environmental services association

POLICY BRIEFING

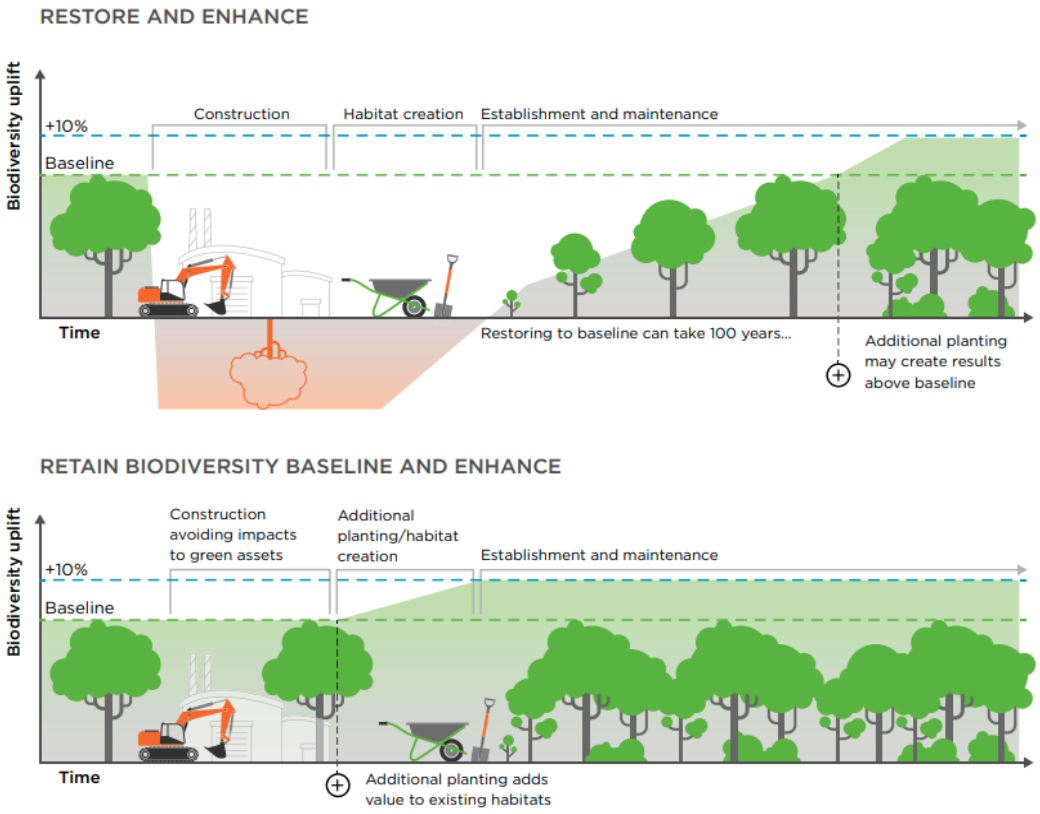
BIODIVERSITY NET GAIN IN ENGLAND (2024)

INTRODUCTION

New rules, which came into force in England on 12 February 2024, require land developers to account for the impact of projects on nature and to have a plan in place to deliver Biodiversity Net Gain (BNG) – not just mitigating their impacts but driving improvements. As with many other sectors, these new requirements will also have implications for the development of new recycling and waste treatment infrastructure.

What is Biodiversity Net Gain?

Biodiversity Net Gain (BNG) is an approach to development that aims to leave the natural environment in a measurably better state than it was beforehand, supporting the objective of the UK Government's 25 Year Environment Plan. It is a habitat-focussed target and strengthens the biodiversity duties of local planning authorities. Fundamentally, BNG aims to retain a biodiversity baseline and then restore and enhance it to make an overall positive contribution to biodiversity, as illustrated in the figure below:



POLICY AND LEGISLATION

The Environment Act 2021 provides the underpinning legislation for Biodiversity Net Gain (BNG) and mandates that new developments in England **deliver a minimum of 10% BNG as a condition of planning permission** and that habitats for wildlife are enhanced by development proposals, with a demonstrable increase in biodiversity compared to the pre-development baseline.

