proof that they need them and proof of purchase.

The following templates have been created by Natural England and must be used unless otherwise agreed with the LPA.

[Biodiversity gain plan - GOV.UK](#)

[Habitat Management and Monitoring Plan Template \(naturalengland.org.uk\)](#)

## **Biodiversity gain plan**

A Biodiversity Gain Plan must be submitted and approved by the planning authority to discharge the general biodiversity condition prior to the commencement of development. The Plan sets out how the biodiversity gain objective of at least 10% gain will be met for the development and must include the following information for standard development which is not to proceed in phases:-

- Information about the steps taken or to be taken to minimise the adverse effect of the development on the biodiversity of the onsite habitat and any other habitat.
- The pre-development biodiversity value of the onsite habitat.
- The post-development biodiversity value of the onsite habitat.
- Any registered offsite biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development.
- Any biodiversity credits purchased for the development.

The Plan must be submitted no earlier than one day after planning permission has been granted.

## **Habitat management and monitoring plan (HMMP)**

A HMMP provides the management and monitoring information for significant on-site enhancements and off-site gains. The HMMP will give a detailed schedule of what you plan to do to:

- create and enhance habitats for BNG; and
- manage and monitor the habitat for at least 30 years

The planning condition or legal agreement states when the 30-year period of management and monitoring starts.

It is strongly recommended that you work with an ecologist or competent professional to write your HMMP.

The HMMP will need to provide information about:

- how you plan to manage the off-site gains or significant on-site enhancements, taking into account any legal restrictions and requirements ;
- when and how you'll monitor habitats (this will vary for different types of habitat);
- when and how you'll report monitoring results;
- when and how you'll review management proposals;
- how you'll restore habitats if the management plan is not working.

An ecologist or competent professional will help you understand what and how much detail to include in your HMMP. You should also discuss with the LPA any extra requirements that might be required to go into your HMMP ([HMMP Template](#)).

## **Multistage development**

The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 modify the general biodiversity condition for planning permissions which are phased development. Instead of the standard approach for the Biodiversity Gain Plan:

- an Overall Biodiversity Gain Plan must be submitted to and approved by the planning authority before any development can be begun; and

- a Phase Biodiversity Gain Plan for each phase must be submitted to and approved by the planning authority before the development of that phase can be begun.

In recognition that phased development can often be implemented over a long period of time, the purpose of the Overall Biodiversity Gain Plan is to set a clear upfront framework for how the biodiversity gain objective of at least a 10% gain is expected to be met across the entire development. Each Phase Biodiversity Gain Plan will subsequently set out a phase's contribution to BNG and track progress towards the overall biodiversity gain objective for the development once clear proposals for each phase have been developed.

It is envisaged that, for an outline planning permission for phased development, the Phase Biodiversity Gain Plan would be prepared alongside the application for reserve matter approvals for a phase. Further details can be found in paragraphs 049 – 055 of the [Draft biodiversity net gain planning practice guidance - GOV.UK](#)

## **Submitting the BNG metric as part of your planning application and discharge of conditions application**

Please note that Section 9 of the Metric User Guide states that the metric should be submitted as a macro disabled Excel file. This is because the Planning Portal cannot handle macro-enabled files.

# Important issues to consider when planning how to meet your BNG requirements

## Good ecological outcomes and the mitigation hierarchy

The purpose of Biodiversity Net Gain is to require development to have a positive impact on biodiversity, so it is essential that ecological principles are being followed at every stage of the process to achieve the best outcomes for nature.

The mitigation hierarchy set out in paragraph 186a of the NPPF must be applied; and harmful impacts must first be avoided. Where they are unavoidable, they must be adequately mitigated, with compensation being a last resort. Enhancement should then be secured over and above that. The net gain process does not remove the need to avoid impacts as the first priority.

To help ensure that good ecological outcomes are secured through the BNG process, a series of nine metric principles are set out in section 3 of the [Metric User Guide GOV.UK](#), in addition to the four metric rules that must in all circumstances all be adhered to. The principles exist to ensure that expert ecological advice and established ecological principles are always used throughout the BNG process. Guidance has also been produced by CIEEM, IEMA and CIRIA - [Biodiversity Net Gain: Good Practice Principles for Development](#) which provides advice to ensure that the best ecological outcomes can be secured through the BNG process.

