

Cabinet – 18 October 2023

Biodiversity Net Gain (BNG)

Portfolio:	Councillor A. Andrew - Deputy Leader and Regeneration
Related portfolios:	Councillor M. Bird - Leader of the Council Councillor G. Flint - Wellbeing, Leisure and Public Spaces
Service:	Planning and Building Control
Wards:	all
Key decision:	Yes
Forward plan:	Yes

1. Aim

- 1.1. Biodiversity net gain (BNG) is a national approach to development that aims to leave the natural environment in a better state than it was beforehand by delivering measurable improvements for biodiversity by creating or enhancing habitat. BNG sits separately to all other existing legal protections for protected habitat, sites and species.

2. Summary

- 2.1. In January 2024, the Environment Act 2021, through upcoming secondary legislation, is expected to bring into effect the requirement for most new major developments to provide a minimum of 10% BNG, strengthening the current requirements stated within national planning policy. This will extend to small sites of less than 1 hectare in April 2024. There will also be a requirement to secure the management and monitoring of land on which BNG has been delivered for 30 years using legal agreements and planning obligations.
- 2.2. The council is still awaiting details on guidance and the secondary legislation to enact the statutory requirement from DEFRA and Natural England. This is likely to be released at the end of November 2023. Members will be updated at the meeting as necessary. A BNG guidance document has been created and is attached at **Appendix 1**.
- 2.3. As the formal West Midlands Local Nature Recovery Strategy is expected to be completed in 2025. The Black Country Local Nature Recovery Map and Strategy has been produced as an interim guidance document (See **Appendix 2**) to aid in the delivery of BNG, through the planning decision making and plan making processes.

3. Recommendations

- 3.1. That the legal requirement to deliver biodiversity net gain from January 2024 and the planning processes required for its effective implementation, is noted.
- 3.2. That Council be recommended to adopt and publish biodiversity net gain guidance for Walsall, as set out in **Appendix 1**.
- 3.3. That Council be recommended to adopt and publish the Black Country Local Nature Recovery Map and Strategy, as set out in **Appendix 2**, to be used as guidance and evidence in the planning process.

4. Report detail – know

- 4.1. Over the last century, the state of nature in UK has declined dramatically as habitats have become increasingly degraded and fragmented. Robust evidence has identified that the UK has lost nearly half of its biodiversity and that 56% of our species are in decline, with 15% threatened with extinction.
- 4.2. The Environment Act 2021 seeks to enable nature to recover by committing to halt species decline by 2030 and increase species abundance by the end of 2042. This will be achieved by mandating development to achieve at least 10% BNG alongside other duties.
- 4.3. In addition, national planning policy, in the form of the National Planning Policy Framework (NPPF) (2023), requires plans to promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species and identify and pursue opportunities for securing measurable net gains for biodiversity. As well as realising opportunities to improve biodiversity in and around developments which should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.
- 4.4. Through secondary legislation, enacted by the Environment Act, from January 2024, with an exact date yet to be confirmed, most new developments will be required to provide a minimum of 10% BNG. There will be a few exemptions which will include development sites with no existing habitat areas, householder applications, permitted development and small-scale self-build housing development.
- 4.5. To allow a staged commencement of the requirement, proposed developments which meet the threshold to be classified as 'small sites' have an extension until April 2024 before being subject to this statutory requirement. Small sites can be defined as either those proposed for residential development, including application sites of less than 1 hectare in size and consisting of less than 10 units, or those proposed for non-residential development with a floor space of less than 1,000 square metres.
- 4.6. BNG will be secured by way of a new statutorily worded planning condition attached to a planning approval, that cannot be removed, modified or

disapplied: 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.

