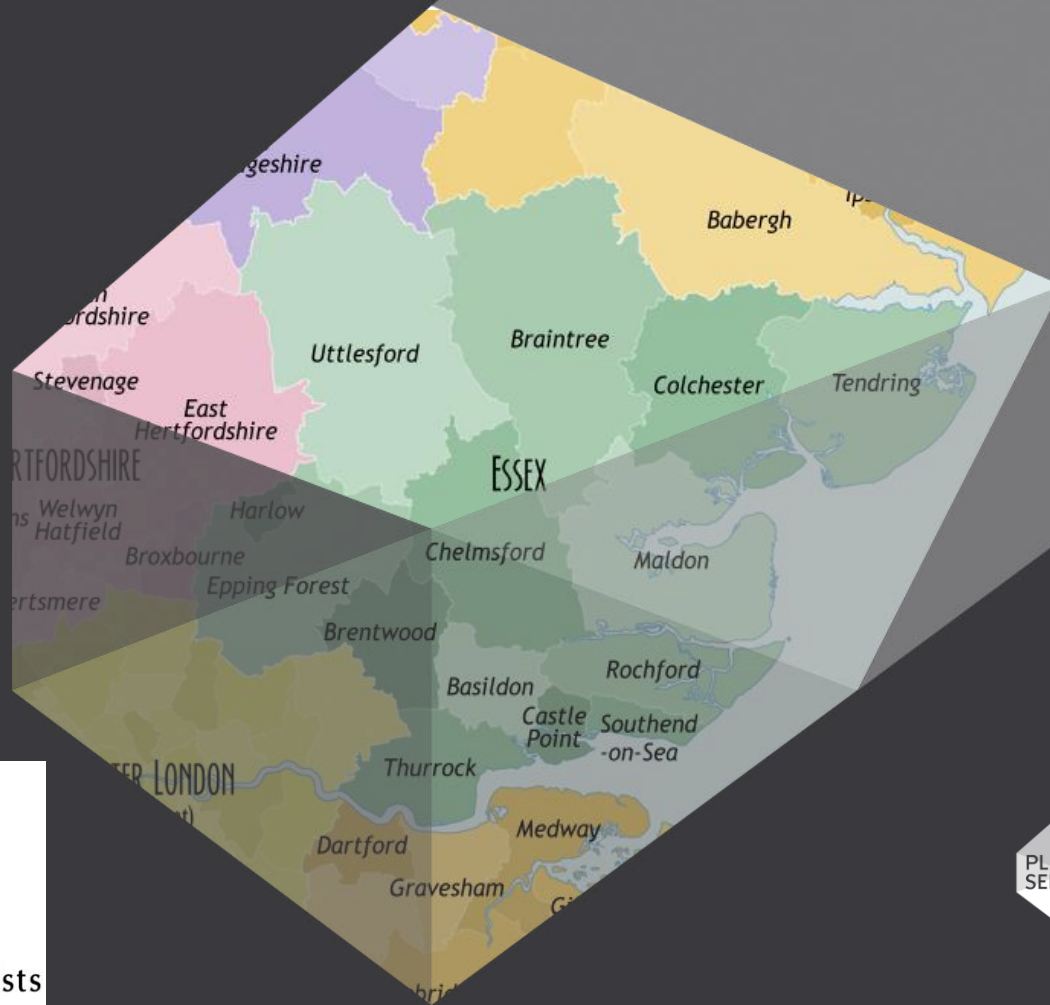


Update on key issues related to biodiversity in Development Management & Spatial Planning

Sue Hooton, Place Services, Essex County Council and National ALGE Executive Committee

East Anglian Planning and Biodiversity Webinar 27th April 2022



ASSOCIATION OF
Local Government Ecologists



Essex County Council



Update on Key issues related to biodiversity in Development Management & Spatial Planning

SUMMARY

- Environment Act 2021 – where are we now ?
- Biodiversity Net Gain (BNG) – Day 1 readiness
- Delivery of offsite BNG
- Local Nature Recovery Networks & Strategies – watch this space
- LPA 5 year Biodiversity Reports – covering 3 years before comes into force
- Nutrient Neutrality assessment requirements for SACs
- Nature Recovery Green Paper for Protected Sites & Species

The Environment Act – where are we now ?