The use of the biodiversity metric does not override existing biodiversity protections, statutory obligations, policy requirements, ecological mitigation hierarchy or any other requirements.

### **Interim arrangements for the 'Strategic Significance' section of the Metric until the North of Tyne Local Nature Recovery Strategy (LNRS) is Published**

Strategic significance relates to the spatial location of a habitat parcel and it operates at a landscape scale. All habitat parcels (both baseline and post-intervention) must be assigned a strategic significance score; it should be considered separately for each individual habitat parcel in the metric and not on a site-wide basis. Habitat not specified in some form of strategy, map or plan for that area should not be considered strategically significant.

The options for scoring each habitat parcel are:

**High Strategic Significance** – formally identified in local strategy, plan or policy (this decision must be justified in the 'Assessor comments' section of the metric calculation tool). Until the LNRS is available, the following sources of evidence can be used to identify sites of high strategic significance:

#### On the Baseline Tab

- Land partly or wholly within or adjacent to Habitats of Principal Importance.

- Land partly or wholly within or adjacent to designated sites (SSSIs, Local Wildlife Sites, Sites of Local Conservation Interest and Local Nature Reserves).
- Land partly or wholly within a wildlife corridor.

#### On the Habitat Enhancement and Habitat Creation Tabs

- Land partly or wholly within or adjacent to Habitats of Principal Importance on which it is proposed to create or enhance habitats compatible with the HPI.
- Land partly or wholly within or adjacent to designated sites (SSSI, Local Wildlife Site, Site of Local Conservation Interest and Local Nature Reserve) where the habitats proposed to be created are compatible with the interest features of the designated site or where proposed enhancement will improve the condition of the site.
- Proposals that support the wildlife corridor network by creating or enhancing habitat within or immediately adjacent to this.

HPI can be found on the [DEFRA Magic mapping website](#) – go to Habitats and Species / Habitats / Other / Priority Habitats Inventory.

Boundaries of SSSIs, Local Wildlife Sites, Sites of Local Conservation Interest and Wildlife corridors can be found on the [Local Plan Policies Map NTC](#)

**Medium Strategic Significance** – location ecologically desirable but not identified in a local strategy, plan or policy.

Professional judgement is applied, and the location is deemed ecologically desirable for a particular habitat type, whether recorded in the site baseline, being created or enhanced. The decision should be justified, and evidence provided in the 'Assessor comments' section of the metric calculation tool.

**Low Strategic Significance** – all other sites.

## **Provision of BNG on the development site**

In principle, the development site is the preferred location for the creation and/or enhancement of habitats to satisfy the BNG requirement. This is to ensure that habitat and green infrastructure is retained in the same location and to ensure that local communities benefit from a nature rich environment. However, there are significant issues to be considered when determining whether this is realistic, particularly on residential sites where open space is important for recreational use such as dog walking and informal play. This requires additional considerations to be taken into account, such as soil nutrient status and location in determining what habitats could realistically be created and managed, and what condition could realistically be achieved for those habitats.

Once they have been created, the habitats will need to be managed for a 30-year period, during which a monitoring process will be used to determine if the required gains are being achieved and; if not, to identify appropriate

remedial measures. It is, therefore, important to ensure that BNG proposals are realistic and achievable.

## **Meeting the BNG requirement through the purchase of biodiversity units**

It is hoped that landowners in North Tyneside will establish Habitat Banks – areas of land where they will create or enhance habitat in order to be able to sell biodiversity units to developers. In order to do this, they will need to complete a legal agreement with the Council and then register the sites with Natural England. The Council will maintain a list of any registered sites in North Tyneside so that it is straightforward for developers to find local providers.

## **Meeting the BNG requirement on other land owned by the developer**

If a developer intends to satisfy their BNG requirements on land that they own outside of the red-line boundary of their development site, they will need to sign a S.106 Agreement with NTC and then register the offsite area with Natural England, following the same process as for Habitat Banks.

## **Sources of further information**

[Statutory Biodiversity Metric and Tools](#)

[Planning Practice Guidance](#)

[Collection of BNG Guidance](#)

[Biodiversity Gain Plan Template](#)

[HMMP Template](#)

[Biodiversity Net Gain: Good Practice Principles for Development](#)

## **Contact details**

[Contact Planning | North Tyneside Council](#)

[North Tyneside Council Website](#)