

# LGA response to the Defra consultation on Net Gain

January 2019

The Local Government Association (LGA) is the politically led cross-party national voice of local government. We work with councils to support, promote and improve local government.

We have answered those questions that relate to local government activity or areas where the LGA has views on behalf of councils in their roles as leaders of place.

## Scope

- 1. Should biodiversity net gain be mandated for all housing, commercial and other development within the scope of the Town and County Planning Act?**
- 2. What other actions could government take to support the delivery of biodiversity net gain?**
- 3. Should there be any specific exemptions to any mandatory biodiversity net gain requirement (planning policies on net gain would still apply) for the following types of development? And why?**
  - a. House extensions**
  - b. Small sites**
  - c. All brownfield sites**
  - d. Some brownfield sites (e.g. those listed on brownfield, or other, land registers)**
- 4. Are there any other sites that should be granted exemptions, and why? For example, commercial and industrial sites.**
- 5. As an alternative to an exemption, should any sites instead be subject to a simplified biodiversity assessment**

We support the principle of biodiversity net gain and the broader ambitions of the 25 Year Environment Plan to be the first generation to leave our natural environment in a better state than we found it. It provides a key opportunity to maximise natural green capital and deliver multiple benefits for councils and the local communities that they serve.

However, we have strong concerns about the practical implementation of the biodiversity net gain proposals, in particular the new burdens on councils, the capacity of local authority planning departments and the lack of specialist ecological expertise to deliver them.

If biodiversity net gain is mandated, all new burdens on local authorities must be properly assessed and fully funded. In relation to any additional roles and responsibilities that the proposals introduce, we would strongly urge the government to look at the capacity and skills required by councils to deliver these.



# Briefing

The government should also develop a capacity building strategy to support local authorities. As an example, Defra worked with the LGA and others to develop a capacity building programme so support the introduction of the Flood and Water Management Act (2010).

We consider that any exemptions to a mandatory biodiversity net gain requirement should be decided locally, in order to effectively take into account the types of development sites in a local area.

**6. Do you agree that the Defra metric should allow for adjustments to reflect important local features such as local sites? Should the Defra metric consider local designations in a different way?**

Yes, we agree that the Defra metric should allow for adjustments to reflect local features and designations.

**7. Should local authorities be required to adopt a robust district level licensing approach for great crested newts, where relevant, by 2020?**

No, it should be up to local authorities to decide whether this is an appropriate approach for their local area. If the government is minded to take this proposal forward new burdens on local authorities must be properly assessed and fully funded

**8. For what species is it plausible to use district level or strategic approaches to improve conservation outcomes and streamline planning processes? Please provide evidence.**

No comment.

**9. Are there wider elements of environmental net gain that could be better incentivised? If so, please specify which, and any benefits that such incentives could provide.**

We support the principle of better incentivising wider elements of environmental net gain e.g. water use, air quality and flood risk. However, careful consideration will need to be given to the right approaches for measuring and incentivising these standards, to avoid potential unintended consequences. Our [response](#) to the government's Clean Air Strategy includes a number of suggestions to better understand and tackle air quality challenges.

**10. Is the Defra biodiversity metric an appropriate practical tool for measuring changes to biodiversity as a result of development?**

**11. What improvements, if any, could we most usefully make to the Defra metric?**

No comment.

**12. Would a mandatory 10% increase in biodiversity units be the right level of gain to be required?**

We do not support a mandatory national arbitrary percentage target. Local site variation will affect the appropriateness of a single national target.

**13. In clearly defined circumstances, should developers be allowed to pay through the tariff mechanism without fully exhausting on-site and local compensation opportunities?**

Circumstances should be decided by councils at a local level, to ensure that they fully reflect the types of sites in an area, their ecological or other importance in the local context, and the habitats located there.

**14. Would this be an appropriate approach to directing the location of new habitat?**

In principle, we support the proposal for a spatial hierarchy of delivering biodiversity net gain i.e. first priority should be to deliver biodiversity units on site where possible; if not, then should be delivered locally and if that is not possible then investment in national conservation priorities may take place through a tariff. We also support the principle that distant habitat creation through the proposed tariff will generally be more expensive than delivering habitats on site or locally.

**15. How could biodiversity assessments be made more robust without adding to burdens for developers or planning authorities?**

**16. Should a baseline map of broad habitats be developed?**

**17. Should this be applied, as a minimum baseline, to:**

**a. net gain calculations for all development?**

**b. net gain calculations in cases of suspected intentional habitat degradation?**

**18. What other measures might reduce the risk of incentivising intentional habitat degradation?**

**19. How can the risks of penalising landowners making legitimate land use change decisions before deciding to sell their land for development be mitigated?**

No comment.

**Delivering biodiversity outcomes**

**20. The provision of compensatory habitats would need to be guided by habitat opportunity maps. At what scale should these maps be developed?**

**a. Locally (e.g. local authority or National Character Area)**

**b. Nationally (i.e. England) as a national framework to be refined, updated and amended locally**

**21. What other measures should be considered to identify biodiversity and natural capital priorities?**

There may be merit in terms of efficiency and capacity in the proposed habitat opportunity maps being developed nationally and then augmented with more detailed local information. A similar exercise was undertaken to develop a flood [map](#) for surface water where the Environment Agency worked with Lead Local Flood Authorities (LLFAs).

**22. Would mandating net gain through the planning system be enough to stimulate the growth of a market for biodiversity units?**

**23. What further measures would help to ensure that the market provides:**

**a. Sufficient biodiversity units for development?**

**b. Cost-effective biodiversity units?**

No comment.

