

Consultation on BNG Regulations and Implementation

Summary of PAS events held
over February & March 2022

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1. Background

- Over February and March 2022, we hosted ten events for local planning authorities on the Defra [consultation on Biodiversity Net Gain Regulations and Implementation](#).
- Four events covered the full scope of the consultation, giving an overview of all the proposals in the consultation document as well as a chance to ask questions or seek clarification.
- Six events took a “deep dive” into practical issues around off-site delivery (event delivered twice due to demand for places); monitoring, evaluation and enforcement; the BNG process for Town and Country Planning Act development (including phased & minerals); the concept of additionality; and the proposals for biodiversity gain plans.
- Presentations and recordings from all events are available on the [PAS website](#).

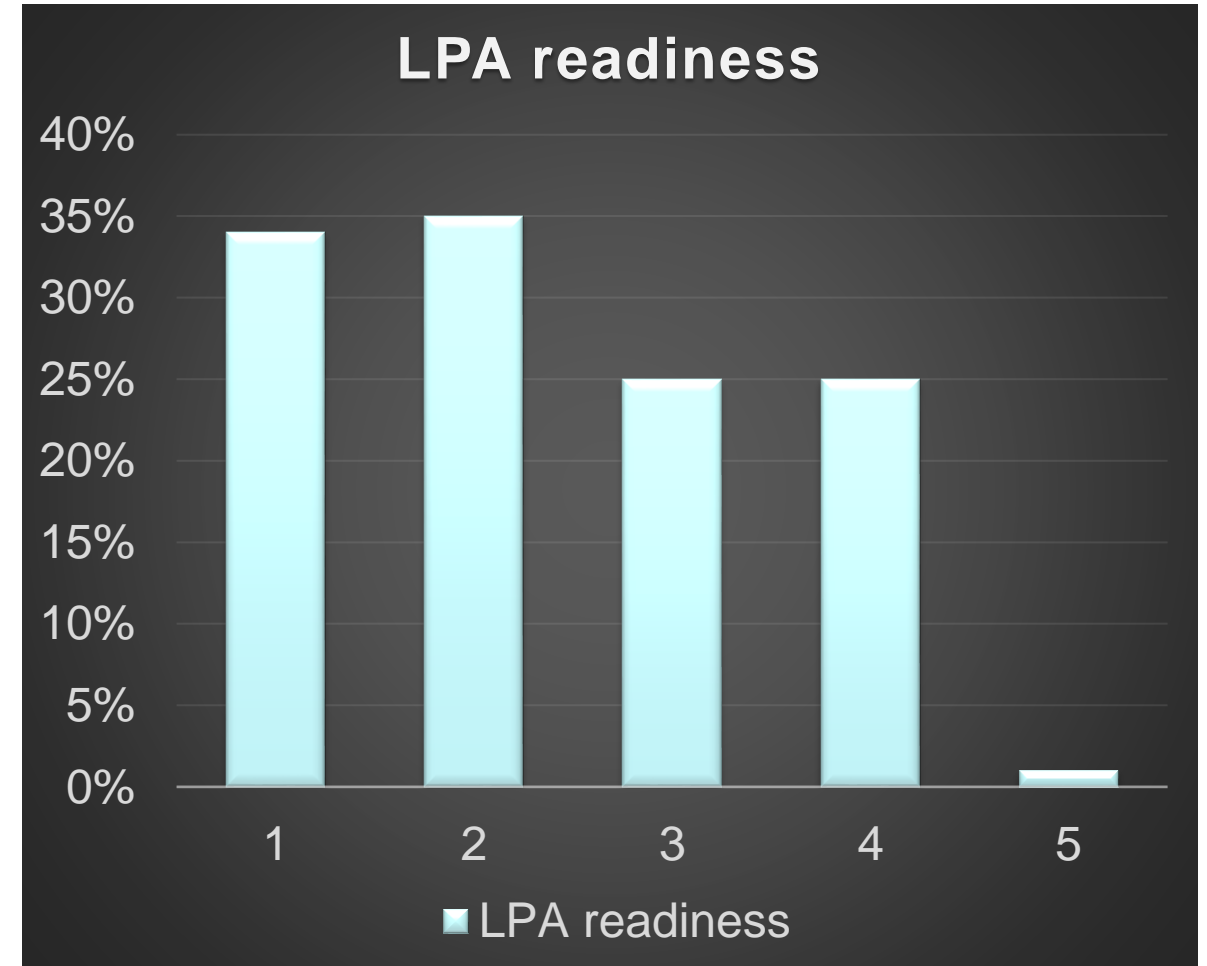
A total of 381 officers and 61 elected members took part in these events, representing 233 LPAs. The following pages summarise what we heard and some next steps.

2. How prepared are LPAs for mandatory net gain?

Using a scale of 1 to 5, we asked how prepared people feel for mandatory net gain when it arrives in November 2023 (1 = we have a lot to do & 5 = we are ready to go tomorrow)

We also asked if people had already read the consultation document at our Feb 2022 events:

- **Yes in full 15%**
- **Yes in part 48%**
- **No 37%**



3. Key Insights

Looking across all the material generated by the events, we think there are six key issues or themes that deserve particular attention. These were brought up again and again in discussions and raised in different contexts during all the events held.

LPA's are keen to make this work and their concerns and issues arise from wanting BNG to deliver and how they can get confidence that it will. We also heard many examples of existing good practice and learning that can be applied from similar approaches.



1) Resources,
capacity &
expertise



2) Delivering
strategic local
ambitions



3) Managing the
transition period



4) Flexibility for
local approaches



5) Monitoring
and enforcement



6) Making
decisions and
securing BNG

3.1 Resources, capacity and expertise

People are extremely concerned about the additional capacity and expertise that will be needed to ensure mandatory BNG is successful.

