

## Guidance

# Biodiversity net gain

Planning practice guidance on biodiversity net gain. Biodiversity net gain is a way of creating and improving biodiversity by requiring development to have a positive impact ('net gain') on biodiversity.

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### Applies to England

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## About biodiversity gain

### What is the statutory framework for biodiversity net gain?

Biodiversity net gain is a way of creating and improving biodiversity by requiring development to have a positive impact ('net gain') on biodiversity.

In England, biodiversity net gain is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021) (<https://www.legislation.gov.uk/ukpga/2021/30/schedule/14/enacted>). This statutory framework is referred to as 'biodiversity net gain' in Planning Practice Guidance to distinguish it from other or more general biodiversity gains.

Under the statutory framework for biodiversity net gain, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met ("the biodiversity gain condition"). This objective is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat. This increase can be achieved through onsite biodiversity gains, registered offsite biodiversity gains or statutory biodiversity credits.

The biodiversity gain condition is a pre-commencement condition: once planning permission has been granted, a Biodiversity Gain Plan must be submitted and approved by the planning authority before commencement of the development. There are exemptions and transitional arrangements which disapply the condition from certain planning permissions, as well as special modifications for planning permissions for phased development and the treatment of irreplaceable habitats.

The statutory framework for biodiversity net gain also includes provisions about information requirements for planning applications and the treatment of the condition on decision notices on the grant of planning permission.

The relevant primary legislation for the statutory framework for biodiversity net gain is principally set out under Schedule 7A (Biodiversity Gain in England) of the Town and Country Planning Act 1990

(<https://www.legislation.gov.uk/ukpga/2021/30/schedule/14/enacted>). This legislation was inserted into the 1990 Act by Schedule 14 of the Environment Act 2021, and was amended by the Levelling Up and Regeneration Act 2023. The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024 made consequential amendments to other parts of the 1990 Act.

The biodiversity net gain regulations most directly relevant to planning are:

- The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024 (<https://www.legislation.gov.uk/uksi/2024/45/contents/made>) which commence biodiversity net gain for most types of new planning applications and provides transitional arrangements for section 73 permissions.
- The Biodiversity Gain Requirements (Exemptions) Regulations 2024 (<https://www.legislation.gov.uk/uksi/2024/47/contents/made>) which prescribe exemptions for categories of development to which biodiversity net gain does not apply.
- The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 (<https://www.legislation.gov.uk/uksi/2024/50/contents/made>) which amend the Town and Country Planning (Development Management Procedure) (England) Order 2015 and the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 to include provisions in respect of applications for planning permission and the submission and

determination of Biodiversity Gain Plans, as well as modifications of Schedule 7A of the Town and Country Planning Act 1990 for phased development.

- The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024 (<https://www.legislation.gov.uk/ukxi/2024/48/contents/made>) which set out the modifications for irreplaceable habitat.

In addition, there are regulations for the Biodiversity Gain Site register established under section 100 of the Environment Act 2021

(<https://www.legislation.gov.uk/ukpga/2021/30/section/100/enacted>) for registered offsite biodiversity gains.

Paragraph: 001 Reference ID: 74-001-20240214

### **How is biodiversity net gain applied through the planning process?**

The statutory framework for biodiversity net gain has been designed as a post-permission matter to ensure that the biodiversity gain objective of achieving at least a 10% gain in biodiversity value will be met for development granted planning permission. Once planning permission has been granted, unless exempt, a Biodiversity Gain Plan must be submitted and approved prior to the commencement of that development. This Plan is the mechanism to ensure that the biodiversity gain objective is met and in particular:

- the post-development biodiversity value of the development's onsite habitat is accurate based on the approved plans and drawings for the development;
- any offsite biodiversity gains have been registered and allocated to the development; and
- biodiversity credits, if they are necessary for the development, have been purchased.

Biodiversity net gain, however, is not just a post-permission matter. To ensure the biodiversity gain objective is met and the condition can be discharged successfully, it is important biodiversity net gain is considered throughout the planning

process. The National Planning Policy Framework emphasises that plans should identify and pursue opportunities for securing measurable net gains for biodiversity, and plans and decisions should minimise impacts and provide net gains for biodiversity.

Specifically, prior to the submission of a relevant planning application, applicants are encouraged to consider biodiversity net gain early in the development process and factor it into site selection and design. Where appropriate, they should discuss the biodiversity net gain requirements for their development upfront with the relevant local planning authority utilising any pre-application advice services offered by them. This could help establish whether development proposals would be subject to biodiversity net gain and, if they are, enable feedback on the proposed strategy for achieving the biodiversity gain objective and consideration of the Biodiversity Gain Hierarchy to inform the design of the proposals.

When a planning application is submitted for development which the applicant believes is subject to the biodiversity gain condition, there are minimum national information requirements related to biodiversity net gain which the applicant must provide. These requirements will allow consideration of existing habitat baselines for relevant applications so there is a common understanding about the pre-development biodiversity value of the development's onsite habitat at this stage. Local planning authorities may also seek further information, where it is appropriate to do so, about the proposed approach to meeting the biodiversity gain objective for the development.

When determining a planning application, biodiversity net gain will often be a material consideration, and local planning authorities will want to consider, where relevant, whether the biodiversity gain condition is capable of being discharged successfully through the imposition of conditions and agreement of section 106 planning obligations to secure significant onsite biodiversity gains and registered offsite biodiversity gains.

Finally, following the approval of the Biodiversity Gain Plan and commencement of development, there will be an important role for local planning authorities to monitor the implementation of biodiversity net gain Plan and, where appropriate, take enforcement action if commitments relating to the Plan are not met.

Paragraph: 002 Reference ID: 74-002-20240214

### **Which planning permissions are in scope and which are exempt from biodiversity net gain?**

While every grant of planning permission in England is deemed to have been granted subject to the biodiversity gain condition, commencement and transitional arrangements, as well as exemptions, mean that certain permissions are not subject to biodiversity net gain.

Biodiversity net gain has only been commenced for planning permissions granted in respect to an application made on or after 12 February 2024. Permissions granted for applications made before this date are not subject to biodiversity net gain.

Biodiversity net gain does not apply to:

- retrospective planning permissions made under section 73A; and
- section 73 permissions where the original permission which the section 73 relates to was either granted before 12 February 2024 or the application for the original permission was made before 12 February 2024

Biodiversity net gain has not been commenced yet for planning permissions which have been granted through other routes to permissions. These include:

- Local development orders;
- Simplified Planning Zones;
- Neighbourhood development orders;
- Successful enforcement appeals; and
- Deemed planning permission.

The grant of permission in principle is not within the scope of biodiversity net gain (as it is not a grant of planning permission), but the subsequent technical details consent (as a grant of planning permission) would be subject to the biodiversity gain condition.

The approval of reserved matters for outline planning permissions is not subject to the biodiversity gain condition (as it is not a grant of planning permission).

There are specific exemptions from biodiversity net gain for certain types of development. The exemptions are set out in paragraph 17 of Schedule 7A of the Town and Country Planning Act 1990 (<https://www.legislation.gov.uk/ukpga/2021/30/schedule/14/enacted>) and the Biodiversity Gain Requirements (Exemptions) Regulations 2024. (<https://www.legislation.gov.uk/uksi/2024/47/contents/made>)

The biodiversity gain condition does not apply to the following types of development:

- **Temporary exemption for non-major development (until April 2024).** Development which is not defined as major development under Article 2 Town and Country Planning (Development Management Procedure) (England) Order 2015 (<https://www.legislation.gov.uk/uksi/2015/595/article/2>) is exempt until 2 April 2024. The exemption will continue to apply to section 73 permissions where the original permission which the section 73 relates to was subject to this temporary exemption.
- **Householder development.** Development which is subject of a householder application as defined within Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (<https://www.legislation.gov.uk/uksi/2015/595/article/2>).
- **Development granted planning permission by a development order under section 59.** This includes permitted development rights.
- **Development subject to the de minimis exemption.** Development that does not impact a

priority habitat and impacts less than 25 square metres (e.g. 5m by 5m) of onsite habitat, or 5 metres of linear habitats such as hedgerows.

- **Self-build and custom build development.** Development which:
  - consists of no more than 9 dwellings, and
  - is carried out on a site which has an area no larger than 0.5 hectares, and
  - consists exclusively of dwellings which are self-build or custom housebuilding as defined in section 1(A1) of the Self-build and Custom Housebuilding Act 2015 (<https://www.legislation.gov.uk/ukpga/2015/17/section/1>).
- **Urgent Crown development granted permission under section 293A of the Town and Country Planning Act 1990.**
- **Development of a biodiversity gain site.** Development which is undertaken solely or mainly for the purpose of fulfilling, in whole or in part, the biodiversity gain condition which applies in relation to another development.
- **Development related to the high speed railway transport network.** Development forming part of, or ancillary to, the high speed railway transport network comprising connections between all or any of the places or parts of the transport network specified in section 1(2) of the High Speed Rail (Preparation) Act 2013 (<https://www.legislation.gov.uk/ukpga/2013/31/section/1>)

Paragraph: 003 Reference ID: 74-003-20240214

### **What development does the de minimis exemption apply to? And how should it be assessed?**

The de minimis exemption only applies to development if the following two conditions are met:

- the development must not impact on any onsite priority habitat; and
- if there is an impact on other onsite habitat, that impact must be on less than 25 square metres (e.g. less than a 5m by 5m square) of onsite



habitat with a biodiversity value greater than zero and on less than 5 metres of onsite linear habitat (such as a hedgerow)

Onsite habitat is impacted by the development if it is lost or degraded such that there is a decrease in the biodiversity value of that habitat (as determined by the statutory biodiversity metric). A decrease in biodiversity value occurs where there is a change in habitat type, extent, or condition which results in a negative unit score. A priority habitat is a habitat listed by the Secretary of State for Environment, Food and Rural Affairs under section 41 of the Natural Environment and Rural Communities Act 2006

(<https://www.legislation.gov.uk/ukpga/2006/16/section/41>)

The exemption is designed to cover planning permissions for:

- Development which only impacts on onsite habitat with a biodiversity value of zero so no gain would be required if there was no exemption;
- Developments where there is only a de minimis impact on other onsite habitat to ensure biodiversity net gain is applied proportionally;
- Minor development in established areas of habitat where the development would have less than 25 square metres (or less than 5 metres for linear habitat) impact on this habitat (unless priority habitat); and
- Change of uses to development where there is no or only a de minimis impact on onsite habitat.

An applicant, if they consider their development proposal would be within the scope of the de minimis exemption, must state in their planning application form that they consider the proposal to be subject to the de minimis exemption and provide reasons for this. This will enable the local planning authority to consider whether the proposal is genuinely exempt at the validation stage. They will want to consider particularly carefully those statements stating that a development proposal will be subject to a de minimis exemption where the proposal is for substantive building works and there

are significant areas of onsite habitat (where the distinctiveness is higher than very low) within the red line boundary.

