

IEMA Briefing on the DEFRA Net Gain consultation

Introduction

1. Defra is seeking views on how they can improve the planning system in England to protect the environment and build places to live and work. They are proposing to do this through the introduction of a mandatory biodiversity net gain requirement for all development decisions controlled at a Local Planning Authority (LPA) level.
2. The [consultation document](#) sets out the proposals and asks for feedback on a wide range of issues including:
 - whether biodiversity net gain should be a requirement
 - standardising the approach so that it is simpler and clearer for developers
 - how the approach could be implemented
 - how to measure and monitor the net gain approach
 - how the approach could be broadened in the future to include other environmental improvements
3. This IEMA briefing provides a summary of the proposals and sets out the key questions that Defra is seeking feedback on. It is split into three parts:
 - i. Introduction to the Defra net gain consultation
 - ii. Policy proposals and questions
 - iii. Call for evidence on key knowledge gaps
4. IEMA will also be hosting a **webinar** in January setting out the key issues and giving you the opportunity to ask questions and comment. Finally, we intend to hold a small number of workshops in January to help shape our final response to Government.
5. We welcome your **feedback and views** by email on any aspects of the proposals. We are particularly interested in what **evidence** you can bring to address the knowledge gaps set out in part three of this briefing paper.
6. Please send all feedback to Spencer Clubb (s.clubb@iema.net) by **Friday 25th January**.

About IEMA

IEMA is the professional body for those working in environment and sustainability.

IEMA's membership of over 14,500 sustainability professionals work at the interface between organisations, the environment and society to create long-term value and minimise risks. They guide and lead the changes that will be required for a sustainable future.

We have previously submitted a consultation response to Government proposals on [biodiversity offsetting](#).

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Part 1: Introduction to the Defra Net Gain consultation

What is biodiversity net gain?

7. Defra describes Biodiversity Net Gain as follows:

Development that adopts a biodiversity net gain approach seeks to make its impact on the environment positive, delivering improvements through habitat creation or enhancement after avoiding or mitigating harm as far as possible.

Based on a standardised approach, biodiversity net gain delivers measurable improvements by comparing habitat losses and gains and steering mitigation and compensation accordingly. New or enhanced habitats can help deliver local and national biodiversity priorities such as the Nature Recovery Network and local strategies for nature, including green infrastructure strategies.

8. IEMA, along with CIRIA and CIEEM, has previously published a similar [definition](#) of biodiversity net gain, along with a [set of principles](#) that we consider are necessary for it to be delivered in a manner consistent with good practice.

Why is Defra proposing to mandate Biodiversity Net Gain?

9. Defra considers that at present, many of the hidden environmental costs of development (such as biodiversity loss, carbon emissions, unsustainable water use, and worsening air quality) are not considered systematically, with no mechanisms to compensate for the harm to nature, communities and future generations. Nor are the benefits of creating greener developments properly understood.
10. An effective net gain policy, Defra argues, could enable us to build the houses, commercial premises and local infrastructure we need and at the same time improve our environment and contribute to the goals of the 25 Year Plan by more than compensating for biodiversity loss where it cannot be avoided or mitigated.
11. Successful implementation of biodiversity net gain would help to drive better delivery of local plans and place making. It would stimulate improvements in the design quality of residential developments. The provision of environmental amenities, such as high-quality and biodiverse urban woodlands, green spaces and parks, will create better places to live and work. In turn, this will bring health and wellbeing benefits.
12. Looking further ahead, Defra argues, a broader environmental net gain approach which helps to deliver cleaner air and water, increased flood resilience and greater energy efficiency could have the potential to transform our environment and support healthier lives.
13. Finally, Defra argues that clear and consistent processes for developers could support housebuilding and other construction by providing certainty and helping developers to get their planning applications right the first time.

What are the key elements of the proposals?

