

Trudy Harrison MP, Minister for Natural Environment and Land Use
Department for Environment, Food and Rural Affairs

Sent by email

23 August 2023

Dear Minister,

We are writing to you on behalf of a coalition of environmental groups to express concern about the implementation of Biodiversity Net Gain (BNG).

When the Environment Act 2021 passed and brought mandatory BNG into law, this was a massive step forward for nature. Development finally had the opportunity to contribute to nature recovery rather than hindering it.

However, as the rules and regulations for BNG have been clarified, that opportunity seems to be slipping away. There is an urgent need to rectify some aspects of the implementation of BNG if it is to help meet the Environment Act target to halt and reverse the decline in species abundance and adhere to our international obligations under the Global Biodiversity Framework agreed at COP15.

On behalf of Link's Wildlife & Countryside Link's Land Use Planning Group, bringing together environmental organisations working in the planning system, we list below the key areas that require urgent consideration.

On-site register

High quality delivery of all biodiversity gains, both on and off site, is essential to delivering benefits for nature. Whilst off-site BNG units will be clearly registered with Natural England acting as the operator, on-site units will not. All on-site BNG should be added to the BNG register as this will allow for crucial monitoring and scrutiny by third parties and local communities who know their area best.

We recognise the Government has stated its intention to explore *"how on-site information can be extracted from planning permissions and published on the register"*. However, this is currently only a vague commitment and clear plans for adding on-site BNG to the register should be set out so that long-term gains can be effectively managed and monitored on site, and that this information is publicly available.

Enforcement

Registering gains alone will not be enough. There must be enforcement where developers fail to deliver and maintain promised gains. The burden of enforcement for BNG will fall largely on Local Planning Authorities (LPAs), particularly for on-site gains which will be secured through planning conditions or obligations. LPAs have limited funds for enforcing planning conditions with 80% of enforcement officers already reporting that there weren't enough officers in their team to carry out the workload.

We welcome the Government's commitment to *"review the role of guidance in supporting when enforcement action can be taken, to clarify that a failure to deliver promised environmental enhancements can justify enforcement action"*. However, further details are urgently needed on this to make clear failure to deliver or maintain gains is enforceable. Furthermore, adequate funding will need to be provided to LPAs to carry out enforcement where gains have not been delivered or maintained.

Selling of excess units

The decision to allow developers to sell excess on-site biodiversity units as off-site gains for another development limits the ability of BNG to recover nature and deliver on nature targets. Currently, some major developments will deliver well above 10% gain and this should be welcomed as a contribution to nature recovery. By allowing such excesses to simply be sold on, excess gains become part of another developer's gain, meaning the additional contribution to nature recovery is removed. In effect this means BNG is only likely to deliver a 10% gain, which the [OEP](#) has said is, in practice, only likely to compensate for lost biodiversity. The proposed regulation which effectively caps BNG at 10% by allowing any additional gains to be sold to another development, must be urgently reconsidered.

Traceability of statutory credits

The Government has set out that they do not propose to make a direct, traceable link between an individual development that purchased credits and specific sites that have received that investment.

This lack of transparency constrains the ability to monitor and evaluate the use of the credits system, in particular the types of developments that are looking to access biodiversity credits. This means it will be impossible to target support where it might be needed to improve the delivery of net gains in future.

Furthermore, it limits the ability of local communities to understand how credits from particular developments are being spent and how developments in their area are benefiting nature. This reduces incentives for developers to identify local BNG opportunities. It also limits the ability of those who receive credits funding to be transparent about the source of their funds. This could limit the ability of organisations who wish to be transparent with supporters or investors from taking part in credit-funded schemes, limiting the effectiveness of credit investment.

Irreplaceable habitats consultation

We understand there are still secondary regulations and guidance to be published on irreplaceable habitats and we are still expecting a public consultation on irreplaceable habitats.

Ensuring the definition of irreplaceable habitats and the principles for compensation is right, through consultation with experts and stakeholders, is essential to ensuring that BNG policy does not lead to the loss of habitats which genuinely cannot be replaced and genuinely results in net gain for biodiversity across the country. We urge you to consult as soon as possible on the irreplaceable habitats recommendations.

There is still time to rectify the issues set out above before implementation in November 2023. We urge you to ensure that regulations and guidance still to be published deliver a robust approach to BNG so that this important policy genuinely protects and restores English nature.

We would be pleased to discuss this further with your team and and DLUHC colleagues. Thank you for your consideration of the above.

Yours sincerely,

Carl Bunnage, Head of Nature Policy, RSPB England
Rebecca Pullinger, Lead Policy Advocate for Planning at the Woodland Trust
Co-Chairs of Wildlife & Countryside Link's [Land Use Planning Group](#) (on behalf of the group)

Replies can be sent to: matt@wcl.org.uk

CC: Rachel Maclean MP, Minister of State (Housing and Planning), Department for Levelling Up, Housing and Communities.