- BNG is being taken seriously by council officers and elected members alike, people want to make sure it is successful in their area.
- However, to do this, LPAs need to ensure that the additional work required is properly resourced and a range of expertise needs to be available.
- People feel that the additional burdens on LPAs haven't been properly understood and recently announced funding isn't sufficient.
- It is not just about access to trained ecologists, successful implementation will also require additional capacity in terms of legal advice, programme management, enforcement, monitoring, administration, etc.
- There will also need to be time and money invested into data management systems (especially GIS) to manage the new BNG regime.
- Many highlighted that BNG is not just about planning – to work well, it will need join-up across Council teams.

3.2 Delivering strategic local ambitions

People want more clarity over how they can encourage delivery of BNG in the right places locally. They think that Local Nature Recovery Strategies (LNRS) will be crucial to the delivery of net gain and they want to understand how BNG can be delivered alongside other environmental requirements and objectives.

- Local planners want a strategic context within which to make decisions on individual schemes, ensuring BNG supports local priorities.
- Elected members want to ensure that the new investment and improvements BNG brings are properly targeted to the benefit of their district, or even to their ward.
- LPAs think the LNRS could be a key tool for ensuring that “everything works together”, so that BNG can be aligned with other environmental aspects, such as designated sites, recreational green space, flood risk, nutrient neutrality and climate change.
- Overall, people want more information on the LNRS elements of the Environment Act asap to inform local priorities and enable work to start locally, as well as further guidance on how to deal with additionality (BNG alongside other environmental measures) with practical examples.

3.3 *Managing the transition period*

Managing the period from now until net gain becomes mandatory in November 2023 is critical, and further guidance on some key aspects would help to speed up progress.

- People are acutely aware they need to doing a lot of work now to prepare for mandatory net gain, but many are struggling with some immediate uncertainties or questions:
 - What actions do we prioritise now, what can we delay or put back?
 - How will the timeline for mandatory net gain align against our local plan review or other local planning timetables?
 - How far can net gain be required in current planning decisions?
- Uncertainty is holding back development of markets for off-site BNG. LPAs are unclear what elements they should be involved in and how consultation proposals will work in practice.
- Given the limited time and capacity available, officers are keen to avoid doing any wasted work or developing policies and projects that don't meet the demands of the regulations and guidance when they are finalised.
- People feel that more clarity on their roles and responsibilities now would help to speed to up work on BNG locally.

3.4 Flexibility for local approaches

Many authorities would like to go beyond the Government's minimum requirement of delivering 10% BNG and want the mandatory system to allow for local discretion in decision-making.

- Discussions with officers suggest that there is confusion on the possibility for going beyond 10% and the flexibility for this in the Government's proposals.
- Local plan policies setting targets above the 10% target will need to be supported by evidence, but planners are uncertain of the type and detail of evidence needed.
- Some authorities also discussed how they could focus on the quality of proposals rather than just the quantity, e.g. delivering net gain to a certain standard or in locally identified areas. How far can LPAs push back when BNG plans aren't good enough?
- People also considered that off-site BNG may be better than on-site in some cases and wanted to understand to what extent the 'on-site first' hierarchy would be flexible to local circumstances.
- Concerns were raised about the potential for BNG to affect delivery of non-statutory requirements, e.g. affordable housing.

3.5 Monitoring and enforcement

Monitoring and enforcement is one of least understood and developed areas of work, but seen as one of the most important for local authorities.

- Although monitoring and enforcement are covered in Part 3 of the consultation document, questions and concerns were raised in every session we held:
 - Who is responsible for making sure net gain is delivered?
 - How much capacity will LPAs have through traditional enforcement teams?
 - How will neighbouring LPAs work together where net gain is delivered outside of the LPA granting permission?
 - 30 years is a long time for monitoring sites and current systems won't cope.
- Monitoring and enforcement also appears to be an area within which there is least experience and fewest cases of good practice in LPAs.
- For many people, monitoring and enforcement is perceived to be the major call on resources for LPAs.

3.6 Making decisions and securing BNG

A general need for further guidance and information on consultation proposals was highlighted so LPAs can ensure BNG is delivered.

- **Decision-making process** – Planners stressed the need for information provision upfront for confident decision-making and asked questions around the sequencing of approvals, legal agreements and other requirements. Challenges in applying BNG to phased and minerals development were raised, as well as existing good practice.
- **Legal mechanisms** – LPAs asked whether the tools for securing BNG, through either S106 or conservation covenants, will be strong and agile enough to meet all requirements and whether alternatives could be developed.
- **Exemptions & small sites** – LPAs wanted more clarity around proposals for exemptions and better understanding of how BNG would be dealt with on small sites
- **On-site BNG** – Questions were asked over why proposed requirements were lower for on-site than off-site BNG.

4. Our next steps



We have collated all the views and points raised during the events and drafted a full report for colleagues in Defra, Natural England and DLUHC.



We will use the views and experiences you shared to develop resources on the [BNG pages of our website](#) and update the FAQs.



We will review and improve our practitioner network for LPAs to enable more people to get involved in our work and share their knowledge.



We will prepare case studies/examples from LPAs to showcase good practice and learn from experience.



We are finalising a new work programme for 2022/3 and will share details asap.

Acknowledgements

We are grateful to the officers and councillors who participated in these events and for the time and expertise they gave. The officers contributed their own opinions, based on experience, and are not necessarily the formal views of their authority.

We are also grateful to colleagues in Defra, DLUHC and Natural England who also gave a great deal of their time, expertise and support to ensure the events were successful. This included advice and practical support in designing the events as well as participation.