

Appendix 1

Draft- Interim offsite BNG protocol

August 2022

Introduction

This Guidance Note provides interim local guidance in relation to biodiversity net gain (BNG) when considering offsite BNG proposals, this note is not formal planning policy. It does not establish new planning policy, nor does it supersede any existing formally made planning policy. Instead, as explained in the note, it is a guidance note as to how Peterborough City Council intends to implement existing policy (national and local), and how Peterborough City Council intends to prepare for upcoming mandatory BNG.

What is Biodiversity Net Gain (BNG)?

BNG is a new national initiative linked to the planning system. The basic idea is that biodiversity will be in a measurably better state after new development has happened than before the development has taken place. So, if a developer wants to build some new homes on a parcel of land, the developer will have to calculate what level of biodiversity exists before development takes place, and then demonstrate how habitats will be created to increase biodiversity after the development has finished. This does not necessarily mean the same type of biodiversity or habitats are created as currently exists, or created in exactly the same place. It's about an overall increase in habitats and biodiversity, once a proposal has been adjusted for what will be lost and what will be gained. Hence the term 'net gain'.

For more details on the principles of BNG, at a national level, then a useful simple guide prepared by Natural England in April 2022 can be found here: [Biodiversity Net Gain Brochure1](#)

BNG has been identified as one of the primary mechanisms for the restoration of biodiversity across the UK. Locally, the need is recognised within Cambridgeshire's Doubling Nature vision. To achieve the vision, a strategic approach to habitat creation and enhancement will be required in line with the Lawton principles of 'more, bigger, better, and more joined up'. This will require focus on improving the condition of existing designated biodiversity sites (albeit this must demonstrate additionality), increasing their size, and improving connections between them by creating steppingstones and corridors of biodiversity rich habitats. The requirement to deliver BNG is already in place, albeit we are currently in a transition phase from BNG being a national policy expectation to BNG becoming a national mandatory requirement. In Peterborough, we have also adopted planning policy which expects BNG to be delivered, in advance of mandatory requirements.

Purpose of this Guide

This guide is help developers and decision makers on what is expected by the Council when considering BNG proposals, prior to the predicted mandatory adoption of the BNG in Autumn 2023.

BNG from a Peterborough Perspective

Introduction

In the interim period before BNG becomes mandatory, the Council's approach is to implement existing national and local policy in a way which matches best practice. Such best practice is very similar to how mandatory BNG will operate, so it's a good opportunity to help both developers and decision makers to get familiar with what BNG is and how it should be applied.

Biodiversity Net Gain Location

This is a crucial aspect of how BNG is to work. Put simply, national and local policy, as well as emerging national practice for mandatory BNG, all point to the same thing: if at all possible, BNG should be delivered 'on-site'.

By 'on-site', that means within the same boundary as the planning application (known as the 'red line boundary', which is a line which must be shown on any planning application and identifies the total area to which the planning permission will apply.

The line normally includes a much larger area than just where a new building will go, and will include land such as open space). This principle is discussed in further detail in the "Delivering BNG" section.

Quantity of Biodiversity Net Gain

Once the Environment Act (November 2021) is enacted the mandatory minimum of 10% BNG will apply to all Town and Country Planning Act (TCPA) applications which are not exempt (see below).

In the interim Peterborough City Council will aim that a minimum of 10% BNG be achieved on all development sites, in line with the mandatory minimum. This aspiration is supported by the recently formulated Doubling Nature Vision endorsed by Council's across Peterborough and Cambridgeshire. If a minimum of 10% net gain is considered to be not proposed (or it is not clear what the deliverable and enforceable gain is to be, if any), then a decision maker, in applying national and local policy, will likely conclude that the planning application is not achieving such policy, and weight against the proposal would be applied accordingly. This means there will be a good chance the development will be refused.

For the avoidance of doubt, the Council reserve the right to propose in a future update of the Peterborough Local Plan, policies to instruct a higher percentage Biodiversity Net Gain target(s) which if adopted would, under current law, take precedence over the nationally mandated 10% BNG.

A Neighbourhood Plan (as prepared by a Parish Council or other relevant neighbourhood body) may attempt to seek a higher % BNG, and if successful that would take precedent over the nationally mandated 10% BNG for proposals within the applicable neighbourhood area.

Applications exempt from requiring BNG

Whilst national policy or law is not established on this point, it is likely that certain types of development will be exempt from having to undertake mandatory BNG, further details of what will be exempt will be released in the future.

For the purpose of this guidance note, and until there is clarity nationally of those development schemes that will be exempt from mandatory BNG, the Council will therefore not require the following planning applications to make provision for BNG. These exemptions are influenced by the BNG consultation document issued by Defra in January 2022. Of course, even if exempt, the Council will still welcome BNG provision if proposed.

- Small scale developments below a 'de minimis' threshold, which we have determined in Peterborough to be a red line application boundary below 20m².
- Householder applications (such as a house extension).
- Change of use applications (which involve no new floorspace).
- Applications exclusively for biodiversity net gain.