14. Defra is proposing a **new standardised approach** to biodiversity net gain that is designed to be simpler and clearer for all stakeholders to use while delivering measurable, verifiable net gains for nature.
15. It will **operate alongside existing planning policy** to ensure that current environmental standards, including the existing protections for habitats such as ancient woodland, species and designated sites, are maintained and implemented.
16. When assessing potential development sites, developers would be required to conduct **habitat surveys** to identify habitats and their condition. This will help them to avoid areas of high biodiversity and to apply the **mitigation hierarchy**. It will also help to identify where **habitat enhancement** on-site may be beneficial.
17. A **standard biodiversity metric** (an updated version of the “Defra metric”) would then be applied using habitat information from the site assessment and landscape plans as a proxy to calculate losses and gains in biodiversity. The metric would help to determine the type, amount and location of enhancement activities necessary to achieve net gain. It could also help to anticipate the **costs of achieving net gain**.
18. The proposals state that habitats should be created or enhanced, **preferably as part of the same development or nearby**. **If net gain cannot be achieved on site**, the metric would support discussions with local providers or with the local authority on a suitable package of off-site restoration measures. This would all be done during **pre-application negotiations**.
19. **Where suitable local compensation opportunities are not available, a tariff could be paid** so that biodiversity net gain can be achieved without delaying development. A tariff could fund habitats for both strategic and local biodiversity priorities, whilst achieving biodiversity net gain overall.
20. The **tariff rate** would offer a guide for the upper limit of habitat compensation costs, alongside information from growing habitat creation markets.

How would this proposal become mandatory?

21. Defra is proposing the following approach to make biodiversity net gain a mandatory requirement:
 1. Working with national planning policy, including updated detailed guidance, which could be underpinned by a clear duty in legislation
 2. Requiring the Defra biodiversity metric to be used so that the approach to measuring biodiversity and any residual tariff obligation is transparent and consistent
 3. Developing monitoring and quality assurance processes that provide confidence in the conservation and development outcomes secured
 4. Providing a workable approach that can be adapted and updated to include components of environmental net gain such as natural resource use efficiency, water quality, flood risk management and air quality

How will this streamline rather than add an extra burden to planning applications?

22. Defra considers that the proposals will help rather than hinder planning applications. Currently, a wide variety of approaches to biodiversity are employed by the 353 local authorities in England, which developers must navigate and adapt to.
23. Mandatory net gain for biodiversity across England would reduce inconsistency, provide greater certainty for developers and provide a more efficient means for Local Planning Authorities to implement national planning policy whilst addressing local biodiversity priorities.
24. A standardised approach would mean that when developers and local planning authorities are consulting with the local community prior to submitting a planning application, they can use biodiversity net gain figures and habitat enhancement measures to explain the benefits and costs of a development proposal more transparently.
25. With clearer expectations, developers will be able to submit planning applications with greater confidence that proposals can be supported on biodiversity grounds.
26. For local authorities, transparent figures for biodiversity losses and gains can be quickly checked and provide confidence that impacts will be positive. Figures will also indicate the environmental quality of green infrastructure as part of development design.
27. As part of the planning permission, developers would sign up to predictable conditions, obligations or a tariff payment to secure biodiversity net gain. The availability of a tariff would prevent planning permission from being delayed by net gain requirements, and local authorities will be able to demonstrate that positive impacts to help improve the environment for local communities have been secured.
28. Importantly, Defra states that the government will only mandate biodiversity net gain if it is satisfied that it will deliver benefits for development, including greater certainty and process cost savings.

What are the key questions that Defra is seeking feedback on?

37. Defra is seeking views on **whether to mandate biodiversity net gain** for development requiring planning permission.
38. It is also seeking views on **how best to implement** biodiversity net gain, including the most appropriate **measurement, delivery and monitoring mechanisms** to ensure it delivers high quality places and reduces uncertainty and unnecessary processes for local planning authorities and developers. They are also seeking views on **how to better integrate species** into a biodiversity net gain approach, where this would benefit the conservation of a species, and how to move from net gain for biodiversity to broader environmental net gain in future.
39. The consultation also explores whether the net gain approach used for biodiversity is the best way to deliver all **wider environmental improvement objectives**. Defra is seeking evidence on what aspects of natural capital should be considered and the options we should consider in developing an environmental net gain approach.
40. These key questions and issues are set out in more detail in Part 2 of this briefing paper.

Part 2: Policy proposals and questions

Scope

Should biodiversity net gain be mandated for all housing, commercial and other development within the scope of the Town and Country Planning Act?

41. The proposed (maximum) scope for the consultation is development decisions controlled at an LPA level. It would cover all new developments that results in loss or degradation of habitat, including buildings such as housing, offices, shops, business space and local infrastructure.
42. Developments that would result in negligible loss or degradation of habitat, for instance material change of use of or alterations to buildings and house extensions, would fall out of scope.