If it is clear the development proposal is not exempt, the pre-development biodiversity value will need to be provided for the application, and, if planning permission is granted, a Biodiversity Gain Plan must be submitted and approved before commencement of the development.

When providing reasons for the de minimis exemption, an applicant should provide sufficient evidence to support their justification. In cases where the development would be smaller than 25 square metres, the description of development, existing and proposed site plans, and the development's area size (in square metres) may be sufficient evidence.

In other cases where it cannot be clearly demonstrated through site plans and descriptions whether an onsite habitat would be lost or degraded by the development, applicants are strongly encouraged to provide a completed metric for the pre-development and post-development value for the onsite habitat and clear plans identifying the nature and size of this pre-development onsite habitat and how much of it will be impacted by the development. This will be particularly important where the development involves multiple small-scale impacts on onsite habitat, especially if the onsite habitat covers a large area, to avoid the cumulative effect on onsite habitat being more than the de minimis threshold.

Some illustrative scenarios where the de minimis exemption would apply are set out below:

### **Scenario 1: A development solely on a sealed surface**

The development is a new commercial building on an existing car park. There are no other habitats (e.g. a green verge or tree) within the red line boundary of the development. The development would be exempted from biodiversity net gain by the de minimis exemption as:

- the development does not impact on any onsite priority habitat;
- the car park would be classified as developed land: sealed surface which has a biodiversity value of zero under the statutory biodiversity metric; and
- there are no other onsite habitats.

### **Scenario 2: A development which only marginally impacts on a garden habitat**

The development is a new residential dwelling largely on the footprint of an existing dwelling which will be demolished but there would be a small loss of a grass lawn (of 20 square metres) in the garden. The red line boundary for the development includes two large trees at the end of the garden which are not affected by the development. The development would be exempted from biodiversity net gain by the de minimis exemption as:

- the development does not impact on any onsite priority habitat;
- the existing dwelling would be classified as a developed land: sealed surface which has a biodiversity value of zero under the statutory biodiversity metric;
- the grass lawn would be classified as vegetated garden and would have a biodiversity value of greater than zero under the statutory biodiversity metric but the size of this habitat lost is less than 25 square metres; and
- the trees within the red line boundary would be classified as individual urban trees and would have a biodiversity value of greater than zero under the statutory biodiversity metric but are not impacted by the development.

### **Scenario 3: A very small development within an established wood**

The development is a new telecommunications mast (taking up 5 square metres of land) within mixed woodland. The development would be exempted from biodiversity net gain by the de minimis exemption as:

- the development does not impact on any onsite priority habitat;
- the woodland would be classified as other woodland: mixed and would have a biodiversity value of greater than zero under the statutory biodiversity metric, but the size of the habitat impacted is less than 25 square metres.

Paragraph: 004 Reference ID: 74-004-20240214

### **How is the biodiversity gain objective of 10% gain calculated?**

The biodiversity gain objective of at least a 10% gain is measured against the pre-development biodiversity value of the onsite habitat for the development. The objective is met if the post-development biodiversity value is exceeded by at least 10%. This 10% gain is calculated in reference to:

- the projected biodiversity value of the onsite habitat at the time the development is completed (“the post development biodiversity value of the onsite habitat”);
- the biodiversity value in relation to the development of any registered offsite biodiversity gain allocated to the development; and
- the biodiversity value of any biodiversity credits purchased for the development.

The statutory biodiversity metric is used to calculate the pre-development and post-development biodiversity value of the development’s onsite habitat, as well as the biodiversity value for offsite biodiversity gains and biodiversity credits. It uses habitat information to generate “biodiversity units”, a proxy measure for biodiversity value. The statutory biodiversity metric data value inputs include habitat type, size, distinctiveness, condition, and its location in the local area.

The statutory biodiversity metric calculation tools must be submitted as part of the Biodiversity Gain Plan to demonstrate the statutory biodiversity metric formula has been accurately applied.

The Department for Environment, Food and Rural Affairs have published [guidance on the statutory biodiversity metric and information on how it is used](https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development) (<https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development>).

Paragraph: 005 Reference ID: 74-005-20240214

## **How should plan-makers deal with biodiversity net gain?**

Paragraph 185 of the National Planning Policy Framework states, to protect and enhance biodiversity and geodiversity, plans should among other things identify and pursue opportunities for securing measurable net gains for biodiversity. Planning authorities and neighbourhood planning bodies when preparing new policies in line with paragraph 185 will want to take account of the statutory framework for biodiversity net gain.

Plan-makers should be aware of the statutory framework for biodiversity net gain, but they do not need to include policies which duplicate the detailed provisions of this statutory framework. It will also be inappropriate for plans or supplementary planning documents to include policies or guidance which are incompatible with this framework, for instance by applying biodiversity net gain to exempt categories of development or encouraging the use of a different biodiversity metric or biodiversity gain hierarchy.

Plan-makers can complement the statutory framework for biodiversity net gain by, for instance, including policies which support appropriate local offsite biodiversity sites, including whether specific allocated sites for development should include biodiversity enhancements to support other developments meet their net gain objectives in line with Local Nature Recovery Strategies.

Plan-makers should not seek a higher percentage than the statutory objective of 10% biodiversity net gain, either on an area-wide basis or for specific allocations for development unless justified. To justify such policies they will need to be evidenced

including as to local need for a higher percentage, local opportunities for a higher percentage and any impacts on viability for development. Consideration will also need to be given to how the policy will be implemented.

Paragraph: 006 Reference ID: 74-006-20240214

### **How will biodiversity net gain be effectively monitored and enforced?**

Failure to comply with the biodiversity gain condition by commencing development without approval of the Biodiversity Gain Plan will be a breach of planning control. Local planning authorities have a range of [planning enforcement powers \(https://www.gov.uk/guidance/ensuring-effective-enforcement\)](https://www.gov.uk/guidance/ensuring-effective-enforcement) and have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their area.

Effective enforcement is important to tackle breaches of planning control and maintain integrity of the decision making process. Local planning authorities are already encouraged to prepare local enforcement plans, and set out the priorities for enforcement action, and they may want to update these to reflect the introduction of biodiversity net gain. This could cover both the initial delivery and ongoing management and maintenance mechanisms to assist monitoring of gains in the longer term.

Appropriately worded planning conditions and planning obligations would also help achieve effective monitoring and enforcement of biodiversity net gain, particularly in relation to the maintenance and monitoring of significant onsite habitat enhancements and registered offsite biodiversity gains.

Paragraph: 007 Reference ID: 74-007-20240214

### **What is the Biodiversity Gain Hierarchy and how does it relate to the mitigation hierarchy for planning decisions where there is a significant harm to biodiversity?**

The Biodiversity Gain Hierarchy and its effect for the purpose of the statutory framework for biodiversity net gain is set out in Articles 37A and 37D of the Town and Country Planning (Development Management Procedure) (England) Order 2015. This hierarchy (which does not apply to irreplaceable habitats) sets out a list of priority actions:

- first, in relation to onsite habitats which have a medium, high and very high distinctiveness (a score of four or more according to the statutory biodiversity metric), the avoidance of adverse effects from the development and, if they cannot be avoided, the mitigation of those effects; and
- then, in relation to all onsite habitats which are adversely affected by the development, the adverse effect should be compensated by prioritising in order, where possible, the enhancement of existing onsite habitats, creation of new onsite habitats, allocation of registered offsite gains and finally the purchase of biodiversity credits.

Planning authorities must take into account how the Biodiversity Gain Hierarchy has been applied and if it has not been applied the reason for that or absence of a reason when determining whether to approve the Biodiversity Gain Plan. If they decide not to approve the Plan they must give reasons for that stating the elements of the plan that are relevant to the determination.

The Biodiversity Gain Hierarchy has been designed for the purpose of the statutory framework for discharge of the Biodiversity Gain condition to reflect the habitat categories in the biodiversity metric and the type of ways that the objective of at least a 10% gain can be achieved.

The Biodiversity Gain Hierarchy is distinct from the mitigation hierarchy set out in paragraph 186(a) of the National Planning Policy Framework which states that a planning application should be refused if significant harm to biodiversity resulting from the development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort,

compensated for. How biodiversity net gain will be secured for a development may be relevant to consideration of the policy in the Framework, especially in relation to adequate mitigation and compensation.

There are also other planning policies which encourage the avoidance of the development on some important habitats which have a low distinctiveness (in the statutory metric (<https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development>)) – for instance, green open spaces and allotments.

Paragraph: 008 Reference ID: 74-008-20240214

### **How is biodiversity net gain applied to minerals development?**

Planning applications for new minerals permissions are in scope of the Statutory framework for biodiversity net gain. There are no special provisions set out in regulations for minerals applications, although there are specific provisions for planning permissions (including outline permission) that have the effect of permitting development in phases which may be relevant for many minerals applications. The provisions for phased development reflect that such development can occur over a long period of time, or full details may not be known at the time of planning permission.

Biodiversity net gain has only been commenced for planning permissions granted in respect to an application made on or after 12 February 2024. Permissions granted for applications made before this date are not subject to biodiversity net gain. Section 73 permissions where the original permission which the section 73 relates to was either granted before this date or the application for the original permission was made before this date are not in scope of biodiversity net gain.

Reviews of Old Mineral Permissions are not within scope of biodiversity net gain as they do not require



a require planning permission under the Town and Country Planning Act.

Paragraph: 009 Reference ID: 74-009-20240214

## **Biodiversity net gain: Submitting a planning application**

**What information must an applicant submit as part of a planning application, if they believe that the statutory biodiversity gain condition does not apply to the development?**

Where applicants consider that the development would not be subject to the biodiversity gain condition, Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (<https://www.legislation.gov.uk/ukxi/2015/595/article/7>) provides that the applicant must provide a statement as part of the planning application setting out the reasons why they believe this is the case.

The planning application form, prescribed by the Secretary of State, (<https://www.gov.uk/government/publications/planning-application-forms-templates-for-local-planning-authorities>) provides for these reasons to be set out. An applicant would be expected in this statement to set out what exemption(s) or transitional provision(s) apply to the development. In some cases, the exemption or transitional provision will be evident as they relate to the type of permission. For example, the planning application form for household development already includes a pre-populated statement. In other cases, evidence may need to be provided, especially for the de minimis exemption. Example scenarios are set out below.

### **Scenario 1: Application for planning permission for 'small development' before 2 April 2024**

An application for planning permission is submitted to the local planning authority on 8 March 2024. The proposed development is for the development of 9 residential units. In this scenario the applicant would set out on the planning application form that

(in their view) the biodiversity gain condition would not apply, as the proposed development benefits from the temporary exemption for ‘small development’.

