



Department
for Environment
Food & Rural Affairs

Consultation on Biodiversity Net Gain Regulations and Implementation



Written response from the Trees and Design Action Group (www.tdag.org.uk)

The Trees and Design Action Group (TDAG) was founded in 2007 as a not for profit and apolitical collaborative forum to promote best practice in the planning, planting and management of urban trees. TDAG was incorporated as a charitable trust in 2013.

The TDAG model was at the time of creation, and remains today, a unique and effective world leading model.

The group shares the collective vision that the location of trees, and all the benefits they bring, can be secured for future generations through strong collaboration in the planning, design, construction and management of our urban infrastructure and spaces.

The uniqueness of TDAG is that, as an organization, it crosses the boundaries associated with professional disciplines engaging with a wide range of professionals who have an interest in trees and the built environment. They include leading built environment practitioners and developers as well as organisations such as the Forestry Commission, the Woodland Trust, the Tree Council and the Community Forests. No other built environment organization in the UK provides such an effective forum or communicates with such a wide range of disciplines.

The key strength of TDAG is that those taking part in TDAG's work can do so in TDAG's name i.e., a neutral organisation with no commercial agenda influencing its guidance, proposals or actions.

TDAG has produced a series of good practice documents especially *Trees in the Townscape: A Guide for Decision Makers*; *Trees in Hard Landscapes: a guide for delivery* and is currently developing *Trees, Planning and Development: A guide for delivery* to complete a trio of documents providing a very broad understanding about the urban forest. In addition, we have produced in association with Dr Andrew Hiron at Myerscough College with support from NERC *Tree Species Selection for Green Infrastructure: a guide for specifiers* and some short guidance documents *First Steps in Urban Air Quality*, *Urban Heat* and *First Steps in Valuing Trees and Green Infrastructure*.

In preparing this consultation response the Trees and Design Action Group has liaised with a number of organisations including IEMA, the ICF, the Landscape Institute, the RTPI, the Green Infrastructure Partnership and the Woodland Trust as well as with a wide range of our members – and found that we all had many concerns in common and some of these are reflected in the text below.

We will respond below by outlining some general concerns and comments and then by focusing on particular issues relating to trees, especially urban trees.

We, of course, support that concept of BNG and are comments are made in the spirit of wanting the outcomes to be as effective as they need to be, given the present state of nature in the UK.

Context – where we are now?

- We regard climate and ecological breakdown, social and economic deprivation and the impact of all these on human health as interconnected issues that should all be addressed together.
- The UK is one of the most nature deprived countries in the world and so every opportunity must be taken to restore biodiversity and the many ecosystem services that we depend on.
- This means, of course, that the extensive biodiversity restoration required will be more than the 10% net gain from new development and more than off-site solutions (as a last resort) such as 'habitat banks will provide. This is a discussion requiring a comprehensive review, understanding and mapping of land use – beyond the scope of this consultation and will, hopefully be included in the Nature Recovery Green Paper now also out for consultation.
- Equally individual local authorities can set their own percentage of net gain above and beyond the 10% required in the Environment Act. This could be beneficial in improving biodiversity in areas of greatest need, if the local authorities had the confidence and sufficient resources to impose this – but this depends on higher levels of skills and competencies in local authorities.
- 'Levelling up' and the need for healthy living places for all is critical and, the 2018 BNG consultation included *creating better places for local communities*. This needs to be retained in all considerations of BNG in new developments.
- It is vital that all new housing developments and living places should provide the necessary public goods of green space, trees and canopy cover, increased biodiversity and these should be assessed and put into place at site allocation stage thus setting out clearly what is required from the development and providing a level playing field for the developer to undertake costings from site purchase to completion and thus avoiding negotiations about viability.
- BNG should also be considered alongside, not just the 'Natural Environment appendices, which should include water, flooding etc, but also a wider range of social and economic issues.
- BNG should also take into consideration, and be a consideration for, the National Model Design Code e.g., the RTPI's research '*Cracking the Code: How design codes can contribute to net-zero and nature's recovery*' was conducted in partnership with the RSPB and led by planners at independent consultancy LDA Design. <https://www.rtpi.org.uk/news/2022/march/new-developments-must-start-with-net-zero-and-nature-recovery-says-rtpi-and-rspb/>

- Generally, there needs to be an integrated approach across a range of strategies and policies to ensure the most beneficial BNG in each location.
- BNG cannot be achieved in isolated pockets, but should be part of local improvement plans alongside nature recovery strategies (and include water management, public access, active travel routes etc) – so that increasing biodiversity is ever extending...like rolling a snowball from small beginnings!
- There appears to be an appetite for local landscape structure plans which offer a graphical vision of what an area could be like in, say, 20 years including identifying the areas which would offer the maximum BNG. This could be useful to communicate better with developers, communities, political leaders et al.
- Protecting what we already have: there is no point in planting more if we destroy what we have. There should be more emphasis on the mitigation hierarchy and the need to achieve continuous improvement and biodiversity increase.
- Nationally significant infrastructure projects (NSIPS) have an important role in achieving greater biodiversity net gain that 10% and provide the opportunity for integration with nature recovery networks. The ambition for infrastructure projects and linear routes should ensure that as much BNG is achieved as possible.