Should there be exemptions or simplified assessment processes for house extensions, small sites, or brownfield sites?

43. Defra is considering what, if any, appropriate exemptions to a possible future mandatory biodiversity net gain policy might be made to developments by size, sector or site location.
44. They propose that permitted development and house extensions should be exempt.
45. They are seeking evidence as to whether small (e.g. under 10 homes) and brownfield sites (perhaps just those listed on brownfield land registers) should also be exempt, noting that they would still be subject to other environmental planning policies. Defra is asking what other sites should also be exempted, such as commercial and industrial sites
46. Alternatively, they are proposing that instead of an exemption, some sites could follow a simplified process, likely in conjunction with paying the proposed tariff in line with their expected impact.

Do the proposals adequately protect local wildlife sites and individual species?

47. Planning policy offers higher levels of protection for internationally and nationally designated sites, meaning that they would not fall under the proposed net gain approach. However, some highly valued local wildlife sites, while also somewhat protected by planning policy, could be adversely affected because planning permission could be granted if a net gain were to be demonstrated.
48. Defra notes that the metric would already allow local authorities to place a higher weighting on losses of local wildlife sites. This would incentivise the avoidance or minimisation of harm to such sites because a great level of biodiversity gain would be required to balance out losses. However, they are seeking views on whether this is sufficient protection for them.
49. Defra acknowledges that the net gain approach does not take into account impacts on individual species. However, they cite the district level licencing approach to great crested newts as a possible model for other species. Defra considers that there would be benefits in combining net gain habitat creation with the district-level habitat creation for great crested newts and potentially other species.
50. Defra is seeking views on whether to mandate a district-level approach to great crested newts and is calling for evidence on what other species this might also work for.

Measuring biodiversity and achieving net gain

Is the “Defra biodiversity metric” appropriate for calculating biodiversity net gain and how could it be improved?

51. Defra proposes that, for biodiversity net gain, the Defra biodiversity metric would provide a suitable base metric upon which to set possible mandatory requirements. Over time, they plan to address some existing limitations of the metric with regards to consideration of individual species and wider environmental value. Defra is seeking views on its suitability and possible improvements to it.

Is a mandatory 10% increase in biodiversity units the right level of net gain?

52. Defra is confident that achieving a net gain using the proposed metric is sufficient to mitigate and compensate for harm caused by the development. However, to account for remaining uncertainties and risks, and to provide an overall gain for nature, they are proposing that a mandatory minimum gain of 10% should be achieved.
53. This means that if a site is worth 50 biodiversity units before development, the site (and any offset sites and tariff payments) should be worth a minimum of 55 units at the scheme’s conclusion.

Can the mitigation hierarchy be bypassed under clearly defined circumstances?

54. Where development will result in minor losses of habitats which are not of particular value to wildlife, Defra is proposing that better outcomes for biodiversity could be achieved by moving straight to the payment of a tariff to support larger-scale off-site conservation schemes, rather than mitigating and compensating on-site.
55. They are seeking views on whether this is appropriate and what those clearly defined circumstances should be, such as site size, ecological importance or distinctiveness.

How should the baseline be set for measuring net gain?

56. If net gain were made mandatory, there could be a stronger incentive for some developers and landowners to clear habitat, disturb wildlife or degrade their land in advance of seeking permission to develop it and in advance of a baseline biodiversity survey being carried out. This would run completely contrary to achieving net gains in biodiversity through the development process.
57. Defra is proposing that this risk could be mitigated by potentially using recent or historical habitat mapping surveys or land-cover data as an approximate baseline. They are seeking views on whether this approach would work and whether it should only be used when intentional degradation is suspected. They are also seeking views on how legitimate land use changes could be respected and whether any other approaches to establishing a baseline could be used.

Delivering biodiversity outcomes

How should biodiversity and natural capital be mapped and prioritised?

58. Defra proposes that the delivery of compensation habitats as part of achieving net gain be aligned with national and local scale strategic habitat objectives, and that government explores how local habitat opportunity mapping might be coordinated and supported through a national habitat mapping framework. They consider that this could work for biodiversity and natural capital.
59. Defra is seeking views on whether habitat mapping should be done at a local (bottom up) or national scale (top down) and what other measures might also help to priorities habitats for enhancement.

How can off-site habitat enhancement be delivered effectively?