## **Scenario 2: Application for householder development**

The proposed application is for a householder development, (within the meaning of “householder application” in Article 2 of the Development Management Procedure Order 2015

(<https://www.legislation.gov.uk/uksi/2015/595/article/2>))

such as the development of a side and rear extension, loft conversion, or front extension. The householder planning application form already includes a statement setting out that development subject to a householder development is exempt from the biodiversity gain condition, and the applicant would indicate on the form they accept that this is the case for the proposed development.

Paragraph: 010 Reference ID: 74-010-20240214

### **What information must an applicant submit as part of a planning application if they believe that the statutory biodiversity gain condition applies to the development?**

Where an applicant believes the development would be subject to the biodiversity gain condition, the application must be accompanied by minimum information set out in Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (<https://www.legislation.gov.uk/uksi/2015/595/article/7/made>):

- confirmation that the applicant believes that planning permission, if granted, the development would be subject to the biodiversity gain condition;
- the pre-development biodiversity value(s), either on the date of application or earlier proposed date (as appropriate);
- where the applicant proposes to use an earlier date, this proposed earlier date and the reasons for proposing that date;

- the completed metric calculation tool (<https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development>) showing the calculations of the pre-development biodiversity value of the onsite habitat on the date of application (or proposed earlier date) including the publication date of the biodiversity metric used to calculate that value;
- a statement whether activities have been carried out prior to the date of application (or earlier proposed date), that result in loss of onsite biodiversity value ('degradation'), and where they have:
  - a statement to the effect that these activities have been carried out;
  - the date immediately before these activities were carried out;
  - the pre-development biodiversity value of the onsite habitat on this date;
  - the completed metric calculation tool showing the calculations, and
  - any available supporting evidence of this;
- a description of any irreplaceable habitat (as set out in column 1 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024 (<https://www.legislation.gov.uk/uksi/2024/48/schedule/made>)) on the land to which the application relates, that exists on the date of application, (or an earlier date); and
- plan(s), drawn to an identified scale and showing the direction of North, showing onsite habitat existing on the date of application (or earlier proposed date), including any irreplaceable habitat (if applicable).

If this information has not been provided, the local planning authority will likely refuse to validate the application. Within the planning application form applicants will be asked to confirm whether this information accompanies the application. Where these details have been provided elsewhere in accompanying documents, applicants are encouraged to cross-reference to these rather than duplicate this information within the application form.

Applicants should be aware that local planning authorities may request further information relating to biodiversity net gain as part of the planning application. Further guidance is available in paragraphs 013 and 015.

Paragraph: 011 Reference ID: 74-011-20240214

### **What is the date used to calculate the onsite pre-development biodiversity value?**

As part of the planning application form, an applicant will need to identify the date being used, this is either: the date of the application; or a proposed earlier date. If the applicant proposes an earlier date, they must provide the reasons for this. This earlier proposed date cannot be a date which is before the day on which Schedule 7A came into force in relation to the development.

The person submitting the Biodiversity Gain Plan for approval and the planning authority are the only parties able to agree that this earlier date is used. This will help inform the submission of the Biodiversity Gain Plan.

Surveys of the development site to calculate the pre-development biodiversity value of the onsite habitat should ideally be done shortly before the submission of the planning application to ensure, if the relevant date is the date of the planning application, the pre-development biodiversity value is accurate. Older surveys can be used where there has been no material change to the onsite habitat when the planning application is submitted.

If there has been a material change since a survey, it should not be used.

For the purposes of the Biodiversity Gain Plan, paragraph 5 of Schedule 7A sets out that the 'relevant date' is used to calculate the pre-development biodiversity value of the onsite habitat is the biodiversity value of the onsite habitat. The relevant date is either:

- in a case in which planning permission is granted on application, the date of the application, and

- in any other case, the date on which the planning permission is granted.

An earlier date can be agreed between the person submitting the Biodiversity Gain Plan and the planning authority determining the Plan. If an earlier date is used, reasons for using this date should be provided on the planning application and the Biodiversity Gain Plan, (and Overall Biodiversity Gain Plan). Applicants are encouraged to engage with the local planning authority prior to submitting the planning application to discuss the use of or need for an earlier date, in order to avoid potential disputes later.

There are special provisions for establishing the pre-development biodiversity value of onsite habitat when loss or impact to habitats (or 'degradation') has occurred prior to the submission of a Biodiversity Gain Plan. This is in order to discourage the deliberate degradation of existing onsite habitats to reduce the pre-development biodiversity value. Further guidance is provided under paragraph 036 of this guidance

Paragraph: 012 Reference ID: 74-012-20240214

### **May local planning authorities request further information relating to biodiversity net gain as part of the planning application?**

In addition to the minimum information requirements, it may be appropriate for local planning authorities to ask for further information in order to assist the consideration of biodiversity net gain as part of the determination of the planning application, where they believe this would be material to the consideration of the application. The amount of information on these matters will vary depending on the type and scale of development, type of planning application, the onsite habitat impacted, and the extent of any significant onsite enhancements.

Local planning authorities should take a proportionate approach to these information requirements (which should be set out in their local lists) focused on only necessary additional

information, and integrated with wider information requirements on biodiversity and other environmental matters, smaller developments should generally be subject to fewer information requirements than a major development unless the development would have an adverse impact on valuable onsite habitats. For example:

- on smaller sites where the existing habitats impacted have a low biodiversity value and the scope for onsite enhancements is limited it may not be appropriate to request a substantive amount of information from applicants, and may want to rely on the minimum information requirements;
- it may be appropriate to require information on the proposed balance between onsite gains, off-site gains and biodiversity credits, for proposals involving significant onsite habitat enhancements, and potential requirements for s106 agreements;
- in some cases, further details (such as landscaping) may only be approved as a subsequent matter (for example approval of conditions following the grant of planning permission) following the grant of planning permission and if offsite gains and credits are proposed to be used, evidence is going to be required in the Biodiversity Gain Plan therefore it may not be proportionate to request all this information at the planning application stage.

There is often a strong link between onsite interventions (including the retention of distinctive onsite habitats and significant onsite enhancements) to support biodiversity net gain and wider planning policies which conserve and enhance biodiversity and protect the environment, such as urban greening policies; and an integrated approach to the provision of information is encouraged building on current practice. Local planning authorities may want to align these local information requirements wherever possible.

Paragraph: 013 Reference ID: 74-013-20240214

## **May applicants submit additional information relating to biodiversity net gain as part of the planning application?**

Some applicants may want to submit draft Biodiversity Gain Plans, including completed [metrics \(https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development\)](https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development) of the post-development value of the onsite habitat, alongside the planning application. These draft plans may be particularly helpful if there are firm proposals for onsite habitats, including landscaping plans, which can generate an accurate post-development value for the onsite habitat. However, they are likely to be incomplete and indicative in some cases.

Applicants are encouraged to engage with local planning authorities [before submitting their application \(https://www.gov.uk/guidance/before-submitting-an-application#the-value-of-pre-application-engagement\)](https://www.gov.uk/guidance/before-submitting-an-application#the-value-of-pre-application-engagement) in order to identify, understand and seek to resolve issues; this will help to improve both the efficiency and effectiveness of the planning application process, reduce issues around validation, and improve the quality of the application.

Paragraph: 014 Reference ID: 74-013-20240214

## **If planning obligations are likely to be used to secure biodiversity net gain, should the local planning authority request further information as part of the planning application?**

For the purposes of biodiversity net gain, planning obligations are one of the mechanisms under paragraph 9 of Schedule 7A necessary to secure the maintenance of significant onsite habitat enhancements for at least 30 years. They are also required to register sites for offsite gains (unless conservation covenants are used).

The purpose of planning obligations is to make development acceptable in planning terms. If planning obligations are going to be used for biodiversity net gain, it is good practice to submit information about any potential planning obligations

which may need to be entered into should the proposal be granted planning permission. For example, this may be appropriate if pre-application engagement has indicated the need for:

- significant increase of onsite biodiversity enhancements, then applicants are encouraged to provide a draft Habitat Management and Monitoring Plan as part of the application which sets out the proposals for long term maintenance of habitats to be secured through [planning condition \(https://www.gov.uk/guidance/use-of-planning-conditions#why-and-how-are-conditions-imposed\)](https://www.gov.uk/guidance/use-of-planning-conditions#why-and-how-are-conditions-imposed) or [planning obligation \(https://www.gov.uk/guidance/planning-obligations\)](https://www.gov.uk/guidance/planning-obligations); or
- an off-site biodiversity gains site specifically to provide gains for the development, then applicants are encouraged to provide the local planning authority with draft heads of terms clearly setting out the obligations that they are likely to be bound by in a [section 106 agreement \(https://www.gov.uk/guidance/planning-obligations\)](https://www.gov.uk/guidance/planning-obligations), should permission be granted.

This is something that local planning authorities may want to add to [local lists of information requirements \(https://www.gov.uk/guidance/making-an-application#Local-information-requirements\)](https://www.gov.uk/guidance/making-an-application#Local-information-requirements) if they are able to justify their inclusion in relation to any particular development.

Paragraph: 015 Reference ID: 74-015-20240214

### **How is an application under section 73 (to vary or remove a planning condition) treated?**

There are specific biodiversity net gain provisions for applications to vary conditions to existing permissions under section 73 to reflect the fact, while a section 73 permission is a new permission, it is linked to an earlier planning permission.

An application to vary a condition of a planning permission under section 73 which is made after 12 February 2024 (the commencement of the statutory framework for biodiversity net gain) is not in scope if the original permission (to which the section 73 application relates) was either granted or the



application for the original permission was made before this date.

Section 73 applications are not required to be accompanied by the minimum information requirements such as the pre-development biodiversity value of the onsite habitat for biodiversity net gain set out in Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (<https://www.legislation.gov.uk/uksi/2015/595/article/7/made>). This baseline information would have already been provided with the application for the original permission.

If a planning permission granted under section 73 does not affect the post development value of the onsite habitat (and in the case of a site containing irreplaceable habitat any arrangements made to compensate for any impact) specified in an approved Biodiversity Gain Plan for planning permission to which the section 73 permission relates, the earlier plan is regarded as approved for the purpose of the new permission granted under section 73. In this circumstance, a new Biodiversity Gain Plan is not required to be submitted and approved prior to the commencement of the development subject to the section 73 permission.

However, if any conditions attached to the new planning permission granted under section 73 do affect the post development biodiversity value, then a Biodiversity Gain Plan for the new permission must be submitted and approved prior to the commencement of the permission.

A section 73 permission cannot be used to vary or remove the biodiversity gain condition.