What is missing?

There is as yet no guidance or secondary legislation and, surely, this needs to be clarified and resolved if there are to be meaningful responses to this consultation and implementation of BNG?

GENERAL CONCERNS

- **Baseline data:** establishing independent and accurate baseline data so that net gain can be correctly assessed and quantified.
At the moment the intention is for developers to *set out on-site and off-site measures in a 'biodiversity gain plan'*. *We intend to align this plan submission process with the digitisation of the planning system when this is possible.*" (Page 16)
How can we ensure that this is accurate and that sites have not been cleared before planning permission is applied for? We know that this currently happens with existing trees on development sites.
- **30-year timescale:** a good starting point but, if we are to really achieve nature recovery, then all biodiversity gained should be permanent and not potentially expendable after 30 years. Trees for example are just beginning to deliver significant ecosystem services from 30 years onwards.

As a first step to improve on the timescale, we support the approach suggested by IEMA about concerns that it is not possible to do anything longer than 30 years even if that is preferred. So, recognising that a time boundary is required (for reassurance for those involved, for financial reasons, for measurable reasons) there should be a mandatory review after 30 years (not for household applications or single builds). This allows for a review (always a good thing), the option right at the start to say you want to commit to improved biodiversity in perpetuity (and do this by reviewing and renewing every 30 years), and the option, even if you only were thinking 30 years in the first instance, to change your mind and go for longer.

- **Biodiversity Net Gain register:** if this is only current for each project for 30 years, can biodiversity net gain be added to the register...and then removed after 30 years? In which case, how do we know that we are actually achieving long term biodiversity net gain into the long-term future?
- **Exemptions to date:** (as yet we don't know what might be included in secondary legislation). All we know is that: (page 20) *Any exemption from mandatory biodiversity net gain would not prevent planning authorities requiring biodiversity gains to be delivered by exempted developments in line with local or nationally set planning policy.*

We support the approach suggested by IEMA about the need to keep things consistent and therefore simpler – so 10% net gain for everybody with Local Authorities being able to except or adjust for householder applications.

Householders' extensions:

- Householders' extensions. Under permitted development these can be significant in terms on garden space given the benefits of gardens, as demonstrated by RHS research, for nature and people.
- Basement extensions continuing into garden space area is also a concern as existing gardens are removed and unlikely to be replaced in a way that enhances biodiversity.
- We reiterate the points raise by IEMA above, i.e. to keep things consistent and required 10% net gain for all projects.

Permitted development:

Potential area for concern as PDR can enable effective change of use and, particularly in the case of change of use to housing, how to ensure adequate provision of access to nature in these cases?

De minimis:

This applies to sites of low and medium ecological value and the Small Sites Metric would be applicable here. Again, all developments should aim to provide access to nature and all opportunities for increasing biodiversity are needed.

• **Brownfield sites:**

These are not exempt, but brownfield sites can sometimes be very rich in biodiversity and should, perhaps become urban nature spaces for people and wildlife. If they are developed, then there will be a loss of biodiversity. Will the net gain, which could be forced off site, account for what has been lost + 10%?

• **BNG gained, but greenspace lost:**

It is very important that solving one problem does not create another. Research from the University of Kent showed that a 10% biodiversity uplift resulted in a 34% reduction in green space – both are needed!

<https://www.kent.ac.uk/news/environment/29240/expert-comment-transformative-action-on-biodiversity-required-from-government>

and

<https://www.theguardian.com/environment/2021/jul/21/biodiversity-metric-algorithm-natural-england-developers-blight-valuable-habitats-aoe>

• **Potential 'get-out' clauses:**

- Off-site should be a last resource when it comes to providing BNG on development sites, as all developments should provide access to nature. Off-site would need to be carefully circumscribed and relate to appropriate land use – investors should not buy land for BNG without consideration of appropriate use of that land.