60. To create or enhance habitats off-site to achieve biodiversity net gain, an adequate supply of high-quality local compensatory habitat sites would be needed. To achieve this, providers of off-site habitats will need to have the knowledge and expertise to ensure that enhancements are delivered in the timeframes, and to the quality standards, agreed so that environmental outcomes would be secured. Defra is therefore considering whether some form of accreditation is necessary.
61. Defra is also proposing that the tariff rate that some developers would pay as part of achieving net gain would need to be sufficiently high as to encourage the growth in biodiversity unit providers. They are also seeking views on whether any further measures are necessary to stimulate the market for biodiversity units and habitat creation.

How to ensure that gains in biodiversity are long-lasting or permanent?

62. Biodiversity net gain should make sure that any compensation or mitigation for habitat loss should last for the duration of a development impact or be established on a “permanent” basis. Currently, industry principles and common practice of biodiversity net gain suggest that compensatory habitat should be actively managed for 25-30 years. After this period, habitat could in theory be changed to an alternative land use.
63. Defra is therefore seeking to identify what mechanisms would enable the practical delivery of biodiversity net gain whilst also securing lasting environmental benefits, and what the minimum period should be that net gains must be secured for (e.g. +/- 25 years).
64. One option would be to transfer the land to a trust with an endowment to fund maintenance, as has been done for some public open spaces with the Milton Keynes Parks Trust and the Land Trust. Defra is therefore seeking views on extending this idea of “conservation covenants”.

Calculating and collecting the tariff

*Is the tariff set high enough to be a more expensive option for developers than following the mitigation hierarchy and seeking local habitat creation opportunities?
Will it support a competitive habitat banking marketplace?*

65. Where a development was unable to mitigate biodiversity loss on site or purchase the required biodiversity units locally, the developer would be required to pay a cash tariff on their shortfall against net gain obligations. The price for a tariff on biodiversity units would need to: i) reflect the costs of creating and managing compensation habitat in a suitable location; ii) strongly incentivise the protection of existing habitats; and iii) encourage suitable local compensatory habitat creation when necessary.
66. Based on the above approach, Defra proposes to set the tariff at between £9,000 and £15,000 per biodiversity unit. The tariff rate could vary by location to reflect different land prices, but would be a fixed price once set. It could be updated if the metric methodology changed significantly. They are seeking feedback on the most appropriate price.

How should the tariff be collected and spent?

67. Defra asks what mechanisms for collecting and spending the residual cash tariff would be straightforward for developers, deliver the best outcomes for the environment and local communities, and would not place additional burdens on LPAs?
68. Defra is seeking views on whether using the s106 levy would have a detrimental effect on the current arrangements and if a dedicated additional approach is necessary.
69. In terms of spending the tariff, Defra is weighing up the advantages of doing so locally (to ensure investment is closely tied to local nature recovery and people living closest to the development site) or Nationally (to deliver national biodiversity enhancement priorities at the best value and with the greatest synergy with other 25 Year Environment Plan policies).
70. Defra is also considering a blended model that is spent according to national nature strategies, but on projects that are as close to the development site as is possible in the circumstances.

Delivery within the planning system

How can the scheme work best for local authorities?

71. There are significant concerns about whether local authorities have the skills, knowledge, resources and capacity to support and deliver mandatory biodiversity net gain.
72. Defra acknowledges that many LPAs are already under pressure to balance their various policy, legal and funding requirements. They consider that this policy will help by representing a step towards more consistent, transparent and accessible reporting of environmental impacts by developers.
73. In the short term, however, Defra acknowledges some challenges and is therefore proposing to mitigate these through a long lead-in time (see below). Defra is also keen to understand and take into account LPA's views on the operation of the tariff system.

What will the impact be on developers?

74. Defra considers that the proposals have advantages to developers because they create the potential for bringing existing requirements and mechanisms into a single transparent metric-based approach. However, Defra acknowledges that there are gaps in their understanding of the implications on developers. They are therefore calling for evidence from across the development and construction sector on the implications of the proposals, any improvements and suggestions for future streamlining with other obligations.

Is the lead-in time before the scheme commences sufficient?

75. Defra proposes that to reduce risks and allow industry and LPAs to prepare for the new requirements, staggered points could be created at which requirements come into effect. However, Defra does not clearly explain how this "staggering" would work, other than stating that a notice period of at least one year after the introduction of new legislation and guidance would be required to prepare for this transition. This would allow for the development of guidance, training, an advice line and some piloting of habitat creation schemes.