There are also further specific provisions for phased development and section 73 permissions. Further guidance is provided under paragraph 062 of this guidance.

Paragraph: 016 Reference ID: 74-016-20240214

**Can applicants apply to vary or remove the biodiversity gain condition on a planning**

## permission?

By virtue of section 73(2B) of the Town and Country Planning Act 1990 (<https://www.legislation.gov.uk/ukpga/2021/30/schedule/14/enacted>), the biodiversity gain condition under paragraph 13 of Schedule 7A cannot be varied or removed by an application under section 73 of the Town and Country Planning Act 1990 (<https://www.legislation.gov.uk/ukpga/1990/8/section/73>).

Paragraph: 017 Reference ID: 74-017-20240214

## Determination of the planning application

### **Are there any specific consultation requirements for biodiversity net gain as part of a planning application?**

There are no statutory requirements to consult a particular body prior to determining a planning application specifically related to biodiversity net gain. The normal consultation arrangements for planning applications apply.

Natural England is not a statutory consultee for biodiversity net gain matters in relation to individual applications. It should only be consulted where it is a statutory consultee under Article 18 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (<https://www.legislation.gov.uk/uksi/2015/595/article/18>).

After a local planning authority has received a valid planning application, it will undertake a period of publicity and consultation where views on the proposed development can be expressed. As part of this consultation, the information submitted as part of the application, including the minimum Biodiversity Gain information will be made publicly available for comment.

Paragraph: 018 Reference ID: 74-018-20240214

## How does biodiversity net gain get taken into account in decision making?

The statutory framework for biodiversity net gain involves the discharge of the biodiversity gain condition following the grant of planning permission to ensure the objective of at least 10% net gain will be met for a development. The determination of the Biodiversity Gain Plan under this condition is the mechanism to confirm whether the development meets the biodiversity gain objective. Development may not be begun until the Biodiversity Gain Plan is approved.

Given this, it would generally be inappropriate for decision makers, when determining a planning application for a development subject to biodiversity net gain, to refuse an application on the grounds that the biodiversity gain objective will not be met.

However, decision makers may need to consider more broadly whether the biodiversity gain condition is capable of being successfully discharged. Matters for consideration may include the following (but this is not an exhaustive list):

- The appropriate balance expected between onsite gains, off-site gains and the use of statutory biodiversity credits for the development, taking account of the Biodiversity Gain Hierarchy;
- Whether the type and location of any significant onsite habitat enhancements proposed for onsite gains are appropriate, taking into account other policies to support biodiversity (including local nature recovery strategies) and other wider objectives (for example policies for design, open space and recreation, and retention of trees); and
- Any planning conditions which need to be imposed to secure any significant onsite habitat enhancements, including any conditions requiring the maintenance of the enhancement for at least 30 years after the completion of the development.

Prior to the determination of the planning application, decision makers will also want to discuss with the applicant whether any section 106 planning obligations are required to secure

either significant onsite habitat enhancements or offsite gains for the development.

For some planning applications (for instance, applications for outline planning permission where landscaping and layout are reserved matters), the implications for existing onsite habitats and the contribution to onsite gains may be uncertain at the time of the determination of the application. In these cases, decision makers may want to consider what subsequent approvals will be necessary to ensure significant onsite habitat enhancements are appropriately secured.

Onsite habitat enhancements to support the biodiversity gain objective may have positive implications for other policy objectives which may need to be taken into account as part of the determination of the planning application. For example, such as delivering wider benefits to landscaping, amenity, and climate change adaptation.

Paragraph: 019 Reference ID: 74-019-20240214

### **How do existing local policies apply following the introduction of mandatory biodiversity net gain?**

It would be inappropriate for decision makers to continue to give weight to aspects of existing local policies related to biodiversity gains which are inconsistent with the statutory framework for biodiversity net gain. The statutory provisions are an important material consideration that in many cases will take precedence over local planning policy. The statutory framework represents the appropriate national approach towards, and benchmark for, biodiversity gains in planning.

A local policy, for instance, which required a gain of at least 10% from new developments in anticipation of the statutory framework should no longer apply when determining applications for planning permission subject to biodiversity net gain, although it may continue to be a material consideration during a transition period and for other types of

planning permission not yet subject to the statutory framework.

By contrast, a policy which required a gain greater than 10% on an area wide basis or for an allocation may still be relevant as the statutory biodiversity gain objective is for at least a 10% gain.

Decision makers should not give weight to local policy which requires biodiversity gains for types of development which would now be exempt under the statutory framework. Other local biodiversity policies which require specific enhancements to support biodiversity would continue to apply to these applications where appropriate.

Paragraph: 020 Reference ID: 74-020-20240214

### **How are significant onsite habitat enhancements treated as part of the determination of the planning application?**

Paragraph 9 of Schedule 7A of the Town and Country Planning Act 1990

(<https://www.legislation.gov.uk/ukpga/2021/30/schedule/14/enacted>) requires that where an applicant relies

upon a significant increase in onsite habitat biodiversity value, the habitat enhancement (“significant onsite habitat enhancement”) must be subject to a planning condition

(<https://www.gov.uk/guidance/use-of-planning-conditions#why-and-how-are-conditions-imposed>),

section 106 agreement

(<https://www.gov.uk/guidance/planning-obligations>), or conservation covenant requiring the habitat enhancement to be maintained for at least 30 years after the development is completed.

The Department for Environment, Food, and Rural Affairs has published further guidance about significant onsite habitat enhancements

(<https://www.gov.uk/guidance/legal-agreements-to-secure-your-biodiversity-net-gain>).

These significant onsite habitat enhancements are likely to form an integral part of the development, and where these are being proposed an application for planning permission would likely be expected to

include detailed proposals of these habitat enhancements as part of the plans, drawings and supporting information accompanying the application. (For outline planning applications, details of landscaping and layout may be reserved for later approval.)

When considering development which seeks to increase biodiversity value, decision-makers should apply principles set out in paragraph 186 of the National Planning Policy Framework (<https://www.gov.uk/guidance/national-planning-policy-framework/15-conserving-and-enhancing-the-natural-environment#para186>), notably that opportunities to improve biodiversity in and around developments should be integrated as part of their design.

Decision-makers may also need to consider wider matters, which are relevant to whether the proposed type and location of the significant enhancement are suitable for that location. For example: highways safety, designated heritage assets, increasing or restricting access to nearby natural areas (depending on the sensitivity of nearby habitats), and the impact on aviation safety. It is particularly important that planning applications provide sufficient detail of habitat enhancements to enable proper consideration of the impact on aviation safety.

Paragraph: 021 Reference ID: 74-021-20240214

### **What should local planning authorities consider as ‘completion’ when seeking to secure the maintenance of significant onsite habitat enhancement for at least 30 years?**

The maintenance of a significant onsite habitat enhancement must be secured by either a planning condition, planning obligation or conservation covenant for at least 30 years after the completion of the development.

When setting such conditions or obligations, the local planning authority should work with applicants to clearly establish the point of completion for when the period begins. For the purposes of defining ‘completion’ for the purposes of biodiversity net

gain, local planning authorities are encouraged to include the completion of any onsite habitat enhancements (not just the buildings related to the development) which would constitute development. The use of traditional indicators of completion for residential or commercial development (such as a building regulations notice) may not be appropriate for the formal 'completion' of the development (i.e. when the final unit is completed) for the purposes of these provisions.

Paragraph: 022 Reference ID: 74-022-20240214

### **How should Aerodrome Safeguarding be taken into account when significant onsite enhancements are being considered?**

The Town and Country Planning (safeguarded aerodromes, technical sites and military explosives storage areas) Direction 2002 (<https://www.gov.uk/government/publications/safeguarding-aerodromes-technical-sites-and-military-explosives-storage-areas>) requires local planning authorities to consult the Civil Aviation Authority (CAA), the Secretary of State for Defence, or the aerodrome operator, where development being proposed is located within consultation areas specified on a safeguarding map of an Officially Safeguarded Aerodrome.

The planning system and the Aerodrome Safeguarding process play an important part in supporting aviation safety, including to protect aircraft from increased wildlife strike. In relation to bird-strike hazards, where a development is located within the bird strike consultation area of an Officially Safeguarded Aerodrome (a 13km circle depicted on a safeguarding map), the local planning authority should consult the relevant aerodrome operator. The creation of significant onsite habitat enhancements to support the biodiversity gain objective for developments near aerodromes could cause greater risk of wildlife strike if the enhancement includes wildlife attractant features. Bird strikes pose a serious threat to aviation safety and any significant onsite enhancement that may increase this risk will be regarded as inappropriate by the CAA and aerodrome operators. Before

determining planning applications decision-makers must consider the comments provided by the CAA or aerodrome operator in relation to any impacts of proposed onsite enhancements on aviation safety.

Where enhancements are being proposed which may include features likely to attract water fowl and other birds within safeguarding areas the applicant is encouraged to engage with the Secretary of State for Defence (where this may affect a military aerodrome), the relevant aerodrome operator, and the local planning authority to understand the safeguarding considerations for their development before submitting the planning application. This is to ensure that any issue can be addressed in the design and detail of the proposed development.

Paragraph: 023 Reference ID: 74-023-20240214

### **Does a local planning authority have to impose the biodiversity gain condition when permission is granted?**

Planning conditions are normally imposed on the grant of planning permission under section 70 (1) and section 72 of the Town and Country Planning Act 1990 (<https://www.legislation.gov.uk/ukpga/1990/8/section/70>)

By contrast, the biodiversity gain condition has its own separate statutory basis, as a planning condition under paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990 (<https://www.legislation.gov.uk/ukpga/2021/30/schedule/14/enacted>). The condition is deemed to apply to every planning permission granted for the development of land in England (unless exemptions or transitional provisions apply), and there are separate provisions governing the Biodiversity Gain Plan.

To ensure applicants are clear about this distinction, the local planning authority are strongly encouraged to not include the biodiversity gain condition, or the reasons for applying this, in the list of conditions imposed in the written notice when granting planning permission.



There is a separate requirement to provide information about the biodiversity gain condition. This information must be separate to the list of conditions on the decision notice.

Paragraph: 024 Reference ID: 74-024-20240214

### **What biodiversity gain information should be included on the written decision notice?**

When granting planning permission, Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (<https://www.legislation.gov.uk/ukxi/2015/595/article/35/made>) requires the decision notice to set out:

- information relating to the biodiversity gain condition including the exemptions to the condition, and transitional provisions in relation to that condition;
- information to note the effect that section 73(2D) of the Town and Country Planning Act 1990 applies (that an earlier biodiversity gain plan in relation to a previous planning permission is regarded as approved);
- the planning authority for the purposes of the Biodiversity Gain Plan;
- requirements relating to irreplaceable habitats; and
- where development is to proceed in phases, a statement to that effect, and that the development cannot begin before an Overall Biodiversity Gain Plan and Phase Biodiversity Gain Plan have been submitted to, and approved by the planning authority, and that a Phase Biodiversity Gain Plan is required to be approved before that phase may begin.