- Habitat banks – these need careful consideration and oversight – who will manage these and their locations...the local authority? How will these relate to the nature recovery network and strategies?
- Statutory biodiversity credits – these are described as a 'last resort' option, but how easy is it to argue the case that they are the most appropriate option?
- **Stacking:**
 - How will double and triple accounting be avoided? Will additionality be the test?
 - Stacking is also practically challenging, including when ensuring a transparent approach – and there is significant risk that BNG would not provide additionality.
- **Additionality (Q49)**
This is an important question and there must be a transparent process that is easy to understand.
- **Selling excess units (Q38)**
 - We support the Woodland Trust and others in strongly disagreeing with this proposal. There is so much uncertainty in whether or not genuine gains for nature will be delivered that we need to take promises of additional gains where we can.
 - Government is supposed to deliver the biodiversity units, presumably it will commission others to do so – who will do this, who has the capacity to do this? At the moment government is falling far short of tree planting targets, so unlikely that they will do better with delivering biodiversity units.
- **Delivery, monitoring and enforcement:**
 - At the moment £4 million has been allocated to local authorities - £13K per authority for the pre-planning (not operational) stage. What resources and how many people will a local authority need to ensure that BNG is really delivered and monitored as it will need to be to have any lasting impact?
 - What scope is there to review consented development completed 3, 5, 10 or 20 years ago on the ground to assess whether environmental mitigation that was approved was actually implemented or successful?
- **Combining net gain initiatives**
How will BNG be combined with other types of net gain and initiatives such as the carbon code or the emerging E.L.M.S payments? There is an opportunity to bring blended benefits of the various 'gains' without double accounting.
- **What can constitute BNG?**
 - Q44A – should SuDS count as BNG for example?
 - There seems to be too much emphasis on native species, not cultivars, but research shows that domestic gardens (usually full of non-natives) can be very rich in biodiversity – so BNG credits will go to farmers and those who plant native species and miss out on this important aspect of biodiversity. At the same time cultivar plants are going to be critical in adapting to and mitigating climate change.

- **Measurement:**
 - Is Metric 3.0 already being revised?
 - How will the Metric account for rewilding and natural regeneration?
- **BNG habitat locations**
 - BNG only requires consideration of habitats within the site boundary, so the Metric would not allow waterways to compensate or deliver quality net gain for habitats that are likely to be most affected by the development.
 - BNG also doesn't require developers to consider impact of developments on habitats outside the site boundary.
- **Skills in planning departments**
The relevant education/training/upskilling will be critical if BNG is going to be seriously and effectively delivered.

TREES

General concerns relating to trees

- All local authorities should have adopted comprehensive tree (and woodland) strategies which align with nature recovery strategies and the role of trees in delivering BNG.
- All trees must be accounted for as individual trees as well as trees in hedges and on linear routes.
- There needs to be greater clarity on native versus non-native trees especially for urban locations and future climate change impacts (given the long life of trees). To what extent should the +10% BNG target take precedence over other environmental policies and design guidance?

Specific concerns about BNG and trees

Some local authorities are already working with BNG on development sites and concern has been expressed that urban trees and new planting is being consistently undervalued.

Metric 3.0:

The metric and trees:

The metric 3.0 for calculating BNG is not fit for purpose when it comes to trees (it is better than version 2.0, though.... But still not quite there yet!!). This needs to change within the next 2 years (i.e., transition period before BNG requirement featured in Environment Act must be complied with by all).

For example:

1/ There are some obvious mistakes, such as confusing diameter at breast height and circumference at breast height (second column in table for assessing tree size)

2/ There are some poor choices, that reflect lack of Arboricultural knowledge among those who developed the metric:

- assessing tree size: why small/medium/large? why refer to RPA?? What does the RPA have to do with biodiversity value??? Why not use actual canopy measurement, as plotted on tree survey???
- assessing tree condition: why is the default position that trees are in poor conditions?

3/ There are some grey areas in deciding whether a set of trees are a tree line or should be approached as individual trees – for sites that are in suburban/peri-urban settings (i.e., not clearly urban). This can make a difference of a factor 8 in how much biodiversity units one finds in the baseline calculations...

The Metric and woodland options:

The Metric does not weigh woodland options appropriately.

The Metric and species choice:

Woodland options are discounted over 30 years and so grassland, for example, scores better than new woodland - ?

The Metric and BS5837 surveys

How do the two relate? Groups of trees? Recorded hedgerows?

The Metric and Arboricultural Impact Assessment

Should BNG values be included here?

Arboricultural and ecological skills and competence:

- Skills issues including local authority resourcing and the fact that the 'competent person' carrying out a tree assessment should be a qualified tree professional e.g., not an ecologist

- Knowledge and skills needed for assessing how newly created habitats will deliver for biodiversity

Knowledge of tree species and biodiversity value

Is further research needed on the ecological value of many tree species and especially those that will be more resilient to the increasing impacts of climate change?

Irreplaceable habitats (Q16): We support the Woodland Trust's comments here:

Useful information on trees and BNG

Bristol Tree Forum

<https://bristoltreeforum.org/bng-urban-trees/>

South Cambridgeshire District Council is launching a showcase for the effective delivery of Biodiversity Net Gain from new developments,

<https://www.cambridgeshire.gov.uk/news/council-launches-innovative-new-scheme-to-help-developers-offset-biodiversity-net-gain-requirements>

TDAG is happy to discuss any issues relating to trees and BNG if helpful.

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