Biodiversity policy in the UK is a devolved matter and England is the first to legislate for mandatory BNG. Nevertheless, BNG is being considered in other UK nations and we can expect similar legislation to follow elsewhere.

In England, BNG will begin in a phased manner.

- **From 12 February:** major development sites* submitting Town and Country Planning Act (TCPA) 1990 planning applications will need to demonstrate a plan for at least 10% net gain improvement as a condition of planning consent.
- **From 2 April 2024:** small sites** will then be phased in.
- **From 2025:** BNG will extend to the Nationally Significant Infrastructure Projects (NSIP) regime (for example, a large Energy from Waste (EfW) Facility).

**Major development includes where the site area is greater than 0.5 hectares.*

***Small, non-residential sites are defined as those with <1,000 square metres of proposed floor space or sites that are smaller than 1 hectare.*

In practice, BNG will require the majority of development proposals (including 'major' waste management developments) to prepare a BNG Plan for submission to the planning authority for approval. This will likely accompany an application for planning permission, showing how a development scheme can secure a minimum 10% BNG along with undertakings to ensure habitats are legally secured and maintained for at least 30 years.

This minimum 10% BNG will need to be calculated to a standardised format using the Government's statutory *Biodiversity Metric*. This essentially scores the biodiversity value of a habitat on a development site before and after development, allowing developers to determine whether post-development intervention measures will increase or decrease the amount of biodiversity. The metric helps inform the decision-making process to enable the 10% net gain requirement to be met, by assessing any potential decrease.

Typically, a submitted BNG plan would be in line with government's Biodiversity Gain Hierarchy, which requires:

- For on-site habitats which have a medium, high and very high distinctiveness (a score of 4 of more according to the statutory biodiversity metric):
    - the avoidance of adverse effects
    - if unavoidable, the mitigation of those effects

- For on-site habitats adversely affected by development, compensate for the effect by prioritising in order:
    - Enhancement of biodiversity on-site
    - Creation of new on-site habitats
    - Allocation of registered off-site biodiversity gains
    - As a last resort, to prevent undue delays, the purchase of biodiversity credits where it can be demonstrated that it has not been possible to achieve BNG through the available on-site and off-site options.

A sequential approach would likely apply in practice. It is also worth noting that BNG will apply in addition to, and not be a substitute for, pre-existing planning policy requirements relating to habitat protection.

BNG AND OUR SECTOR

The recycling and waste treatment industry has long played an important role in addressing the global ecological crisis. Being more efficient with resources helps to reduce, or even avoid, biodiversity loss associated with the extraction and processing of virgin material.

In recognition of the current and potential role of our sector, the ESA convened a Biodiversity Working Group in 2021 and published sector-specific **best practice** guidance in 2022. The group aims to develop monitoring, reporting and governance protocols to track performance in due course. In this vein, the ESA has already published a **Nature Positive Toolkit**

BNG: challenges and opportunities

As both landowners and developers of recycling and waste treatment facilities, BNG is an important policy change for the industry which presents a number of opportunities and challenges.

Impacts of BNG on operators will vary depending on a range of factors including location and size of development; individual local authority requirements; and the type of sites and facilities within a company's property or investment portfolio.

Opportunities

Enhances the credentials of waste management planning applications

BNG provides ESA members with the opportunity to articulate and more clearly evidence how waste management development proposals are placing minimal impact on the environment and how protection of nature] can be incorporated into development planning.

Members can demonstrate their commitment to BNG by going beyond the 10% compliance and prioritising on-site restoration and enhancement.

Existing land assets could be used to discharge BNG obligations

Closed landfill sites have the potential to become 'biodiversity banks' with land set aside to fulfil a company's own BNG requirements related to its other development projects, or to become registered with Natural England to allow the site to be used to discharge third party BNG obligations (through their purchase of biodiversity units). **Statutory biodiversity credit prices** range from £42,000 to £650,000 depending on the distinctiveness of the habitat, subject to review every 6 months.

It is important to note that a site which is already habitat rich (such as a restored landfill site) would have to be further improved to meet BNG requirements. The existing baseline (the biodiversity value of the onsite habitat as before January 2020 if degradation has already taken place since then) condition could not simply be 'protected' and it would need to be shown to generate uplift.