Local planning authorities are encouraged to use model paragraphs for Biodiversity Gain Information on the written decision notice when granting planning permission which will be published in due course.

Paragraph: 025 Reference ID: 74-025-20240214

## **Model paragraphs for biodiversity gain Information on the written decision notice**

To ensure consistency in approach to the information to be provided on the decision notice, model paragraphs for biodiversity gain Information on the written notice will be published in due course.

Paragraph: 026 Reference ID: 74-026-20240214

### **Can a local planning authority apply planning conditions in relation to biodiversity net gain?**

Local planning authorities have broad powers to impose planning conditions (<https://www.gov.uk/guidance/use-of-planning-conditions>) and can, where appropriate, include additional conditions relating to the delivery of biodiversity net gain.

A planning condition can be used to secure significant onsite habitat enhancements which are required to be secured and maintained for at least 30 years under paragraph 9 of Schedule 7A. Other potential conditions could include monitoring and reporting arrangements. Planning conditions should be appropriately worded to ensure effective compliance and enforcement of biodiversity net gain.

It is not appropriate to use planning conditions to secure funding for delivering or monitoring biodiversity net gain. These should be secured through section 106 planning obligations (<https://www.gov.uk/guidance/planning-obligations>) where justified.

Paragraph: 027 Reference ID: 74-027-20240214

### **What could be included in section 106 agreements in relation to biodiversity net gain?**

Local planning authorities can agree section 106 planning obligations (<https://www.gov.uk/guidance/planning-obligations>) to mitigate impacts of development including

obligations relating to the delivery of significant onsite biodiversity enhancements, registered off-site biodiversity gains and the use of statutory credits.

Matters that could be covered in planning obligations include management and monitoring arrangements, dealing with excess net gains to be used for other developments, offsite gains and circumstances where credits can be used as a last resort. Where offsite gains are already registered and subject to a planning obligation or conservation covenant, it may not be necessary to tie them to development with another planning obligation.

Local planning authorities can charge a monitoring fee through section 106 planning obligations, to cover the cost of monitoring and reporting on delivery of that section 106 agreement.

Planning obligations should be appropriately worded to ensure effective compliance and enforcement of biodiversity net gain.

Local planning authorities are encouraged to use and publish standard forms and templates to assist with the process of agreeing planning obligations to support biodiversity net gain. These could include model agreements and clauses (including those already published by other bodies), that could be made publicly available to help with the planning application process. Any further information required by the local planning authority, or issues raised by the applicant regarding planning obligations, should be addressed at an early stage of the planning application process.

Paragraph: 028 Reference ID: 74-028-20240214

### **How does biodiversity net gain relate to other environmental regimes which apply to planning applications?**

Biodiversity net gain is a separate statutory framework to support biodiversity. Other statutory regimes, including Environment Impact Assessment and Habitat Regulations Assessment, may be required for proposed development before the grant

of planning permission. The evidence submitted for a Biodiversity Gain Plan will not in itself suffice to meet such assessment requirements in full, but there may be opportunities for co-ordination, for example to share surveys on common biodiversity matters.

There can also be specific synergies between mitigation measures required by appropriate assessments under the Habitat Regulations and biodiversity gains required to meet the biodiversity gain objective. For instance, in relation to nutrient mitigation schemes, the Department for Environment, Food and Rural Affairs has produced guidance on how land managers can combine biodiversity units and nutrient credits, and sell them alongside other environmental payments:

[Combining environmental payments: biodiversity net gain \(BNG\) and nutrient mitigation](https://www.gov.uk/guidance/combining-environmental-payments-biodiversity-net-gain-bng-and-nutrient-mitigation)  
(<https://www.gov.uk/guidance/combining-environmental-payments-biodiversity-net-gain-bng-and-nutrient-mitigation>).

Paragraph: 029 Reference ID: 74-029-20240214

### **What are the biodiversity net gain implications for applications submitted directly to the Secretary of State under section 62A?**

The same procedural requirements for biodiversity net gain apply to applications made directly to the Secretary of State under section 62A where a local planning authority has been designated for poor performance. Applicants are encouraged to engage with the Planning Inspectorate prior to submission (<https://www.gov.uk/government/publications/planning-applications-process-section-62a-authorities-in-special-measures/procedural-guidance-for-section-62a-authorities-in-special-measures#pre-application-process>) if the consideration of biodiversity net gain is likely to have implications for decision making.

Paragraph: 030 Reference ID: 74-030-20240214

### **Submission of the Biodiversity Gain Plan**

## **What is the Biodiversity Gain Plan?**

The statutory framework for biodiversity net gain requires a Biodiversity Gain Plan to be submitted and approved by the planning authority to discharge the biodiversity gain condition prior to the commencement of development.

The Biodiversity Gain Plan sets out how the biodiversity gain objective of at least a 10% gain will be met for the development granted planning permission. It must contain a number of matters to enable the planning authority to determine whether the biodiversity gain objective has been met.

The plan must be submitted in writing, no earlier than the day after planning permission has been granted. A developer may want to submit a draft plan alongside the planning application for information and discuss this plan with the local planning authority prior to determination of the application, although this is not a minimum information requirement. There is a standard Biodiversity Gain Plan template available to complete which brings together many of these matters into one document.

There are special arrangements for phased development and separate templates for phased development.

Paragraph: 031 Reference ID: 74-031-20240214

## **Who is the planning authority for determining the Biodiversity Gain Plan?**

Paragraph 12 and Part 1A of Schedule 7A of the Town and Country Planning Act 1990 (<https://www.legislation.gov.uk/ukpga/2021/30/schedule/14/enacted>) makes provision for the planning authority in relation to the Biodiversity Gain Plan.

In most cases the planning authority for determining the Biodiversity Gain Plan is the local planning authority which granted the relevant planning permission.

There are a number of special rules about who is the planning authority to deal with particular circumstances where the decision maker granting planning permission is not the local planning authority.

Where the Secretary of State has granted planning permission under section 62A (direct submission of a planning application where there is a designated local planning authority) or section 77 (call in of a planning application) of the Town and Country Planning Act 1990, the Secretary of State may direct that they or the local planning authority which would have granted the planning permission (had it not been granted by the Secretary of State) is the planning authority.

Where the Secretary of State or the Inspector appointed by the Secretary of State has granted planning permission for an appeal under section 78 of the Town and Country Planning Act 1990, they may direct that they or the local planning authority which would have granted the planning permission (had it not been granted by the Secretary of State or Inspector) is the planning authority.

Where the Mayor of London has given a direction under section 2A of the Town and Country Planning Act 1990 and granted the relevant planning permission, the Mayor may direct that the local planning authority (to whom the planning application was made) will be the planning authority for determining the Biodiversity Gain Plan. Otherwise, the Mayor is the planning authority for the Plan.

Where the Mayor of London has given a direction under section 2A of the Town and Country Planning Act 1990 but the Secretary of State or Inspector has granted the planning permission on appeal, then the Secretary of State or Inspector will determine whether they, the Mayor of London or the local planning authority (to whom the planning application was made) will act as the planning authority for determining the Biodiversity Gain Plan.

Where a combined authority has the function to call-in and determine planning applications under section 2A and the order which grants those powers

so provides, the planning authority for the purposes of biodiversity gain is the combined authority. In other cases where a combined authority grants planning permission, the local planning authority (to whom the planning application) was made will be planning authority for determining the Biodiversity Gain Plan.

Where other bodies have planning powers to determine planning applications, such as Mayoral Development Corporations and Urban Development Authorities, then they will be the planning authority for determining the Biodiversity Gain Plan if the Order which grants those powers so provides.

Paragraph: 032 Reference ID: 74-032-20240214

### **What is the pre-development biodiversity value and does this change?**

The pre-development biodiversity value represents the value of onsite habitats present on land on the relevant date, prior to the approval of the Biodiversity Gain Plan. This is calculated using the official biodiversity metric tool (<https://www.gov.uk/government/publications/statutory-biodiversity-metric-tools-and-guides>) to ensure a consistent approach to calculating biodiversity values is taken. There are special provisions for establishing the pre-development biodiversity value of onsite habitat when loss or impact to habitats (or 'degradation') has occurred prior to the submission of a Biodiversity Gain Plan.

The Department for Environment, Food and Rural Affairs have published guidance on calculating biodiversity value using the metric (<https://www.gov.uk/government/publications/statutory-biodiversity-metric-tools-and-guides>).

For the purposes of biodiversity net gain, once the pre-development biodiversity value has been established through an approved Biodiversity Gain Plan, or an Overall Biodiversity Gain Plan, the pre-development biodiversity value does not change for that planning permission.

### **What is the process for submitting the Biodiversity Gain Plan?**

The statutory framework for biodiversity net gain requires a Biodiversity Gain Plan to be submitted and approved to discharge the biodiversity gain condition prior to the commencement of development. An applicant may want to submit a draft plan for information ahead of the determination of the planning application, although this is not a national information requirement.

A developer must submit the Biodiversity Gain Plan to the planning authority in writing, no earlier than the day after planning permission has been granted. The use of the Biodiversity Gain Plan template is strongly encouraged to bring together the required information into one document for approval.

There is no separate application form for the submission of the Biodiversity Gain Plan. As with the discharge of other conditions which require approval of local planning authority, planning authorities will have 8 weeks to approve the Biodiversity Gain Plan (unless another timescale is agreed).

Paragraph: 034 Reference ID: 74-034-20240214

### **What must be included in a Biodiversity Gain Plan?**

The following content of a Biodiversity Gain Plan is required for development which is not to proceed in phases. Where planning permission is granted that has the effect of permitting development in phases, there are different requirements for the Biodiversity Gain Plan.

Under paragraph 14(2) of Schedule 7A, a Biodiversity Gain Plan must include the following matters:



- 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;
- the pre-development biodiversity value of the onsite habitat;
- the post-development biodiversity value of the onsite habitat;
- any registered off-site biodiversity gain allocated to the development and the biodiversity; and
- any biodiversity credits purchased for the development.

