

Climate Change CAG
27 November 2023

Progress to date on Biodiversity Net Gain and the Enhanced Biodiversity Duty

Background

The New Duty Implications of Biodiversity Net Gain (BNG) arising from the Environment Act 2021 have significant implications for the Council. The purpose of this paper is to provide an update on actions to date at both the national and local levels.

At the National Level

The mandatory requirement for 10% BNG for qualifying developments was due to come into force in November 2023. However, due to delays in the writing of secondary legislation and guidance this has now been pushed back to January 2024. The Government has recently set out its [timetable](#) for implementation, namely:

- legislation will be laid in November
- 10% mandatory BNG will be required from January 2024
- BNG for small sites will still be applicable from April 2024
- BNG for NSIPs will be required 2025
- By the end of November all guidance and regulations will be published including:
 - The statutory biodiversity metric, critical for calculating the correct biodiversity gain
 - draft biodiversity gain plan template
 - the Habitat Management and Monitoring Plan template
 - a package of Biodiversity Net Gain guidance that sets out further advice for landowners, developers, and Local Planning Authorities around their role and responsibilities in delivering mandatory Biodiversity Net Gain

Government Funding for BNG

Defra have allocated funds which are to be held in a ring-fenced reserve for BNG related activities. For 2022/23 most second tier authorities were allocated £14,007 to be spent before the 2023/24 allocation of £26,807. If the money is not spent then it has to be returned to Government.

The Council had to confirm acceptance of the grant conditions by the deadline of 31 August 2023 and an initial evidence of spend by 15 September 2023 (for the period 1 April 2023 to 31 August 2023). Further evidence of spend for the period 1 September 2023 to 31 March 2024 to be submitted by 15 March 2024. All of the money is committed to the following projects:

- Contribution to the Kent Wildlife Trust (KWT) BNG register - annual contribution may be subject to future grant settlements

- Local Wildlife Sites SLA with KWT - annual contribution may be subject to future grant settlements
- Baseline Study
- Contribution to KCC BNG officer - annual contribution (may be subject to future grant settlements)
- Part funding of TDC BNG officer

At the local level

Recommendations from the previous report are set out in the table below

Recommendation	Progress
Identify a lead senior (CMT) officer be nominated	Bob Porter (Director of Place) appointed as CMT lead
Establishment of cross-department working group	A group has been established and meets monthly Representatives from Planning, Strategic Planning, Open Spaces, Climate Change Officer, Housing, Environmental Health, Regeneration, Property and Legal
Amendments to internal processes to consider the implications of BNG in all of the Council's actions	This is ongoing
Identification of the Council's biodiversity priorities	To commission a study to identify a biodiversity baseline
Management of the Council's own land	It was agreed by the group that this should wait until the various vacant posts in the Open Spaces team have been filled.
How proactive does the Council want to be in identifying suitable locations for off-site provision and whether the Council has the required skills	There are a number of legal and practical issues arising from this which need to be resolved through the regulations and guidance. The Government recommends that if a local authority is to set up an habitat bank using its own land holdings and selling biodiversity units to developers, it would need to establish a separate organisation referred to as a Habitat Bank Vehicle. Another issue is if BNG is secured by a s106 agreement, an agreement between the developer, third parties and the local authority, the Council as the BNG off-site provider would need to be party to this, however, it cannot sign a S106 agreement with itself.

Other progress

In addition to the previously identified recommendations, work has progressed on other priorities identified by the officer working group.

Planning Policy Website: A page has been set up on the [planning policy news page](#) to provide basic information on Biodiversity Net Gain and related biodiversity issues. This page will be developed as more guidance becomes available.

Biodiversity Officer: Following on from Government announcements for funding to meet the new BNG burden, it was agreed by the OWG that a bid be submitted for a biodiversity officer as part of the star chamber process which could be partly funded, at least initially, from the BNG grant money. A job description and person specification have been drafted and currently being evaluated. One of the main tasks for this post would be to write a biodiversity strategy for the District and to advise colleagues of the BNG implications of their proposals, programmes and projects.

Baseline study: The OWG agreed to commission a Biodiversity baseline study for the District to identify the distribution of habitat types across the District and to assess the relative importance of those habitats ranging from high to medium and low importance using accepted good practice and industry standards. The study will also identify the most important areas for biodiversity and those areas which have the potential to become important and identify areas to improve habitat connectivity across the District.

KCC BNG officer: This post will produce guidance on an approach to BNG for Kent for both local authority planners and developers. A procedure note for BNG for local authority planners is also being produced. Training has also been provided on integrating BNG into the planning process for local authority planners with further training to be scheduled once regulations and guidance are published by the Government. This post is being funded by contributions from each of the districts using some of the Defra grant.

Kent Biodiversity Net Gain Register: Kent Wildlife Trust and KCC are jointly producing a BNG register which identifies land that is available for biodiversity net gain. The Kent BNG Site Register seeks to:

- Provide evidence of the supply of potential biodiversity units.
- Provide evidence to support the implementation of BNG policy requirements.
- Register prospective BNG sites which have not yet been surveyed (prospective sites).
- Register sites which have been surveyed and have a completed BNG metric (surveyed sites)
- Allow the identification of BNG delivery sites and facilitate contact between the landowner and a consultant/developer.

The Districts are making a contribution to fund this work from the Defra grant.

Local Nature Recovery Strategy (LNRS): On 30th June 2023 the Government [published](#) the areas and responsible authorities for the LNRS and KCC were appointed. In October Kent launched the [Making Space for Nature \(MS4N\)](#) programme - the LNRS for Kent. All of the districts are part of this stakeholder group.

Enhanced Biodiversity Duty Report: The Environment Act 2021 requires local authorities to publish a [Biodiversity Report](#) setting out their biodiversity duty actions. This is over and

above biodiversity duties as part of the planning process. The report must include the following:

- Local authority policies, objectives and actions - can include partnerships
- Demonstrate how other strategies have been considered
- Any future actions
- For LPAs - BNG information in relation to planning applications

Optional Information

- Information about the authority
- Your top achievements
- How your policies and actions have helped
- How you have raised awareness and educated the community
- Monitoring and evaluating your actions
- Biodiversity highlights and challenges

The first consideration of actions that could be taken has to be completed by 31st Dec 2023. The end date of the first reporting period should be no later than 1 January 2026. After this the end date of each reporting year must be within 5 years.

The OWG is pulling together an initial report for the end of the year. Biodiversity actions are already reported in the Strategic Planning Team's [Annual Monitoring Report](#) (AMR) of local plan policies.

Planning Advisory Service (PAS) - the Council also has a representative on the PAS Biodiversity Net Gain forum for LPAs and so is able to keep up to date with best practice and guidance. PAS provide a conduit between LPAs, DLUHC, Defra and NE and frequently hold practitioner meetings to discuss evolving guidance and regulations and provide training for LG officers and members.

Conclusion:

Although the official implementation date of mandatory BNG has been pushed back to January 2024 (exact date has yet to be published), there is still work to be done on internal and external processes and procedures to prepare for mandatory BNG and the enhanced biodiversity duty reporting.

The two key priorities are present are:

1. Recruitment of a BNG Officer; and
2. Commissioning of district BNG baseline study.

Additional links, for further information:

- Government [BNG guidance](#)
- [Planning Advisory Service guidance](#)
- [Kent Nature Partnership](#)