Considerations with guidance to come from Secretary of State on:

- Strengthened duty under s40 of NERC Act 2006 to read “to conserve and enhance biodiversity”.
- LPAs must have regard to Local Nature Recovery Strategies (LNRS), Species Conservation Strategies e.g. GCN District Level Licensing and Protected Site Strategies
- Biodiversity Reports for BNG within a year of Section 102 coming into force and then at least every five years
- **Skills and expertise needed to delivery BNG include ecology, planning, legal services and data management.**



Biodiversity Net Gain – no mandatory 10% yet

Schedule 14 inserts a new Schedule (Schedule 7A) into the Town and Country Planning Act 1990 which *will* impose a general condition of planning permission **when BNG Regulations come into force** (probably Autumn 2023).

The Act sets out the following key components of mandatory BNG in England only:

- **The mitigation hierarchy still applies !**
- **Minimum 10% BNG will be required**
- **Calculated using Defra Biodiversity Metric with Biodiversity Gain Plan (BGP) - 10% each for habitats, linear features & rivers**
- **Habitat secured for at least 30 years** - on-site, off-site or via statutory biodiversity credits.
- **Habitat can be delivered on-site, off-site or via statutory biodiversity credits** (evidence needed for discharge prior to commencement)
- **All off-site mandatory BNG will require a legal mechanism & be recorded on national register.**

Biodiversity Net Gain – no mandatory 10% yet



BNG delivery mechanisms



Onsite (units)

Potentially in full or combination



Delivered via habitat creation/enhancement via landscaping/green infrastructure

Offsite (units)



Delivered through new habitat creation/enhancement on land holdings or via habitat banks