In addition, under Articles 37C(2) and 37C(4) of The Town and Country Planning (Development Management Procedure) (England) Order 2015, the following specified matters are required, where development is not to proceed in phases:

- name and address of the person completing the Plan, and (if different) the person submitting the Plan;
- a description of the development and planning permission reference number (to which the plan relates);
- the relevant date, for the purposes of calculating the pre-development biodiversity value of onsite habitats and if proposing an earlier date, the reasons for using this earlier date;
- the completed biodiversity metric calculation tool(s) (<https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development>), stating the publication date of the tool(s), and showing the calculation of the pre-development onsite value on the relevant date, and post-development biodiversity value;
- a description of arrangements for maintenance and monitoring of habitat enhancement to which paragraph 9(3) of Schedule 7A to the 1990 Act applies (habitat enhancement which must be maintained for at least 30 years after the development is completed);
- (except for onsite irreplaceable habitats) a description of how the biodiversity gain hierarchy will be followed and where to the extent any

actions (in order of priority) in that hierarchy are not followed and the reason for that;

- pre-development and post-development plans showing the location of onsite habitat (including any irreplaceable habitat) on the relevant date, and drawn to an identified scale and showing the direction of North;
- a description of any irreplaceable habitat on the land to which the plan relates which exist on the relevant date, and any part of the development for which planning permission is granted where the onsite habitat of that part is irreplaceable habitat arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat; and
- if habitat degradation has taken place:
  - a statement to this effect,
  - the date immediately before the degradation activity,
  - the completed biodiversity tool showing the calculation of the biodiversity value of the onsite habitat on that date, and
  - any available supporting evidence for the value.

There is a standard Biodiversity Gain Plan template available to complete which brings together many of these matters into one document.

Paragraph: 035 Reference ID: 74-035-20240214

### **How is habitat degradation dealt with when calculating the pre-development biodiversity value of onsite habitat?**

There are special provisions for the calculation of the pre-development biodiversity value of onsite habitat when loss or impact to habitats (or 'degradation') has occurred prior to the submission of a planning application and Biodiversity Gain Plan in order to discourage the deliberate degradation of existing onsite habitats to reduce the pre-development biodiversity value.

For the Biodiversity Plan, Paragraph 6 of Schedule 7A of the Town and Country Planning Act 1990 makes provision relating to unauthorised

degradation takes place, and Paragraph 6A of the 1990 Act makes provision relating to degradation taking place which is in accordance with a planning permission:

- Where unauthorised degradation of the onsite habitat has taken place on the land between 30 January 2020 and the date of relevant date, the biodiversity pre-development value of the onsite habitat should be calculated as the biodiversity value of the habitat on the date immediately before the carrying out of these degradation activities. The relevant date should therefore be set as a date immediately before these activities. Unauthorised degradation of onsite habitat is any degradation which is not in accordance with a previous planning permission.
- If activities to implement or in connection with a planning permission are carried out after 25 August 2023 that lower the biodiversity value of the onsite habitat, the pre-development biodiversity value of the onsite habitat is taken to be the biodiversity value immediately before the carrying out of the activities. The relevant date should therefore be set as a date immediately before these activities.

If there has been degradation and there is insufficient evidence about the biodiversity value of the onsite habitat immediately before the degradation, the pre-development biodiversity value of the onsite habitat must be taken to be the highest biodiversity value of the habitat which is reasonably supported by any available evidence relating to it. This requirement must be applied to the calculation of pre-development biodiversity value in the metric tool (<https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development>), and the Biodiversity Gain Plan template asks for information regarding whether there has been prior habitat degradation.

For the purposes of submitting a planning application, where degradation activities have taken place (as listed above) before the submission of the application or an earlier proposed date, the applicant must provide:

- a statement setting out that these degradation activities have been carried out;
- confirmation of the date immediately before these activities were carried out;
- the pre-development biodiversity value of the site on this date;
- the completed metric calculation tool showing the calculations, and
- any available supporting evidence of this.

Paragraph: 036 Reference ID: 74-036-20240214

### **Is a fee charged for submission of Biodiversity Gain Plan?**

The submission of a Biodiversity Gain Plan to a local planning authority falls under Regulation 16 of the Town and Country Planning (Fee for Applications, Deemed Applications, Requests and Site Visit) (England) Regulations 2012 which covers fees for the written confirmation of compliance with a condition or conditions attached to a grant of planning permission (<https://www.legislation.gov.uk/uksi/2012/2920/regulation/16/made>). The current fee is £145 for each request.

Where a Biodiversity Gain Plan takes longer than 12 weeks to determine, the planning guarantee applies and the fee must be refunded (<https://www.gov.uk/guidance/determining-a-planning-application>).

Paragraph: 037 Reference ID: 74-037-20240214

### **Determination of the Biodiversity Gain Plan**

#### **Is there any requirement for local planning authorities to consult on or publicise a submitted Biodiversity Gain Plan?**

As with most applications to discharge conditions, there are no statutory requirements to consult any statutory bodies on Biodiversity Gain Plans or to

publicise the submission of a Biodiversity Gain Plan prior to its determination.

Paragraph: 038 Reference ID: 74-038-20240214

## **What is considered when determining the Biodiversity Gain Plan?**

Under paragraph 15 of Schedule 7A, the planning authority must only approve the Biodiversity Gain Plan if they are satisfied that:

- the pre-development biodiversity value of the onsite habitat is as specified in the plan;
- the post-development biodiversity value of the onsite habitat is at least the value specified in the plan;
- in the case where the registered offsite biodiversity gain is specified in the plan, as allocated to the development:
  - the registered offsite biodiversity gain is so allocated (and, if the allocation is conditional, that any conditions attaching to the allocation have been met or will be met by the time the development begins), and
  - the registered offsite biodiversity gain has the biodiversity value specified in the plan in relation to the development;
- that any biodiversity credits specified in the plan as purchased for the development have been so purchased; and
- the biodiversity net gain objective is met.

In addition, in determining whether to approve the plan, a planning authority must take into account how the Biodiversity Gain Hierarchy will be followed, and any reasons where it cannot be followed (except in relation to irreplaceable habitats where the Hierarchy does not apply).

If a planning authority makes a determination not to approve the Biodiversity Gain Plan, the decision notice must state clearly and precisely their full reasons for the determination, specifying all elements of the biodiversity gain plan which are relevant to the determination.

The applicant has the right to appeal the non-determination or refusal of the Biodiversity Gain Plan.

There are special provisions for the approval for the Biodiversity Gain Plan for phased development or if part of the development land includes irreplaceable habitat.

Paragraph: 039 Reference ID: 74-039-20240214

### **Is there a public record of Biodiversity Gain Plans which have been made and decided?**

Article 40 of the Town and Country Planning (Development Management Procedure) (England) Order 2015  
(<https://www.legislation.gov.uk/ukSI/2015/595/article/40/made>) (as amended), requires each local planning register authority (usually the local planning authority) to maintain a register of planning applications in relation to their area ('the planning register'). Article 40 also requires each local planning register authority to publish the following Biodiversity Gain Plan information on the planning register:

- a copy of the Biodiversity Gain Plan submitted to the planning authority; and
- notice of the determination whether to approve the Biodiversity Gain Plan, if any, including the date of that notice and the name of the planning authority.

Further guidance about the planning register can be found in Making an application  
(<https://www.gov.uk/guidance/making-an-application#planning-register>).

Paragraph: 040 Reference ID: 74-040-20240214

**If decisions are made on the Biodiversity Gain Plan by a planning authority, other than the local planning authority, are decisions still made public?**

Article 37D(4) of The Town and Country Planning (Development Management Procedure) (England) Order 2015, requires that where written notice is given to the person submitting the Biodiversity Gain Plan, the planning authority must provide the local planning register authority (usually the local planning authority) within 5 working days of that written notice:

- a copy of the Biodiversity Gain Plan submitted to the planning authority; and
- notice of the determination whether to approve the Biodiversity Gain Plan, if any, including the date of that notice and the name of the planning authority.

The local planning register authority then must make this information public.

Paragraph: 041 Reference ID: 74-041-20240214

### **How are Irreplaceable Habitats treated for the purpose of Biodiversity Gain?**

Irreplaceable habitats are valuable habitats which are technically very difficult or take a very significant time to restore, recreate or replace once destroyed. Paragraph 186(c) of the National Planning Policy Framework provides strong policy protections for irreplaceable habitats when determining planning applications: development resulting in the loss or deterioration of irreplaceable habitats should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists. The Framework's Glossary provides a definition of irreplaceable habitats for this policy.

There are specific provisions for the treatment of irreplaceable habitats within the statutory framework for biodiversity net gain. It is recognised that the environmental cost of such loss or deterioration cannot adequately be captured by the biodiversity metric alone. For these reasons, the statutory framework for biodiversity net gain treats irreplaceable habitats differently.

The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024

<https://www.legislation.gov.uk/ukxi/2024/48/contents/made>  
e) define and list irreplaceable habitats for the purposes of biodiversity net gain. If these irreplaceable habitats form part of the development site, there are special modifications for the content and approval of the Biodiversity Gain Plan.

Although irreplaceable habitats are still included within the calculation of the pre-development and post-development biodiversity value of the onsite habitat, they will not be assigned a value unless there is an enhancement proposed to the habitat. So they will not usually contribute to the achievement of the biodiversity gain objective of at least a 10% gain.

However, the Biodiversity Gain Plan must include information about how any adverse effect on the irreplaceable habitat has been minimised and any compensation plan if there are any adverse effects. The planning authority may only approve the Biodiversity Gain if they are satisfied that the adverse effect of development on the irreplaceable habitat is minimised and that appropriate arrangements have been made for the purpose of compensating for any impact. The arrangements are only appropriate if they secure a compensation plan relative to the baseline habitat type and which do not involve the purchase of biodiversity credits.

The statutory biodiversity metric applies to irreplaceable habitats as set out below:

All irreplaceable habitats must be recorded within the metric tool. The statutory biodiversity metric will not calculate the biodiversity value of irreplaceable habitat impacted by a development and will flag that bespoke compensation is required if this is the case. If irreplaceable habitat is being enhanced, the statutory biodiversity metric will calculate the biodiversity unit value of that enhancement.

Where there are proposed enhancements to the irreplaceable habitat: This must be recorded in the irreplaceable habitats sheet of the metric. It will be included in baseline calculation. As there are no negative effects on the habitat, a bespoke compensation package is not necessary and does not need to be approved. The value of any



enhancement can contribute to 10% biodiversity gain requirement in these circumstances.

Where there are no losses or deterioration to the irreplaceable habitats: This must be recorded in the irreplaceable habitats sheet of the metric. The biodiversity value of the irreplaceable habitats is not included in the calculation of pre-development biodiversity value in these circumstances and a bespoke compensation package is not necessary if evidence confirms there are no losses or deterioration to the irreplaceable habitats.

Where there are losses or deterioration to the irreplaceable habitats: This must be recorded in the irreplaceable habitats sheet of the metric. The biodiversity value of the irreplaceable habitats is not included in the calculation of pre-development biodiversity value and a bespoke compensation package needs to be agreed with the planning authority, in addition to the Biodiversity Gain Plan.

