

# BIODIVERSITY NET GAIN REGULATIONS 2023

*Biodiversity – all things in the natural world around us; plants, animals, insects and microorganisms.*

The Government's Environment Act 2021 is part of a new legal framework for environmental protection and includes three important components affecting land development; nutrients, water and biodiversity.

Whilst the first two call for 'neutrality', the latter, under the Biodiversity Net Gain (BNG) Regulations, calls for a minimum net gain of 10% for biodiversity that may be adversely affected by development of land and habitat.

*Put simply; make it better than it was before.*

**The BNG Regulations will be MANDATORY from (a date) November 2023 for all large developments and from (a date) April 2024 for small sites.**

**A small site, by definition, is 1- 9 dwellings on a site of less than one hectare.**

Developers will need to use the services of an environmental expert, for example an ecologist, to produce a BNG Plan. This will be done using the BNG Metric Tool, specialised software that will calculate what needs to be done at the site to achieve the target of 10% gain.

## **How does this affect Local Authorities?**

Every local authority, be it county, district or parish/town, that has a Planning Department or Committee to administer the Town & Country Planning Act 1990, will have a legal responsibility to ensure that planning applications are in compliance with BNG **before they are approved.**

## **What are the challenges facing BHTC?**

- BNG will apply to everything the Council does within its own operations e.g. any developments it makes must comply or be proven to be exempt.
- Officers and Councillors will need to have a good understanding of BNG and how to apply the Regulations in order to test the viability of a BNG Plan.
- MSDC will pass down planning applications but BHTC should see evidence of BNG compliance by the developer.
- New planning permissions will be introduced (as at August 2023 not yet published).
- BHTC will ultimately need to assist in the monitoring of compliance i.e. has the developer delivered the BNG Plan.

## **Exemptions from BNG Regulations**

The exemptions are currently expected to be:

Existing Permitted (Lawful) Development.

Householder Applications.

Brownfield Sites (where 10% of 0 = 0)

Limited self-build ownerships.

## **BNG Credits**

There is provision within BNG Regulations for developers to apply for BNG 'off-site' credits, which can be used elsewhere, at a later date. Already there appears to be businesses offering to 'trade' these credits and a developer is acting within the law if he chooses to place the mitigation measures in say, Northumberland.

However, the Local Government Association recommends that 'off-site' credits are used to enhance the local environment, except under very special circumstances (clarity required). It argues that the whole point of BNG is for the benefit of the site or local area and habitat that is being disrupted.

### **Example Applications**

A real time example is that of the SA13 Folders Lane Development application, as approved by Mid Sussex Council in July 2023. Here the joint developers have acknowledged BNG but have chosen to use 'off-site' credits at Wiston, near Steyning. Far better to have found sites in or near Burgess Hill.

A brownfield site development application for 20 flats is received. This application will be exempt as there is no existing biodiversity habitat. However, the developer should be encouraged to create a new habitat on the brownfield site.

## **Recommendations to Strategic Development KAG**

Councillors to receive 'BNG Awareness' training to establish competence in applying the Regulations.

Council to see a developer's BNG Plan at the early stage of design.

To consider allocating a 'land bank' from Council-owned land or that of Mid Sussex District Council, for example Batchelors Farm (north-east corner).

Council to consider how to effectively monitor BNG off-site works, perhaps in partnership with Mid Sussex District Council.

To ensure that Council's position on BNG is widely known through About Town magazine, our website and social media.