Please note that being exempt from BNG does not mean the development is exempt from wider nature related policy requirements, such as protected species, trees or habitats.

Making Sure a Developer Implements BNG

Once a planning application is granted planning permission by a local council, that permission will always be accompanied by a set of 'planning conditions'. These conditions make it clear exactly what the developer must do, when construction takes place. Sometimes, usually larger developments, will also have other 'planning obligations' attached to the planning permission. These are legal agreements that the developer commits to doing, and are particularly useful, for example, for delivering infrastructure away from the actual development site.

Planning conditions and other obligations will be an essential part of delivering BNG, both at the mandatory stage and in the interim period before then.

The Environment Act is making it mandatory for all planning proposals which are required to undertake BNG (which as described above, will be the vast majority of proposals), to have a condition attached to any planning permission as follows:

“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 above requirement for a biodiversity gain plan (see section later on) is not yet mandatory (again, this is expected in late 2023), but best practice in the interim period is to implement a similar arrangement.

In Peterborough, therefore, in the interim period prior to mandatory BNG, an application should include either:

- All necessary information in order to determine whether a net gain will be achieved, and if so, the Council will include a suitably worded condition (and/or where necessary require some other planning obligation or legal agreement) to secure the delivery of the proposed gain;

or

- Sufficient information to give confidence to the decision maker that a net gain will be possible, but the details are reserved to a later date. If so, the above wording contained in the Act will be used as a condition attached to the planning permission.

Calculating and presenting BNG

Once mandatory, a crucial part of BNG is the biodiversity metric. The Environment Act requires government to publish such a metric, for use in association with BNG. The metric is a habitat-based approach used to assess an area's value to wildlife. The metric uses habitat features to calculate a biodiversity value.

Government have been trialling versions of a national metric, and the latest version at the time of writing is the biodiversity metric 3.1 calculation tool and user guide⁷ (21 April 2022), which is published on Natural England's Access to Evidence website. The user guide describes how to gather the information needed for the metric calculations.

You can use the biodiversity metric to calculate how a development, or a change in land management, will change the biodiversity value of a site. For example, building houses, planting a woodland or sowing a wildflower meadow. You can use the metric to:

- assess the biodiversity unit value of an area of land
- demonstrate biodiversity net gains or losses in a consistent way

- measure and account for direct impacts on biodiversity
- compare proposals for a site - such as creating or enhancing habitat on-site or off-site

It can help you design, plan and make land management decisions that take better account of biodiversity. The metric calculates the values as 'biodiversity units'. Biodiversity units are calculated using the size of the habitat, its quality and location. You should use the metric and calculator tool with ecological advice.

The Local Planning Authority will verify the accuracy of the biodiversity value calculations and consider the merits of any off-site net gain measures with reference to existing baseline data and strategies. Any scheme of Biodiversity Net Gain must include a mechanism for delivery of the target habitats, management, and monitoring of their condition, and an approach to remediation in the event of targets not being met. Where proposals are for enhancement to a designated Local Wildlife Sites or Local Nature Reserve, they must provide measurable additionality to existing management arrangements and not support management that should already be undertaken by a public body. Sites in private ownership that are in poor condition may be suitable for BNG contributions for enhancement.

These mechanisms of delivery will likely be presented within a 'biodiversity net gain plan'. A document that will become a mandatory application submission with any development that has a BNG requirement. The Environment Act has already set out 'matters' that will need to be included within a Biodiversity Net Gain Plan:

- “(a) 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,
- (b) the pre-development biodiversity value of the onsite habitat,
- (c) the post-development biodiversity value of the onsite habitat,
- (d) any registered offsite biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development,
- (e) any biodiversity credits purchased for the development, and
- (f) such other matters as the Secretary of State may by regulations specify.”

Inevitably, this is going to be a steep learning curve for both developers and councils in terms of what is expected to be published and scrutinised in a biodiversity gain plan, especially in the interim period before full guidance is published.

Nevertheless, it is important that the level of information that should be submitted in the plan should be proportionate to the development proposed. Crucially, this must be detailed and robust enough in order to establish the degree of net gain proposed, and how that net gain will be implemented, managed and monitored.

One potential useful guide is the CIEEM/IEMA/CIRIA publication “Biodiversity Net Gain Principles and Guidance for UK construction and developments (ciria.org)” 6 (2019). This is a free publication, which includes guidance for all parties involved in BNG, some good practice principles as well as technical guides. It also includes information on the ‘business case’ for including BNG in development.

A submitted biodiversity gain plan must include a mechanism for delivery of the target habitats, management and monitoring of their condition, and an approach to remediation in the event of targets not being met.

Delivering BNG: A Hierarchical Approach

The following hierarchy is required to be used by applicants for planning permission (and by subsequent decision takers on those applications), moving down the hierarchy only if the full proposed BNG has not been achieved at each stage of the hierarchy. Where a partial amount of BNG is delivered at one stage of the hierarchy, then this opportunity should be taken, and only the remaining amount of BNG to be delivered should be considered for the next stage of the hierarchy, and so on.