**24. Should there be a minimum duration for the maintenance of created or enhanced habitats?**

**25. If so, what should the minimum duration be?**

**a. Less than 25 years**

**b. 25 to 30 years**

**c. Longer than 25-30 years**

**d. Permanent**

**26. Would conservation covenants be useful for securing long term benefits from biodiversity net gain or reducing process and legal costs?**

**27. What safeguards might be needed in the implementation of conservation covenants?**

Any minimum durations should be decided by local authorities at a local level to reflect the types of sites in an area, their ecological or other importance in the local context, and the habitats located there.

### **Calculating and collecting the tariff**

**28. Does this proposed range for tariff costs fit with the principles set out in this section?**

**29. Would this proposed range for tariff costs provide opportunities for cost-effective habitat banks and compensation providers to compete?**

**30. Do you agree with the proposed principles for setting the tariff rate, as set out in this section? Please suggest any other factors that should be taken in to account.**

We support the principle that the tariff price should provide an incentive to retain habitat on site and to limit local habitat losses; and seek net gain through use of local habitat creation schemes (whilst also encouraging cost-efficiency in local habitat creation or enhancement schemes).

However, we are not clear whether the proposed tariff rate for biodiversity unit of between £9-15,000 is set at the right level to provide the right level of incentive for local habitat compensation and avoid the risk of a tariff being a too easy route to permission to degrade the site of a development. There should be flexibility to enable local authorities to alter the rate to ensure it reflect local circumstances.

**31. How should the tariff revenue be collected?**

**a. Locally (e.g. through a local authority)**

**b. Nationally (e.g. through Natural England or another national body)**

**c. Other, please specify**

**32. How should the tariff revenue be spent?**

**a. Locally (e.g. through a local authority)**

**b. Nationally (e.g. through Natural England or another national body)**

**c. Through a blended model, allowing spending at both levels**

**d. Other, please specify**

**33. If tariff revenue was collected and spent nationally, should spending prioritise areas which have contributed the most through biodiversity net gain tariff payments?**

The tariff revenue should be collected and spent locally by local authorities. However, any new burdens should be assessed and fully funded.

### **Delivering net gain in the planning system**

#### **34. What further measures will help to prevent burdens on local authorities increasing?**

All new burdens on local authorities that result from delivering net gain through the planning system must be properly assessed and fully funded. In relation to any additional roles and responsibilities that the proposals introduce, we would strongly urge the government to look at the capacity and skills required by councils to deliver these.

The government should also develop a capacity building strategy to support local authorities. As an example, Defra worked with the LGA and others to develop a capacity building programme so support the introduction of the Flood and Water Management Act (2010).

The LGA (in conjunction with the Planning Advisory Service and the Chartered Institute of Ecology and Environmental Management) ran a workshop on biodiversity net gain in December 2018 for local authority planners, which received very positive feedback. There was also strong feedback from delegates on the need for more capacity building support on biodiversity net gain if a new approach was introduced for both officers and elected members.

We are particularly concerned about the limited ecological expertise/capacity within local authorities and this will need to be addressed should the proposals in this consultation be taken forward. This is a significant risk to implementation. Research undertaken by the Association of Local Government Ecologists (ALGE) showed that only one third of planning authorities in England have access to their own 'in-house' ecologist and that around 65 per cent have no or only limited (i.e. part-time or shared with another authority) access to any 'in-house' ecological expertise. It also showed that 90 per cent of local authority planners lack ecological qualifications, have had very little training and consequently recognise that they have only basic levels of the ecological expertise required to discharge duties and national policy.

In addition, planning departments need to be properly resourced. Local planning authority resourcing is a huge issue, impacting on the ability to deliver the tasks expected of the planning system. Despite a 20 per cent increase in nationally-set planning fees in January 2018, taxpayers still subsidised the cost of processing planning applications by almost £200 million in 2017/18. We would urge the government to urgently take forward measures to ensure that local planning authorities are funded sustainably. A further 20 per cent increase in fees, which the government consulted on in 2017, should be allowed universally for all local planning authorities. Alongside this, government should test a fair and transparent scheme of local fee setting, giving councils the flexibility to set appropriate fees to reflect local circumstances.

#### **35. How could the proposals be refined to manage any negative impacts on the scale and delivery of other developer contributions (e.g. through Section 106 or Community Infrastructure Levy payments)?**

We would expect that any additional policy requirements relating to biodiversity net gain should be taken into account by developments alongside any other costs including their own profit expectations and risks, and that they should ensure that

proposals for development are policy compliant. Consideration should be given as to whether the current [viability guidance](#) could benefit from further strengthening in this regard.

**36. Would you, as a planning authority stakeholder, prefer any net gain tariff revenue to be paid through:**

**a. local authority administration?**

**b. a nationally managed funding scheme (which could then reinvest in local habitat schemes best aligned with national strategic environmental priorities)?**

Any net gain tariff should be paid through local authority administration, however this would be a new burden on local authorities and should be fully funded.

### **Impact on developers**

**37. How could the proposed net gain process be improved for developers?**

**38. What other steps, considerations or processes in environmental planning could be integrated within a net gain approach?**

**39. Would any particular types of development (e.g. commercial, industrial, public sector, local infrastructure) be disproportionately affected by a mandatory biodiversity net gain requirement?**

No comment.

### **Implementation of mandatory biodiversity net gain**

**40. Do you agree that the proposal for staggered transitional arrangements would help to ensure smooth implementation of biodiversity net gain policy?**

Yes, but should government be minded to take forward a mandatory biodiversity net gain approach it will need to ensure local authorities are fully funded for all new burdens and ensure an effective package of capacity building support is in place.