Statutory Credits

Only if units not available

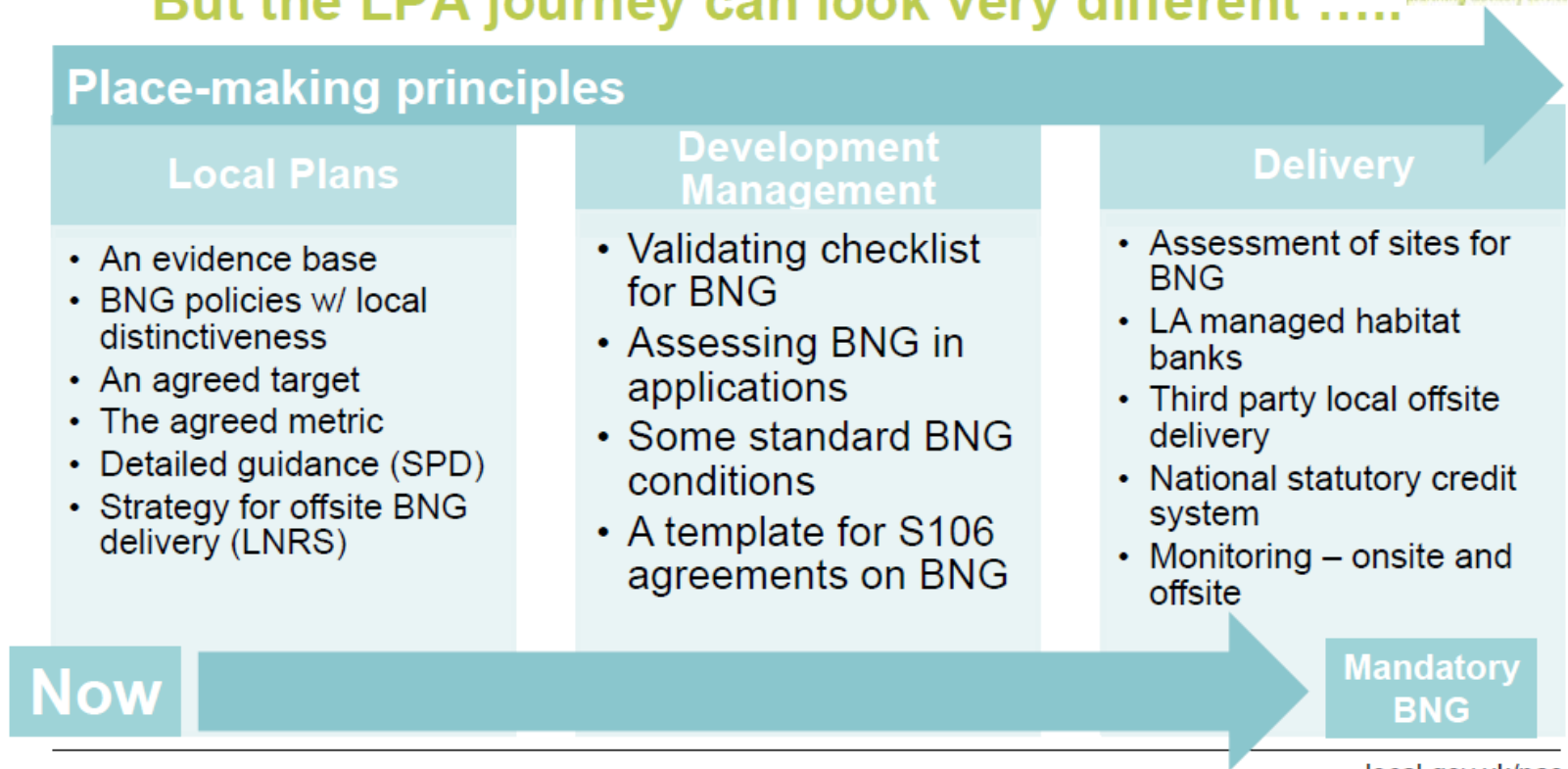


Delivered through landscape-scale strategic habitat creation delivering nature-based solutions

Biodiversity Net Gain – no mandatory 10% yet



But the LPA journey can look very different



Biodiversity Net Gain - no mandatory 10% yet



LPA Biodiversity Net Gain Capacity and Skills Project

- Two year project funded by Defra started in March 2021
- Focus on BNG, but also touching on LNRS and other relevant aspects of Environment Bill
- Aim is to enable LPAs to be 'day one ready' for BNG
- Develop a programme of training and support for 330+ LPAs England-wide:
 - Policy planners
 - Development management planners
 - Councillors
 - Others as relevant
- Outputs will include:
 - Community of LPA planners and members
 - Website and resources focused to key groups



Biodiversity Net Gain – no mandatory 10% yet

- **1st instalment of “new burdens” s31 grant funding for LPAs arrived but more than ecological expertise is needed.**
- BNG can be secured on LPA land including financial contribution towards improving condition of habitats within green infrastructure
- CIEEM have published [BNG report and audit templates](#) and Place Services has provided example BNG condition text to PAS.



To local authorities in England listed in Annex A

28 February 2022

Dear colleagues,

Section 31 (Local Government Act 2003) Grant Determination Letter for the Biodiversity Net Gain Grant 2021/22: Grant No. 31/5945

This Determination is made between:

- (1) The Secretary of State for Environment, Food and Rural Affairs and
- (2) The local authorities listed at Annex A.

Background

Biodiversity net gain (BNG) is an approach to development that leaves biodiversity in a measurably better state than before. This means protecting existing habitats and ensuring that lost or degraded habitats are compensated for by enhancing or creating habitats that are of greater value to wildlife and people.

The Environment Act 2021 includes provisions that make the achievement of 10% biodiversity gain mandatory for developments under the Town and Country Planning Act 1990. The requirement is due to come into force in late 2023.

Purpose of the Grant

The purpose of this grant is to provide funding to the local authorities in England listed at Annex A, towards expenditure lawfully incurred or to be incurred by them.

The grant is intended to support local planning authorities in their preparations for the introduction of mandatory BNG.

The total funding allocated for the period 2021/22 is £4.18 million. Most local authorities have been allocated £10,047, with Unitary Authorities being allocated £20,094.

Individual planning authorities are best placed to decide how to use the funds in the most effective way.