- 4.7. It is expected that at the planning application determination stage, the applicants will be required to submit a biodiversity gain statement to provide details of the proposed net gain approach, with final details agreed and confirmed in a biodiversity gain plan, for compliance with this condition.
- 4.8. The statutory 10% BNG will be calculated by assessing the current habitats and landscaping present within an application site and assigning a proxy value to each habitat based on their size, condition, quality and strategic significance, using a metric spreadsheet designed by DEFRA. This is then repeated for the development proposal in consideration with proposed habitat retention, creation and enhancement. Both total proxy values are then compared against each other to determine whether a 10% biodiversity net increase has been delivered.
- 4.9. To deliver biodiversity net gain, developers have the following options:
 - a) The preferred option is for developers to achieve the 10% net gain within the development site, and they will be encouraged to accommodate this net gain into the early design stages of their schemes, especially as part of the pre-application process.
 - b) Where it is evidenced as being not possible to achieve the 10% net gain within a development site, developers can look to deliver provision offsite to meet this target, through legal agreements called conservation covenants or planning obligations.
 - c) The final, last resort, option for developers is to purchase statutory biodiversity credits through a national government scheme. These will be expensive and could be spent anywhere nationally and consequently with potentially no local benefits accruing.
- 4.10. All land placed under an agreement to be managed to meet BNG targets will be subject to a 30-year management period, formalised through a habitat management and monitoring plan. This plan will sit alongside any legal agreement and will require regular monitoring by the council or an alternative 'responsible body'. The council will include a relevant BNG monitoring fee within future planning obligations to secure this ongoing monitoring requirement.
- 4.11. One of the major commitments in the government's 25-year Environment Plan and the follow up Environment Improvement Plan 2023, is the delivery of the national Nature Recovery Network (NRN). The delivery of the NRN will provide 500,000 hectares of additional wildlife habitat, and link existing protected sites and landscapes, while providing wider environmental benefits including greater public appreciation and enjoyment, carbon capture, and water quality improvement and flood risk management. The NRN will be created by 48 interlinked Local Nature Recovery Strategies (LNRS), forming part of the Environment Act 2021, with the extent of the LNRS areas determined by the Secretary of State.

- 4.12. In June 2023, the secretary of state determined that Walsall Borough would be part of the West Midlands Local Nature Recovery Strategy, with the West Midlands Combined Authority (WMCA), formerly appointed by DEFRA, as the Responsible Authority for producing the strategy. Walsall are listed as a Supporting Authority by DEFRA to assist in its production. From a recent meeting with WMCA, it was stated that the WMCA are in the early stages of planning for the LNRS delivery and in line with government expectations, it is anticipated that the West Midlands LNRS will be completed in 2025.
- 4.13. However, with mandatory BNG coming into effect from November 2023, the Black Country Authorities commissioned the Wildlife Trust for Birmingham and the Black Country (WTBBC) and EcoRecord to develop the Black Country LNRMS for use in the interim period until the West Midlands LNRS can be adopted.
- 4.14. The Black Country Local Nature Recovery Map and Strategy (LNRMS) has been produced and can be found at [Local Nature Recovery Strategy \(LNRS\) | Birmingham & Black Country Wildlife Trust \(bbcwildlife.org.uk\)](https://www.bbcwildlife.org.uk/local-nature-recovery-strategy-lnrs/). It is a locally led spatial strategy designed to align with, and help deliver, the requirements of the Environment Act, including the delivery of mandatory biodiversity net gain, and provide a focus for a strengthened duty on all public authorities to conserve and enhance biodiversity.
- 4.15. The map and strategy were produced by:
- mapping the most valuable existing habitat for nature by comparing existing mapping data and satellite habitat derived data against land use, species records, protected sites and priority habitat, in order to evaluate the ecological importance of landscape units across the whole of the Black Country.
 - mapping specific proposals for creating and/or improving habitat for nature and wider environmental goals.
 - setting out a framework for agreed priorities for nature's recovery by the identification of core landscapes and priority network restoration zones.
- 4.16. Five core landscape areas are identified within Walsall Borough that support the highest abundance and diversity of semi-natural and priority habitat. They are considered a priority for investment in ecological recovery. These five areas are:
1. Rough Wood Chase and Sneyd Reservoir
 2. Brownhills Common and Pelsall
 3. Barr Beacon, Druid's Heath and Shire Oak
 4. Park Lime Pits, Cuckoo's Nook, The Dingle and Great Barr Park
 5. the northern portion of Sandwell Valley

- 4.17. In addition, priority network restoration zones are identified within the strategy. These are areas where support should be given to the creation of ecological corridors across the wider landscape to improve connectivity and where investment in nature recovery outside of the core areas should be prioritised.