Early engagement to incorporate nature into proposals

By integrating on-site BNG delivery in project designs from the outset, developers will have the opportunity to be creative about incorporating nature into their projects.

Steps should be taken to identify the BNG requirements of a development proposal as early as possible, ideally at the site-acquisition stage. While the biodiversity value baseline would not need to be calculated until the planning application stage, early evaluation of the 10% requirement would be advisable along with consideration on its delivery (e.g. integrated into scheme design on-site, or delivered off-site).

Challenges

Delivery of BNG on or off-site

This matter has been the subject of debate and developers could find themselves under pressure from local authorities to deliver on-site BNG in line with government's Biodiversity Gain Hierarchy. However, the departure from the mitigation hierarchy allows some flexibility. Avoidance and mitigation in the first instance for on-site habitats are only required for those with medium, high or very high distinctiveness, however any habitats adversely impacted ought to prioritise enhancement and restoration on-site before allocating off-site and purchasing credits.

On-site BNG delivery may be more viable for sites where pre-development biodiversity is low or the developer does not have ready access to landbanks elsewhere, while off-site provision may be preferrable where space is constrained.

Bigger, more joined-up areas of biodiversity off-site could be more beneficial than small, fragmented areas on industrial estates. Either way, the developer would need to justify its decision within the BNG Plan in seeking the planning authority's approval.

Potential uncertainty in selling biodiversity credits

While for ESA Members there are opportunities to sell biodiversity credits, and actively start planning for implementation of BNG, this nonetheless remains an area of uncertainty.

Selling biodiversity units would come with requirements, such as maintaining the land for at least 30 years following the completion of habitat enhancement works. There are the statutory biodiversity credit prices, but it is not yet known what prices would be for the biodiversity units sold in the new off-site private market. This would need monitoring.

Potential delays in planning application process

BNG presents a potential resourcing issue for already over-stretched local authorities which could further delay determination timeframes for waste management planning applications, and with varying interpretations of the new requirements likely until the new system fully beds in.

BNG also presents an additional layer (and cost) to the planning application process, and an on-going compliance cost in maintaining habitats for 30 years. Negotiations with local authorities could potentially be lengthy and complex as terms would need to be secured (likely through a s106 agreement or similar) on the delivery of BNG, whether that be on-site, off-site or biodiversity credits.

The third option, the purchase of biodiversity credits, ought to be relatively more straightforward but, being a last resort and the Government's least preferred option, will likely be designed as the more expensive option. There is also potential for negative public perception should a developer choose to deliver BNG off-site.

PREPARE FOR BNG

To support our members, and the wider sector, in meeting the new BNG requirements, we recommend the following actions.

	Actions
1	Carefully assess how much habitat creation will be required for development schemes planned for roll out from 2024 onwards. BNG will be a mandatory requirement of the planning system for all 'major' planning applications submitted in England from **12 February 2024**, and the submitted metric will be assessed by local planning authorities at the validation stage of the planning process. Competent advice should be sought in meeting the BNG requirements, and it should be noted that the BNG assessment process and the submission of the metric to the planning authority should be done by a 'competent person' (i.e. an ecologist).
2	For companies with large land assets (such as landfill sites) a useful first step would be to assess the biodiversity baseline of those assets as potential sites to discharge your own company BNG obligations (and/or that of third-party developers through the purchase of biodiversity units).
3	Improving your organisation's familiarity with the *Biodiversity Metric* would be beneficial to help understand how biodiversity gains and losses are accounted for. The new BNG requirement will need to be delivered to the satisfaction of the relevant local authority, which can set its own requirements. Subsequently, we would recommend understanding each relevant local authority's exact requirements and to keep track of emerging local policy, bearing in mind that local authorities have discretion to require more than the minimum 10% BNG.

CONTACT

If you have any further questions about Biodiversity Net Gain (BNG) or the contents of this document, please contact Emilia Peters at the Environmental Services Association by email to [redacted]

Further ESA resources on biodiversity, including our Biodiversity Best Practice Guide and Nature Positive Toolkit, are available for free online at www.esauk.org