BNG & Implications of the Environment Act 2021



In relation to the issue of any pre development site clearance affecting BNG baseline for an application:

Pre-development biodiversity value must be calculated before any site clearance or other habitat management work has been undertaken, by the applicants or anybody else. It should be noted that the baseline for habitats on any site proposed for development will be taken as 30 January 2020, or the nearest (in time) prior aerial photographic evidence or survey.

See Schedule 14 Part 1 paragraph 6 of the Environment Act 2021
(<https://bills.parliament.uk/Publications/41447/Documents/196/21003.pdf>)

This clause will be triggered when the BNG mandatory requirement comes into force.



Securing delivery of Off-site BNG

- **Appropriate when:**
 - Mitigation hierarchy met on-site
 - All options for on-site BNG exhausted (Defra metric 3.0)
(Relates to habitat only, enhancements such as bird and bat boxes do not add to the BNG calculation)
- **Off-site approach:**
 - **Option 1 Strategic** (i.e. Local Nature Recovery Network)
 - **Option 2 Local** (community-led project)
 - **Option 3 Combination of strategic and local**
 - **Option 4 National Statutory biodiversity credits** (not available yet)

Trading down - When a habitat type of certain 'distinctiveness' is replaced with one of lesser distinctiveness i.e. woodland replaced by amenity grassland. **MUST BE AVOIDED!** Rule 3 Biodiversity Metric 3.0 Technical Supplement

Habitat Bank – site where specific habitats have been created to deliver biodiversity units (or credits) to meet BNG requirements from development – see Greater Cambridge case study [Pioneering Biodiversity Units Marketplace Unveiled in Cambridgeshire \(bidwells.co.uk\)](#)

KEY FACTS for BNG & Next Steps (Natural England, 2022)



KEY FACTS & NEXT STEPS

Landowners can start to undertake habitat works now in anticipation of mandatory BNG - this is referred to as 'habitat banking'.

LPAs can use their own land to deliver BNG on, under the caveat that all necessary requirements are met and any conflicts of interest managed.

BNG is additional to, and does not replace or reduce existing protection for protected sites, habitats or species.

BNG can also be delivered via blue and/or green infrastructure, both on-site and off-site.

Prior to mandatory BNG, the net gain requirement for a project will be dependent on Local Plan and NPPE requirements.

Habitat enhanced or created for mandatory BNG must be secured, managed and maintained for at least 30 years and must achieve the distinctiveness and condition as intended.

River, hedgerow and area habitats are considered independently and are not interchangeable; you cannot address a loss of one type by providing another.

FOR INFORMATION

More detailed information on the net gain approach can be found on:

- [Natural England Blog](#)
- [GOV.UK](#)
- [Local Government Association](#)

FOR ACTION

- Progress on the development of the digital services required for BNG, including registering land, can be tracked via the [BNG Digital Services Blog](#).
- Developers can: familiarise themselves with the [British Standard for net gain](#), and the [CIEEM, CIRIA, IEMA Good Practice Principles for Developments](#).
- Local Planning Authorities can: [Sign up for updates on the Planning Advisory Service website](#).

Local Nature Recovery Strategies



Local Nature Recovery Strategies (LNRS) are a new system of spatial strategies for nature, which will cover the whole of England. They are designed as tools to drive more coordinated, practical and focussed action to help nature.

The production of each LNRS by **Responsible Authorities** and will be evidence-based, locally led and collaborative, to create a network of shared plans that public, private and voluntary sectors can all help to deliver. This will provide a locally owned foundation to developing and underpinning the [Nature Recovery Network](#); identifying the places which, once action has been taken on the ground, will enable the Network to grow over time.

A LNRS can be used to target *offsite* BNG so that it contributes to the Local Nature Recovery Network. **It should reflect local priorities and locally-specific plan policies could specify how the LNRS will be used to influence how and where BNG is delivered.**

If there is no LNRS, with local options for delivery, the default for mandatory BNG will be secured by statutory biodiversity credits (national) !