How will disputes over the achievement of net gain be resolved?

76. Defra notes that developers and LPAs might sometimes disagree on the assessment of existing habitats or compensation proposals. Much of this could be resolved during pre-application discussions or during the determination of planning applications. The existing right of appeal in the planning system would also be available. However, Defra is seeking views on whether an additional assurance mechanism is needed that could focus on the verification of net gain metric calculations.

Monitoring and evaluation

What additional monitoring and evaluation mechanisms will be necessary?

77. To provide confidence that biodiversity net gain is achieved, Defra intends to monitor the quality of delivery on the ground. Further engagement with stakeholders is proposed in due course on additional quality assurance measures such as embedding best practice principles and guidance, accreditation requirements for carrying out habitat assessments or running enhancement schemes, and introducing an insurance scheme to ensure that biodiversity gains are delivered. Improvements to data quality and random spot audits are also suggested. Views are sought on any other suggestions.

When will the scheme be evaluated and reviewed?

78. Defra intends to review implementation of the scheme from time to time, in conjunction with stakeholders. However, any proposed changes will be evidence-based and focussed on improving the effectiveness of the scheme, rather than relitigating the basic ideas and principles behind it.

What other aspects of the environment could be managed in a similar approach to biodiversity net gain?

79. While this consultation only proposes the mandatory introduction on biodiversity net gain, Defra is seeking views on what other aspects of the environment, such as water and air quality, could follow a similar approach in the future.

80. Defra acknowledges that many of these other environmental aspects are already managed through building standards and similar types of regulation, however, they are keen to incentivise performance against and beyond these standards through a wider environmental net gain approach.

81. Defra considers that this might further streamline environmental requirements for developers, and thereby simplify processes for developers and LPAs by presenting progress against wider environmental requirements or targets in one place.

82. Defra gives the following examples:

- Projected water use could be limited to a recommended number of litres per day
- Development could be required to be 'air quality neutral' and not to contribute to potential exceedance of international air pollution limits or national pollutant objectives, in line with the Clean Air Strategy
- For flood risk, developments may need to achieve greenfield run-off rates for surface water with sustainable drainage systems and for properties to meet a given flood resilience standard.

Part 3: Call for evidence on key knowledge gaps

83. Defra is seeking evidence to address gaps in knowledge relating to implementing mandatory biodiversity net gain. IEMA members hold expertise in several relevant areas. We are therefore seeking evidence to take to Defra relating to any of the following key knowledge gaps:

Evidence gap	What we would like from you
Transition and ongoing delivery costs to central (e.g. Defra, Natural England) and local government (e.g. LPAs).	Evidence of how much a biodiversity net gain approach costs to implement. We are aware of evidence from the biodiversity offsetting pilots, but these costs included development of the approach and spatial strategies which are now better understood.
Interactions with other contributions such as Section 106 and Community Infrastructure Levy.	Evidence of whether a biodiversity net gain requirement would affect wider developer contributions. If so, how significant would this effect be?
Distributional impacts of net gain on viability.	Will a mandatory biodiversity net gain requirement affect some types of development disproportionately?
Recent trends in habitat loss and gain due to development, likely habitat under threat due to future development, and expected habitat delivery through net gain.	What types of habitat are typically lost through development? Is development typically achieving no net loss of biodiversity, and is performance improving?
Further detail on costs to small and large developers and developments, including familiarisation costs and impact of tariff.	Are there any further costs or benefits not identified in this document or the accompanying Impact Assessment? Please provide evidence of these costs or benefits.
<p>The impact of biodiversity net gain delivery for</p> <ul style="list-style-type: none"> •commercial development; •public sector development; •industrial development; and •local infrastructure development 	<p>To what extent do these development types already achieve net gains, or no net loss of biodiversity, and is performance improving?</p> <p>What is the typical habitat type and condition on these sites and how does this differ from other types of development (i.e. residential)?</p> <p>Is there typically a greater net negative impact on habitats through development of these types, resulting in greater costs for net gain?</p>
Net gain interactions with on-site delivery of housing and other green infrastructure (e.g. parks, recreation)	Will biodiversity net gain negatively or positively affect the quality of green space for recreation and enjoyment within new developments?