1.BNG within red line of development

BNG is provided within the red line of the development. Currently this is the simplest option to secure and deliver. The developer will be responsible for funding baseline assessments, drafting management plans, undertaking any approved scheme monitoring etc.

BNG best practice is to deliver on site (within the red line) and this approach is rewarded through the Defra BNG metric 3.1 However, it is recognised that on a few sites practical, sustainable ecological enhancement may not be viable.

Onsite

BNG will likely form part of a multifunctional space and may not be the primary function. For example, it could be associated with recreational space or Sustainable Urban Drainage Systems. Indeed, a key national policy aim of BNG is to improve people's access to nature. However, where public access and/or multifunctionality is proposed, this needs to be balanced against the risk of overwhelming the biodiversity intentions.

2. BNG offsite but adjacent

BNG is provided on land owned by the developer or someone else either immediately adjacent to the site or demonstrably functionally linked to the development site. This may require early engagement and agreement with third party landowners. The developer would be responsible for funding baseline assessments of land and drafting management plans. Legal and financial agreements would be required to secure delivery and monitoring.

3. BNG offsite within a priority Peterborough habitat or landscape area

The next preference is land within the priority landscapes that fall within the one of Natural Cambridgeshire's priority landscapes i.e., John Clare Countryside and the Nene Valley (within Peterborough unitary area (UA) only). Where the developer has demonstrated that offsite BNG proposal is not possible in any of the above locations they are then encouraged to explore a proposal that is contained within any of the following guidance or strategies (subject to them falling with the Peterborough UA):

Peterborough Green Infrastructure Strategy, Parish Nature Recovery Plans, Local Wildlife Sites Register and the Peterborough Habitat Opportunity Mapping.

Local Nature Recovery Strategies (LNRS)

The Environment Act introduces a statutory requirement for Local Nature Recovery Strategies (LNRS) to be produced by a responsible authority appointed by the Government. Covering the Peterborough area, the responsible authority is likely to be the Cambridgeshire-Peterborough Combined Authority. This means the Combined authority will have the responsibility to prepare a LNRS which covers the geographical area of Cambridgeshire and Peterborough. The Combined authority will likely assist by a partnership of Natural Cambridgeshire (the Local Nature Partnership) and all Local Authorities that make up the Cambridgeshire and Peterborough area. Other interested parties will be asked to support its preparation.

These strategies will be developed to map important habitat areas where there is an opportunity to improve the local environment, and in turn this will assist the delivery of BNG and other policies. Such areas are likely to be of a large and strategic scale, rather than smaller community based habitat areas.

The LNRS network will provide a framework upon which off-site non-adjacent BNG may be directed towards. When these strategies are published, any BNG proposals that align themselves with the strategies will be favoured compared to proposals which do not.

4. BNG offsite anywhere within Peterborough City Council area

BNG proposed to be provided on private land (including the developer's own land) anywhere within Peterborough UA and not immediately adjacent to the site or demonstrably ecologically functionally linked. To assist developers and prospective landowners wishing to offer land for offsite BNG, Peterborough City Council currently offer a list of relevant contacts, details of their approx. location within Peterborough, potential new habitats to be created and their potential compliance with existing strategic guidance. However, other than a very basic aerial check, such landowners and their land has not been subject to any due diligence, and Peterborough City Council takes no responsibility for the accuracy or suitability of the land that may be being proposed for off-site net gain. All such due diligence is the responsibility of the developer. Habitat Banks sell "units" of habitats already created to a developer to enable the net gain requirement to be met. Currently there are no known operational Habitat Banks in Peterborough. The biodiversity units made available through these banks will be considered at a same level of priority as biodiversity units made available elsewhere in the Peterborough area.

5. Buy Units from Habitat Bank outside of Peterborough City Council Area

This scenario allows for strategic delivery of BNG; however, it is the least desirable option as it is removed from the immediate impact of the development on both local biodiversity and the local community (it is possible that habitat bank land is adjacent to the applicants site although this is unlikely). This option will only be considered if clear evidence of steps 1-4 having been investigated and no suitable options exist.

For strategic habitat banks established prior to the proposed national register of habitat banks, the LPA will not provide an accreditation or specific endorsement. Proposed offsite BNG proposals will be reviewed on a case-by-case basis through the application process to ensure they meet the criteria outlined by Defra and follow BNG best practice principles. Habitat bank Biodiversity Unit credits will be recognised for habitat enhancement or creation in advance of development, provided the works began after January 2020 and clear baseline evidence is available. Strategic Habitat bank sites will be assessed against the following criteria:

- **Location:** Located within a recognised strategic biodiversity location, for example a Natural Cambridgeshire Priority Landscape Areas
- **Habitats:** baseline habitats are surveyed, and appropriate priority habitats are planned.
- **Scale:** Site is over 40 hectares or forms part of a 100-hectare wider priority habitat unit
- **Governance:** The site can be privately owned or managed by a public body or a non-statutory conservation provided that a minimum 30-year creation / enhancement and management plan is in place and can be secured for the proposed development through S106 or similar agreement