Council Plan priorities

- 4.18. The implementation of BNG through the development management process, will help deliver the following Council Plan 2022/2025 priorities:
- a. encouraging our residents to lead more active, fulfilling and independent lives to maintain or improve their health and wellbeing
 - b. the people of Walsall feeling safe in a cleaner, greener Borough
 - c. regenerating the Borough to support places where people are proud to live and work

Risk management

- 4.19. Unless satisfactory measures are put in place to secure, deliver, manage and monitor biodiversity net gain effectively, the council could be challenged as to not exercising its legal duty to conserve and enhance biodiversity in an appropriate manner.
- 4.20. The provision of the additional mandatory 10% BNG requirement could be argued to have implications on the viability of development schemes. This may mean that developers will seek to evidence that, by taking on the BNG requirement as part of the scheme, they would have to forego the provision of other planning measures, such as an appropriate number of affordable homes. Should this matter arise, the overall viability of the scheme will need to be assessed and the planning balance, within the planning decision making process, applied with the mandatory requirement of net gain in mind.

Financial implications

- 4.21. In May 2022, the council employed an ecology officer to lead on this matter within the planning and building control service which was funded from existing revenue resources.
- 4.22. The government has provided grant funding to assist with the council in being ready for the statutory requirement, with £10,047 in 2021/22 and £26,807 being made available for both financial years 2022/23 and 2023/24. The government has not yet committed to long term funding for the additional duties imposed by the act however the ongoing ask is around staffing and monitoring arrangements which can be achieved within existing resources.
- 4.23. Additional monitoring fees can be incorporated within the legal agreements and planning obligations however secondary legislation is required for further guidance on this matter.

Legal implications

- 4.24. The Environment Act 2021 includes a provision for BNG to be a condition of planning permission in England and provides a legal framework for a biodiversity gain site register, biodiversity credits and local nature recovery strategies in England, as well as a general duty to conserve and enhance biodiversity.
- 4.25. The new statutory requirement will place increased duties on the council as part of the planning system. These will include:
- discharging the statutory BNG planning condition;
 - monitoring and enforcing legal obligations placed on landowners providing registered offsite biodiversity gain and significant onsite biodiversity gain;
 - review monitoring reports submitted by the developer over the 30-year management period; and
 - regularly publishing a biodiversity report summarising the actions that the council has taken over the past reporting period and plans for action over the subsequent period.

Procurement Implications/Social Value

- 4.26. Evidence has already been produced by external bodies to produce an interim LNRMS to deliver on BNG on identify and location strategic ecological sites.
- 4.27. Ongoing review of legal aspects and relevant aspects of the planning process will require assessment internally, but could require the potential procurement of evidence externally, in order to meet the requirements in an efficient and legal compliant manner.
- 4.28. Further evidence on this matter may be procured as part of the progression of the Walsall Borough Local Plan, with an emphasis on setting out a potential policy on net gain. While such a policy would need to align with the net gain provisions, it will sit separately to the mandatory BNG requirement, and could for instance, be targeted to meet local circumstances.

Property implications

- 4.29. The minimum 10% statutory requirement will place new obligations and legal requirements on development, which will require additional actions throughout the process, from early design stages to 30 years post completion. This will include council projects and council land, unless any exemptions apply.
- 4.30. Should the council choose to offer its land to be a sink for off-site compensation, this would allow developments to fund habitat enhancement and management within our land. An internal working group is currently looking at legal requirements and ramifications of taking this direction.

