Biodiversity Net Gain: Sky High Prices for Statutory Credits

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The Government has published a price list for statutory BNG credits. It's not commercially attractive at all, which is precisely the point.

The biodiversity net gain (BNG) policy is intended as a way to contribute to the recovery of nature while developing land; to make sure the habitat for wildlife is in a better state than it was before development. The concept was brought into law by the Environmental Act 2021 and will be implemented through changes to the planning system. However, the Government's intention is that BNG will create a market in biodiversity units.

This coming winter, the Government is introducing a mandatory requirement to achieve at least a 10% biodiversity net gain increase from a site's pre-development biodiversity value. The relevant planning legislation is not yet in force there will be a new section 90A and Schedule 7A to the Town and Country Planning Act 1990.

The Department for Agriculture and Rural Affairs' Land Blog has suggested it is on track to introduce the requirement from November 2023, starting with most major developments: you can see the update by clicking on this link.

Where planning permission is granted for a planning application submitted after November 2023, the notice of planning permission will impose a statutory BNG delivery requirement that must be discharged before development can begin.

To discharge the condition, the planning authority must approve the development's biodiversity gain plan. This biodiversity gain plan approval must take place before development starts. Applicants for planning permission will have to include biodiversity gain information with their application.

The basic rules are that habitats are to be managed for at least 30 years and must satisfy a 10% net gain in biodiversity points. The points are a reference to a value as calculated in accordance with a specialist biodiversity metric: see version 4.0.

The way the metric is intended to work is to encourage developers to minimise loss of habitat and enhance the biodiversity of their development land. If that's not possible the developer must create habitat either on-site or

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off-site: i.e. on the development land or on land the developer owns away from the development site. Alternatively, off-site provision may be made by buying BNG units from a land manager. If the developer is unable to provide BNG units on-site or on off-site land, it must buy statutory BNG credits from the government. There is Government guidance for developers about the options.

The Government has always intended that buying statutory biodiversity credits should be a last resort option, and the price list for the Biodiversity Net Gain statutory biodiversity credit scheme bears that out. Published at the end of July, it is a very unattractive option: you can see the prices here. For example, by our crude calculations using the metric, it would appear that the loss of one hundred metres of hedgerow on site would require wholly disproportionate expenditure on statutory credits.

Developers on the cusp of making planning applications should act now to ensure that, if necessary, forthcoming projects have secured sufficient sources of private BNG units in good time should the Government press ahead with its plans to introduce mandatory BNG this winter.

Need advice?

Lester Aldridge's Planning & Environment team advises national and regional developers on all legal aspects of planning. Contact the team at online.enquires@LA-law.com.

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