LPA 5 year Biodiversity Report

Section 104 inserts a Section 40A into the NERC Act requiring LPAs to produce a Biodiversity Report covering a period of up to three years of the section coming in to force, within 12 weeks of the end of the period and then every five years

- (3) A biodiversity report so published must contain—
 - (a) a summary of the action which the authority has taken over the period covered by the report for the purpose of complying with its duties under section 40(1) and (1A),
 - (b) a summary of the authority's plans for complying with those duties over the period of five years following the period covered by the report,
 - (c) any quantitative data required to be included in the report by regulations under subsection (8)(b), and
 - (d) any other information that the authority considers it appropriate to include in the report.
- (4) If the authority is a local planning authority, its biodiversity report must also contain—
 - (a) a summary of the action taken by the authority in carrying out its functions under Schedule 7A to the Town and Country Planning Act 1990 (biodiversity gain as condition of planning permission) over the period covered by the report,
 - (b) information about any biodiversity gains resulting or expected to result from biodiversity gain plans approved by the authority during that period, and
 - (c) a summary of the authority's plans for carrying out those functions over the five year period following the period covered by the report.

Implications of The Environment Act 2021



Section 109 – Species Conservation Strategies

Sets out the powers to develop strategic licensing approaches for other species along the lines of Great Crested Newt District Level Licensing

- (6) A local planning authority in England and any prescribed authority must co-operate with Natural England in the preparation and implementation of a species conservation strategy so far as relevant to the authority's functions.



Implications of The Environment Act 2021



Section 110 Protected Site Strategies e.g. Suffolk Coast RAMS, Essex Coast RAMS and Nutrient Neutrality for SACs

- (1) Natural England may prepare and publish a strategy for—
 - (a) improving the conservation and management of a protected site, and
 - (b) managing the impact of plans, projects or other activities (wherever undertaken) on the conservation and management of the protected site.

This process may include identifying plans and projects that might have an impact on a protected site, assessing their impacts, and recommending measures.

Sections 112 and 113 allow the Secretary of State to amend clauses in the Conservation of Habitats and Species Regulations 2017, but...

- (7) The Secretary of State may make regulations under this section only if satisfied that the regulations do not reduce the level of environmental protection provided by the Habitats Regulations.

Nutrient Neutrality assessment requirements – River Wensum SAC and The Broads SAC



Nutrient Budget Calculator Guidance Document



Nutrient Neutrality Budget Calculator

a tool for assessing the nutrient loading to a Habitats Site

The Broads SAC and Ramsar



Image Source:
Martin Pettit
Boat Trip On The Norfolk Broads At Waxham, Norfolk
Copyright: © Martin Pettit 2015

Nature Recovery Green Paper

Consultation closes 11 May 2022



The proposals set out in this Green Paper support Government ambitions to restore nature and halt the decline in species abundance by 2030.

The Green Paper includes options to bring clarity and coherence to our framework for protected sites; to reform species protections; and to modernise funding arrangements.

It also looks at what institutional and delivery arrangements would best support our nature recovery objectives.

Government is setting out proposals to create a system which better reflects the latest science and the impending impacts of climate change, which better reflects our domestic species and habitats, and which will help us achieve our significant goals to recover nature.

[Nature Recovery Green Paper: Protected Sites and Species](#)
[- Defra](#)

BNG and Implications of the Environment Act



Summary

- **Environment Act 2021** – secondary legislation is needed for BNG and associated delivery mechanisms & strategies. Look out for more guidance and respond to Nature Recovery Green Paper on Protected Sites and Species.
- **Biodiversity Net Gain** – no mandatory 10% yet but NPPF policies apply to plans and projects. PAS events on consultation on BNG Regulations – are you proposing to submit any comments ?
- **PAS training & FAQs on BNG for LPAs** to be “Day 1 ready” – these will be updated regularly with added content for LPAs e.g. resourcing, strategic, local plans, decision making, viability, additionality and training for planners and Members which is recorded and available on PAS website.
- See [Biodiversity Net Gain FAQs - Frequently Asked Questions | Local Government Association](#)
- Ask for support 😊

Thanks for listening....



ASSOCIATION OF
Local Government Ecologists

Representing professional ecologists working in local government
<https://www.alge.org.uk/alge-membership/>

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