

Delivering net gain in the planning system

Impact on Local Authorities

Successful net gain policy would work effectively with planning policy, strengthening the approach to biodiversity net gain outlined in the NPPF. The policy approach outlined in this consultation should clarify how LPAs assess biodiversity impacts and the mechanisms available to achieve biodiversity gains. We recognise the pressure that many LPAs are under to balance their various policy, legal and funding requirements. We have taken this into consideration in designing this policy, and believe that this policy would represent a step towards more consistent, transparent and accessible reporting of environmental impacts by developers. Specifically, we think that the policy would lead to:

- Clearer reporting of ecological impacts.
- Developers undertaking more mitigation and compensation planning in advance of submitting applications.
- Developers submitting fewer inappropriate applications (i.e. those that would show a clear net loss for biodiversity).
- The potential for LPAs to offer (paid-for) habitat compensation brokering and advice.

These outcomes should provide long term benefits for LPAs. We recognise, however, that any changes to approaches in the planning system would create challenges in the short term. To manage this we propose that:

- Implementation of mandatory biodiversity net gain requirements would take place after a notice period of at least a year from the passage of any new legislation to allow developers, LPAs and ecologists to factor the requirement into planning processes, and to become familiar with the policy, metric and guidance. A notice period would also enable LPAs to consider the need to create green infrastructure or habitat opportunity maps where these are not in place, to ensure wildlife and people benefit from compensation habitat delivery.
- Joint work with industry bodies such as CIEEM, IEMA and CIWEM could be undertaken so that training opportunities would be available that would be fully compatible with government policy, and that advice services were in place, for example through Natural England and Environment Agency area teams.
- The introduction of a mandatory policy would be accompanied by clear guidance, drafted in conjunction with LPAs, to ensure that any concerns are addressed. Industry guidance, which will shortly be available for reference, can provide a reference point.
- We engage in greater depth and breadth with LPAs throughout and after the consultation period to establish further risk and opportunities in this policy area²⁸.

²⁸ If you, or your organisation, are willing to be a part of this engagement, please contact netgainconsultation@defra.gsi.gov.uk

The way in which the net gain tariff scheme is delivered would also be likely to impact the activities of LPAs. We would be particularly interested in views from LPAs on how the operation of a tariff could be optimised in light of any effects it might have on the existing developer contributions framework.

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

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)?

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)?**

Impact on developers

This consultation sets out our proposals for establishing a more consistent and predictable biodiversity net gain process for developers. This should help to reduce risk and uncertainty from the process of acquiring planning permissions, and it creates the potential for bringing existing requirements and mechanisms into a single transparent metric-based approach.

We recognise, however, that the proposed approach has potential costs for developers and so welcome views on how it could be improved from a development perspective, including to keep costs to a minimum. We would also welcome views on whether any existing environmental planning requirements beyond biodiversity, could be usefully within scope of a future, broader environmental net gain approach.

The limited available evidence from LPAs and industry suggests that a wide range of development types can successfully achieve biodiversity net gain; we recognise, however, that development and construction is a broad sector and that our engagement to date is unlikely to have reached those delivering development of all types. We have therefore included the impacts of biodiversity net gain on commercial, industrial, public sector and local infrastructure development within the “Key evidence gaps” section at the end of this consultation document, and would welcome all relevant evidence on this subject from consultees. Understanding the distribution of possible impacts is key to designing and delivering the policy successfully and achieving the most for the environment and developments.

- 37. How could the proposed net gain process be improved for developers?**
- 38. What other steps, considerations or processes in environmental planning could be integrated within a net gain approach?**
- 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?**

Implementation of mandatory biodiversity net gain

If biodiversity net gain is implemented on a mandatory basis we will need to ensure that the transition to mandatory biodiversity net gain minimises both operational impacts to developers and LPAs, and manages any environmental risks from allowing development through before the requirement is imposed.

LPAs have different levels of access to professional ecological advice, whether that be in-house, through partnership with other public bodies or by engaging private sector consultants. Professional ecologists will be familiar with the inputs to the biodiversity metric but may need to increase their capability to use the tool effectively, with the support of professional bodies. Local authority planners would also need to become familiar with the principles of the metric to assess planning applications. We will engage with LPAs on how to ensure that planning departments are able to apply the policy effectively.

We propose that to reduce risks and allow industry to prepare for the new requirements, staggered points could be created at which requirements come into effect. The time could be used by industry and LPAs to attend training and become familiar with the working of the metric. It could be used by government to develop accreditation schemes or for piloting of biodiversity net gain with a tariff. We propose that a notice period of at least one year after the introduction of new guidance would be required to prepare for this transition.

In order to support the smooth introduction of a mandatory biodiversity net gain policy, Defra would work to support the delivery of guidance to minimise burdens on developers, consultees and local planning authorities, and to maximise public understanding of the new approach.

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

Right of appeal

We recognise that, whilst a metric should facilitate agreement, developers and LPAs might sometimes disagree on the assessment of existing habitats or compensation proposals. If there was any disagreement about any aspect of the submitted metric this could be discussed during optional pre-application discussions or during the determination of planning applications. A standardised net gain metric would aim to simplify biodiversity discussions as they would be less subjective and qualitative than at present. If agreement were not met then the planning system would continue to offer the right of appeal against refusal or non-determination of an application.

We would be interested in views, particularly from developers and LPAs, on whether existing planning procedures would be sufficient under a mandatory biodiversity net gain requirement or whether reliance on them would cause any issues. There may be advantages to introducing an additional assurance process, for example to verify a proposed metric calculation.

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

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