Matters relating to the spatial choices for the development which may affect irreplaceable habitats, such as the size and location of buffer zones, are likely to be considered at the planning application stage for a development. Buffer zones themselves will be subject to the 10% biodiversity gain requirement. The Biodiversity Gain Hierarchy may be taken into account as relevant

For further information, see the Department for Environment, Food and Rural Affairs [guidance on the biodiversity metric and irreplaceable habitats](https://defraenvironment.blog.gov.uk/2023/10/05/irreplaceable-habitats-and-bng-what-you-need-to-know/) (<https://defraenvironment.blog.gov.uk/2023/10/05/irreplaceable-habitats-and-bng-what-you-need-to-know/>).

Paragraph: 042 Reference ID: 74-042-20240214

### **Can I make amendments to an approved Biodiversity Gain Plan?**

There is no mechanism to amend an approved Biodiversity Gain Plan. If the approach to meeting the biodiversity gain objective for a development has changed after the approval of a Biodiversity Gain Plan but before the commencement of the development (for instance, due to a switch between

registered offsite gains and biodiversity credits), a new Biodiversity Gain Plan can be submitted to the planning authority for approval.

Paragraph: 043 Reference ID: 74-043-20240214

## **Appeals on a Biodiversity Gain Plan**

### **Is there a right to appeal against refusal of a Biodiversity Gain Plan?**

If an application for the approval of the Biodiversity Gain Plan is refused by the local planning authority (acting as the planning authority for the plan), the person submitting the plan may appeal to the Secretary of State against the decision, under [section 78 of the Town and Country Planning Act 1990](https://www.legislation.gov.uk/ukpga/1990/8/section/78) (<https://www.legislation.gov.uk/ukpga/1990/8/section/78>).

Before making any appeal, the person submitting the plan is encouraged to first consider re-engaging with the local planning authority to discuss whether any changes to the plan would make it more acceptable.

There is no right to appeal where a Biodiversity Gain Plan is refused by the Secretary of State, (as the planning authority for the plan). Secretary of State decisions can only be challenged on certain statutory grounds, where a challenge is brought within 6 weeks of the decision under [section 288 of the Town and Country Planning Act 1990](https://www.legislation.gov.uk/ukpga/1990/8/section/288) (<https://www.legislation.gov.uk/ukpga/1990/8/section/288>).

Paragraph: 044 Reference ID: 74-044-20240214

### **Is there a right of appeal if the local planning authority does not make a decision on a Biodiversity Gain Plan within the statutory time period?**

The person submitting the Biodiversity Gain Plan for approval may appeal under [section 78 of the Town and Country Planning Act 1990](https://www.legislation.gov.uk/ukpga/1990/8/section/78) (<https://www.legislation.gov.uk/ukpga/1990/8/section/78>).

if the local planning authority (acting as the planning authority for the plan), does not make a decision within 8 weeks, or another period where there is a written agreement from the planning authority and person submitting the Biodiversity Gain Plan to extend the decision-making period.

However, applicants should first consider engaging with the local planning authority to establish when the plan might be decided, before deciding whether to appeal against non-determination.

Paragraph: 045 Reference ID: 74-045-20240214

### **What is the deadline for submitting an appeal against refusal, or where no decision has been made on the Biodiversity Gain Plan?**

Appeals may be made at any time within 6 months of the decision on the Biodiversity Gain Plan or, if no decision has been made, within 6 months from when a decision should have been given.

Paragraph: 046 Reference ID: 74-046-20240214

### **Who decides the appeal on a Biodiversity Gain Plan?**

Appeals on a Biodiversity Gain Plan are, in the first instance, determined by Planning Inspectors on behalf of the Secretary of State. However, the Secretary of State has the power to make the decision on an appeal rather than it being made by the Planning Inspectorate – this is referred to as a ‘recovered appeal’.

Paragraph: 047 Reference ID: 74-047-20240214

### **When an appeal is brought on a Biodiversity Gain Plan, what needs to be sent to the Planning Inspectorate?**

All appeals relating to a Biodiversity Gain Plan must be submitted using a completed appeal form, obtained from the Secretary of State and accompanied by the relevant application documents contained in Article 37E of the Town and

Country Planning (Development Management Procedure) (England) Order 2015, these are:

- the Biodiversity Gain Plan, to which the appeal relates;
- a copy of the planning application sent to the local planning authority, to which the Biodiversity Gain Plan relates, and all plans, drawing and documents sent to the local planning authority relating to that application;
- all correspondence with the local planning authority relating to the determination whether to approve the Biodiversity Gain Plan; and
- the notice of the determination whether to approve the Biodiversity Gain Plan, if any;
- except where a direction by the Secretary of State under section 321(3) of the Town and Country Planning Act 1990 (<https://www.legislation.gov.uk/ukpga/1990/8/section/321>) has been given:
  - i. the full statement of case of the person who submitted the Biodiversity Gain Plan;
  - ii. a statement of which procedure (written representations, a hearing or inquiry) the person who submitted the Biodiversity Gain Plan considers should be used to determine the appeal;
  - iii. a draft statement of common ground if the person submitting the Biodiversity Gain Plan considers that the appeal should be determined through a hearing or an inquiry.

Paragraph: 048 Reference ID: 74-048-20240214

**When an appeal is brought on a Biodiversity Gain Plan, what needs to be sent to the local planning authority who determined the plan?**

The person submitting the appeal to the Biodiversity Gain Plan must provide the relevant local planning authority (who made the decision on Biodiversity Gain Plan), the following documents when an appeal is made on a Biodiversity Gain:

- the completed appeal form;

- except where a direction by the Secretary of State under section 321(3) of the Town and Country Planning Act 1990 (<https://www.legislation.gov.uk/ukpga/1990/8/section/321>) has been given:
  - i. the full statement of case of the person who submitted the Biodiversity Gain Plan;
  - ii. a statement of which procedure (written representations, a hearing or inquiry) the person who submitted the Biodiversity Gain Plan considers should be used to determine the appeal; and
  - iii. a draft statement of common ground if the person submitting the Biodiversity Gain Plan considers that the appeal should be determined through a hearing or an inquiry.

Paragraph: 049 Reference ID: 74-049-20240214

### **How are appeals determined on Biodiversity Gain Plans?**

Appeals on Biodiversity Gain Plans will be determined as if the application for permission had been made to the Secretary of State in the first instance.

Paragraph: 050 Reference ID: 74-050-20240214

### **What procedure will the appeal on a Biodiversity Gain Plan follow?**

The procedure to be followed at the appeal will depend on the complexity of the matters to be considered and will be determined by the Planning Inspectorate (more information is available on the Planning Inspectorate Procedural Guide (<https://www.gov.uk/government/publications/planning-appeals-procedural-guide>)). These can either be written representations, inquiries or hearings.

The person submitting the Biodiversity Gain Plan will be asked to indicate their view of the most appropriate procedure for their case, however the appointed planning inspector may determine a different procedure to be used.

Paragraph: 051 Reference ID: 74-051-20240214

## **Can an appeal decision on a Biodiversity Gain Plan be challenged?**

Appeal decisions can only be challenged through the courts on certain statutory grounds, and a challenge must be brought within 6 weeks of the decision under section 288 of the Town and Country Planning Act 1990 (<http://www.legislation.gov.uk/ukpga/1990/8/section/288>).

Further information about applications under section 288 of the Town and Country Planning Act 1990 can be found in the Administrative Court Judicial Review Guide 2023 (<https://www.judiciary.uk/courts-and-tribunals/high-court/administrative-court/administrative-court-judicial-review-guide-2022/>).

Paragraph: 052 Reference ID: 74-052-20240214

## **Phased development**

### **What is ‘phased development’ for the purposes of biodiversity net gain?**

The statutory framework for biodiversity net gain includes specific modifications for planning permissions (including outline permissions) that have the effect of permitting development which proceed in phases (termed ‘phased development’ in this guidance). This reflects that phased development can occur over a long period of time where full details of all phases may not be known at the time of planning permission. For these permissions, the standard approach may not be possible. The arrangements for approving the biodiversity gain plan for phase development need to follow a different approach.

These modifications for phased development apply to :

(a) a grant of outline planning permission where the reservation of matters for subsequent approval has

the effect of requiring or permitting development to proceed in phases; or

(b) a grant of any kind of planning permission, where the grant is subject to conditions which requires development to proceed in phases

An example of a phased development would be a large scale urban extension for residential or commercial development where an outline planning permission has been granted and the permission identifies clear phases for development where subsequent reserved matter approvals would grant content for the detailed design of a phase.

Not all outline planning permissions will meet these requirements. For instance, an outline permission for a small-scale residential development where appearance and landscaping were the only reserved matters for later determination is unlikely to do so, and it would be subject to the standard provisions for biodiversity net gain.

When granting planning permission for a development which is to be phased, the decision-maker will indicate on the written decision notice whether the development is to proceed in phases. The decision notice will also include information relating to the approval of the biodiversity gain condition and that the phase development modification would apply. Applicants may want to confirm with the planning authority that the development is phased prior to submitting an Overall Biodiversity Gain Plan.

Paragraph 053 Reference ID: 74-053-20240214

### **How is biodiversity net gain approached for phased development?**

A phased development must meet the biodiversity gain objective of at least 10% net gain (unless it is exempt or subject to transitional arrangements). However, phased development is subject to a different approach for meeting the biodiversity gain condition.

The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024

(<https://www.legislation.gov.uk/ukxi/2024/50/contents/made>) modifies the general biodiversity condition for planning permissions which are phased development. Instead of the standard approach for the Biodiversity Gain Plan:

- an Overall Biodiversity Gain Plan must be submitted to and approved by the planning authority before any development can begin; and
- a Phase Biodiversity Gain Plan for each phase must be submitted to and approved by the planning authority before the development of that phase can begin.

In recognition that phased development can often be implemented over a long period of time, the purpose of the Overall Biodiversity Gain Plan is to confirm that there is a clear upfront framework for how the biodiversity gain objective of at least a 10% gain is expected to be met across the entire development. Each Phase Biodiversity Gain Plan will subsequently set out a phase's contribution to biodiversity net gain and confirm progress towards the overall biodiversity gain objective for the development once clear proposals for each phase have been developed. It may be appropriate that where an outline planning permission has been granted for a phased development, that subsequent Phase Biodiversity Gain Plans would be prepared alongside the application for reserved matter approvals for those phases.

Paragraph 054 Reference ID: 74-054-20240214

**How should applicants approach biodiversity net gain for phased development when preparing proposals?**

As a phased development is likely to be a substantive development, so applicants seeking planning permission for phased development are encouraged to engage with the local planning authority as part of their wider pre-application engagement about the development so the strategy



for delivering the biodiversity net gain (including the balance between onsite and off-site gains) is known and factored into the preparation of the development's masterplan and phasing strategy. In some cases, if the development has been allocated in a local plan, there may be a strategic allocation policy which sets out the expectations for the delivery of biodiversity net gain for the development.