Health and wellbeing implications

- 4.31. The net gain approach plans to leave the environment in a better condition for the next generation by protecting, enhancing and creating habitat areas for wildlife, while also creating more green areas for residents and increasing green infrastructure and travel routes.

Reducing Inequalities

- 4.32. With the use of the strategic significance weighting of the biodiversity scoring, the LNRMS and future potential development plan policies, green space creation can be directed to areas within the borough, which currently have a lack of open space areas or along wildlife corridors. This could result in improving health and wellbeing in areas of relative deprivation, thereby tackling the inequality of access to green space within the borough, while improving landscape corridors.

Staffing implications

- 4.33. This new statutory requirement will place an additional workload on planning officers, enforcement officers and the ecology officer, with support from service areas such as Healthy Spaces and legal services. This will include the task of assessing biodiversity gain plans, implementing the 30-year monitoring requirement for application and reporting on this duty.

Climate Impact

- 4.34. The mandatory 10% net gain requirement for development in both the urban and rural areas of the borough can be seen to form part of a package of proposals on habitat creation and enhancement to help tackle the climate emergency through other ecosystem services and link directly to the council's future climate change strategy.

Consultation

- 4.35. No formal public consultation is required as this matter relates to the implementation of a legal requirement and has been overseen by an internal BNG working group.

5. Decide

- 5.1. For the Council to adopt guidance, provided in **Appendix 1**, on how BNG will be implemented in order to comply with the legal requirement expected to be implemented in January and April 2024, respectively.
- 5.2. As this looks to implement guidance to meet new national legislation, no other alternatives are available.
- 5.3. For the Council to adopt the LNRMS as guidance and evidence to be used in the planning process.

- 5.4. The alternative option would be to not utilise the documentation and await the formal West Midlands LNRS to be produced in 2025. While Walsall Council would still see the benefits of the creation of green spaces through offsite compensation areas, the lack of a landscape led strategy would prevent the habitat creation being directed to areas to provide additional wider ecosystems benefits and borough wide ecological corridors.
- 5.5. In addition, without the evidence base for plan making, further evidence may be required to be produced for the Local Plan or a delay created to awaiting the West Midlands LNRS.

6. Respond

- 6.1. The proposed response is to adopt and implement the biodiversity net gain guidance, as set out in **Appendix 1**, and the LNRM+S, as set out in **Appendix 2**.

7. Review

- 7.1. Development plan policies on the theme of nature conservation and biodiversity net gain in particular, along with any new internal BNG processes and monitoring regimes, will be kept under regular review to ensure they achieve the necessary outcomes.
- 7.2. The electronic mapping systems and additional services required to deliver BNG effectively will be reviewed, including the measures needed to deliver, manage and monitor net gain on council owned land as off-site compensation areas.
- 7.3. The Black Country Local Nature Recovery Map and Strategy will be retained as a live document, to be reviewed and kept up to date on a regular basis with current and future biodiversity work and projects.

Appendices

Appendix 1: Biodiversity net gain guidance document

Appendix 2: Black Country Local Nature Recovery map and strategy: an emerging approach – March 2022

Background papers

- Planning advisory service website
<https://www.local.gov.uk/pas/topics/environment/biodiversity-net-gain-local-authorities>
- The government biodiversity net gain website –
[https://www.gov.uk/government/collections/biodiversity-net-gain#:~:text=Biodiversity%20net%20gain%20\(%20BNG%20\)%20is,than%20it%20was%20before%20development](https://www.gov.uk/government/collections/biodiversity-net-gain#:~:text=Biodiversity%20net%20gain%20(%20BNG%20)%20is,than%20it%20was%20before%20development)

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Signed



Kathryn Moreton
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On behalf of Dave Brown

6 October 2023

Signed



Councillor Andrew
Portfolio holder

6 October 2023