When a planning application is submitted for phased development, applicants are strongly encouraged to provide sufficient information to enable the local planning authority to consider how the objective of at least 10% biodiversity gain is expected to be achieved for the development. Such information is likely to include:

- the proposed balance between onsite gains, off-site gains and possible use of biodiversity credits;
- proposals for any significant onsite enhancements and how the implementation will be phased; and
- potential requirements for s106 agreements for both onsite and off-site gains.

Applicants and local planning authorities should discuss the expected biodiversity net gain information requirements for the planning application for a phased development as part of their pre-application engagement.

Applicants may want to submit a draft Overall Biodiversity Gain Plan as part of their planning application although further information about, for instance, proposals for significant onsite enhancements and the approach to offsite gains may be required so these gains can be secured through planning conditions or section 106 planning obligations should planning permission be granted.

Paragraph 055 Reference ID: 74-055-20240214

**Does the biodiversity net gain objective of at least 10% gain apply to each phase?**

The biodiversity gain objective of at least 10% net gain applies to the overall development (not each phase). The contribution of each phase to achieving net gain may vary, providing a net gain of at least 10% is achieved for the overall development at the time of its completion.

Paragraph 056 Reference ID: 74-056-20240214

### **How is the pre-development biodiversity value calculated for phased development?**

The pre-development biodiversity value of the onsite habitat for a planning permission for phased development is calculated on the same basis as other permissions. This biodiversity value is for the onsite habitat of the entire development (not each phase). It will not change regardless of the approach to phasing. Later changes to the condition of onsite habitat on a phase prior to its commencement are not relevant to the calculation of the pre-development biodiversity value for phase development.

Paragraph 057 Reference ID: 74-057-20240214

### **What is contained in an Overall Biodiversity Gain Plan?**

The content of an Overall Biodiversity Gain Plan is different in several ways from a standard Biodiversity Gain Plan reflecting that there is unlikely to be detailed proposals agreed at the outset.

The Overall Biodiversity Gain Plan for a phased development (which is not related to a section 73 permission) must include the following matters:

- 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;
- the pre-development biodiversity value of the entire onsite habitat;
- any registered offsite biodiversity gain allocated or proposed to be allocated to the entire

development and the biodiversity value of that gain in relation to the development;

- any biodiversity credits purchased or proposed to be purchased for the entire development; and
- the post-development biodiversity value of the onsite habitat for the entire development and each phase of development\*

\*The post-development biodiversity value of the onsite habitat for the entire development and each phase is a projection of the biodiversity value at the completion of the entire development (not after the completion of each phase). Where firm proposals for development and habitat enhancement on each phase have yet to be finalised, assumptions about the likely development and habitat enhancements should be used to determine this post-development value. This value will set the expectations about the biodiversity value of onsite habitats, and the final value will need to be set out in later Phase Biodiversity Gain Plans.

The Overall Biodiversity Gain Plan must also include the following further information:

- name and address of the person completing the plan, and (if different) the person submitting the plan;
- a description of the development and planning permission reference number (to which the plan relates);
- pre-development plans showing the location of existing onsite habitat and drawn to an identified scale and showing the direction of North;
- the relevant date, for calculating the pre-development biodiversity value for the development, and if proposing an earlier date, the reasons for using this earlier date;
- completed biodiversity metric calculation tool(s) (<https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development>) stating the publication date of the biodiversity metric used and showing the calculation of the pre-development and post-development biodiversity values;
- arrangements for the maintenance and monitoring of significant onsite habitat

enhancements;

- a description of how the Biodiversity Gain Hierarchy will be followed and where to the extent one or more actions in that hierarchy are not followed, the reasons if not (except for irreplaceable habitats);
- a description of any irreplaceable habitat on the land to which the plan relates which exist on the relevant date, and any part of the development for which planning permission is granted where the onsite habitat of that part is irreplaceable habitat arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat; and
- a statement whether habitat degradation has taken place, and if it has:
  - a statement to this effect,
  - the date immediately before the degradation activity,
  - the completed biodiversity tool showing the calculation of the biodiversity value of the onsite habitat on that date, and
  - any available supporting evidence for the value.

Paragraph: 058 Reference ID: 74-058-20240214

### **What is considered when determining an Overall Biodiversity Gain Plan?**

The planning authority must only approve the Overall Biodiversity Gain Plan for a phased development (if it is not a section 73 permission) if they are satisfied:

- that the pre-development biodiversity value of the entire development's onsite habitat specified in the Plan is correct;
- that the biodiversity gain objective of at least 10% net gain will be met taking account of the post-development biodiversity value for the onsite habitat for the entire development and each phase, the allocation and proposed allocation of registered offsite biodiversity gain, and the purchase and proposed purchase of biodiversity credits;

- any registered offsite gain specified as allocated to the entire development have so been allocated;
- any biodiversity credits specified as purchased for the entire development have so been purchased; and
- If the development includes onsite irreplaceable habitats, the adverse effect of the development on the irreplaceable habitat's biodiversity is minimised and appropriate arrangements have been made compensation any impact.

In deciding whether to approve the Plan, they must also take account of the Biodiversity Gain Hierarchy (except in relation to irreplaceable habitats).

Paragraph: 059 Reference ID: 74-059-20240214

### **What is contained in a Phase Biodiversity Gain Plan?**

The content of a Phase Biodiversity Gain Plan is intended to be more limited in scope than an Overall Biodiversity Gain Plan, instead of detailing the overall strategy (like the Overall Plan), the Phase plan focusses on a phase's contribution to biodiversity net gain and confirming progress towards the overall biodiversity gain objective for the entire development. It must include the following matters:

- the post-development biodiversity value of the onsite habitat for the phase of the development (which is the subject of the Plan);
- the post-development biodiversity value of the onsite habitat for each other phase of development (whether begun or otherwise);
- any registered offsite biodiversity gain allocated to the entire development and the biodiversity value of that gain for the development prior to submission of the phase plan;
- any registered offsite biodiversity gain which is proposed to be allocated to the entire development and the biodiversity value of that gain in relation to the development;
- any biodiversity credits purchased for the entire development prior to submission of the phase

plan; and

- any biodiversity credits proposed to be purchased for the entire development.

The Phase Biodiversity Gain Plan must also include the following further information:

- name and address of the person completing, and (if different) the person submitting the plan;
- description of the development and planning permission reference number (which the person submitting the plan considers is relevant to the phase of development);
- post-development plans for the phase of development showing the location of existing onsite habitat (including any irreplaceable habitats) and drawn to an identified scale and showing the direction of North;
- a completed biodiversity metric calculation tool(s) (<https://www.gov.uk/guidance/biodiversity-metric-calculate-the-biodiversity-net-gain-of-a-project-or-development>) stating the publication date of the biodiversity metric used and showing the calculation of the pre-development and post-development biodiversity values;
- information about the steps taken or to be taken to minimise the adverse effect of the phase of development on the biodiversity of the onsite habitat;
- arrangements for the maintenance and monitoring of significant onsite habitat enhancements;
- a description of how the Biodiversity Gain Hierarchy will be followed and where to the extent any actions in that hierarchy are not followed, the reasons if not (except for irreplaceable habitats); and
- a description of any irreplaceable habitat on the land to which the plan relates which exist on the relevant date, and any part of the development for which planning permission is granted where the onsite habitat of that part is irreplaceable habitat arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat.

## **What is considered when determining a Phase Biodiversity Gain Plan?**

The planning authority must only approve the Phase Biodiversity Gain Plan if they are satisfied:

- that post development biodiversity value of the onsite habitat for the phase (which is the subject of the Phase Plan) is at least the value specified in the Phase Plan;
- the post development value of the onsite habitat for any other phase which has begun is at least the value of specified in the Phase Plan most recently approved for that phase (unless there has been a section 73 permission which has affected the value in that earlier Phase Plan);
- any registered offsite biodiversity gain allocated and biodiversity credits purchased for the development are at least the value specified in this Phase Plan;
- the biodiversity gain objective of at least 10% gain will be met for the entire development, taking into account the post development of the onsite habitat of the entire development and each phase (whether begun or not), the biodiversity value of any registered off-site gain allocated or proposed to be allocated to the entire development, and any biodiversity credits purchased or proposed to be purchased for the entire development; and
- If the phase (which is the subject to the Phase Plan) includes onsite irreplaceable habitats, the adverse effect of the development on the irreplaceable habitat's biodiversity is minimised and appropriate arrangements have been made to compensate any impact, having regard to the Overall Biodiversity Gain Plan for the entire development.

In deciding whether to approve the Plan, they must also take account of the [Biodiversity Gain Hierarchy](#) (except in relation to irreplaceable habitats).

Paragraph: 061 Reference ID: 74-061-20240214

**What are the implications for biodiversity net gain if a section 73 permission varies a**

## **condition related to a permission for phased development?**

The statutory framework for biodiversity net gain has been designed to take account of the fact that, for a long term phased development, a section 73 permission can sometimes be granted after the original permission has been commenced to change the conditions related to development, including future phases, and this section 73 permission is a separate permission to the original permission.

In the first instance, if a section 73 permission for phased development does not affect the post-development value of the onsite habitat of the entire development or affect irreplaceable habitats (including any compensation arrangements) as specified in an earlier plan, the Overall Biodiversity Gain Plan for the original permission is regarded as approved for the section 73 permission and a new Overall Plan would not need to be submitted and approved. Similarly, any Phase Plan which has been approved would continue to apply as the post-development value for the development or irreplaceable habitats has not been affected.

However, if the section 73 permission affect the post-development value of the phased development's onsite habitat or its irreplaceable habitats, a new Overall Plan would be required to be submitted and approved to ensure the biodiversity gain objective will be achieved.

The content and approval matters for this Overall Plan are similar to that of an Overall Plan for the original planning permission, except that additional information must be provided in the Overall Plan about the post-development biodiversity value of the onsite habitat of a phase which has already begun and the planning authority must be satisfied that this value is at least the value of specified in the Phase Plan most recently approved for that phase (unless there has been a section 73 permission which has affected this value.)



## What are the procedures for an Overall or Phase Biodiversity Gain Plan?

The procedures for submitting an Overall or a Phase Development Biodiversity Gain Plan are the same as a standard Biodiversity Gain Plan. The planning authority has 8 weeks (or another agreed timescale) to determine either Plan, and an [appeal](#) can be made if the planning authority has refused or not approved either Plan in this timescale.

Paragraph: 063 Reference ID: 74-063-20240214  
Published 14 February 2024

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