

ePaper: Biodiversity Net Gain



RIDGEMONT

We are construction & real estate law
Solicitors that simplify and resolve complex
legal issues.

Providing you with the clarity and
pragmatic advice you need to make
informed commercial decisions.



Biodiversity Net Gain: Building a hostile environment that will lead to the extinction of Developers?

The government has been prolific in legislating in relation to construction specific issues. Much of that is to be applauded, but it has created a difficult environment for Developers to make a profit and many sites are simply unviable. Nevertheless, further legislation has come into force that will inevitably increase the cost of development and one wonders whether Developers will consider capital is better spent elsewhere, in circumstances where the margins are increasingly narrowed. This ePaper/ focuses on 'Biodiversity Net Gain' legislation that is a further unwelcome cost to Developers.

All planning approvals in England, with a few exceptions (including small sites), must deliver at least a 10% Biodiversity Net Gain from 12 February 2024. The requirement for small sites kicks in on 2 April 2024, with nationally significant infrastructure projects from late November 2025. The "net gain" means that if a Developer, for example, cuts down trees on the development site, that "net loss" needs to be made good, in addition to the 10% increase on the original biodiversity of the site.

The developments that are exempt from the Biodiversity requirements are:

1. Planning permission applications made prior to 12 February 2024.
2. Variations to existing planning permissions.
3. Developments that are below the threshold, being less than 25 sq m or 5m of on-site linear habitats (i.e. hedgerows).
4. Home extensions, conservatories or loft conversions.
5. Developments of no more than 9 dwellings on a site no larger than 0.5 hectares consisting of dwellings that are self-build or custom housebuilding as per section 1 (A1) Self-build an Custom Housebuilding Act 2015.
6. Developments undertaken mainly for the purpose of fulfilling the Biodiversity Net Gain planning condition for another development.
7. High speed rail transport network.
8. Urgent Crown developments.
9. Developments granted planning permission by a development order (including permitted development rights).

This article should not be considered legal advice and is for information purposes only. If you have a legal issue that relates to this content then you should take independent legal advice.



The government's website tells us that Biodiversity Net Gain "is an approach to development [that] makes sure that habitats for wildlife are left in a measurably better state than they were before the development". A development must result in a greater or improved quality of natural habitat than pre development.

The requirement was brought in via Schedule 7A Town and Country Planning Act 1990, as inserted by [Schedule 14 Environment Act 2021](#). It is worth noting that paragraph 2 (4) of the Act empowers the Secretary of State to change the percentage i.e. increase/decrease the current 10% obligation.

The guidance tells us that when considering biodiversity value, Developers ought to consult an ecologist, to measure the biodiversity value of the pre development habitat and advise on improving the same. This is not required for small sites, for which Developers can use the small sites biodiversity metric tool or a survey of the site can be undertaken and a calculation made by, for example, a project manager, gardener or landscape architect.

To calculate the number of biodiversity units for pre development habitat or enhancements to achieve Biodiversity Net Gain, Developers need to use the statutory biodiversity metric tool. Guidance on the same can be found [here](#). The pre-development biodiversity value will generally be considered as of the date of application for planning permission. The post-development biodiversity value is as of the date of completion of the development.

The government has produced helpful guidance for Developments on what they need to do to meet the new requirements. You can find it [here](#). You need to be sufficiently aware of how you are going to achieve the required uplift at an early stage as you need to set it out in your planning application. The Local Planning Authority must approve your plan before you can commence works.

The plan needs to include:

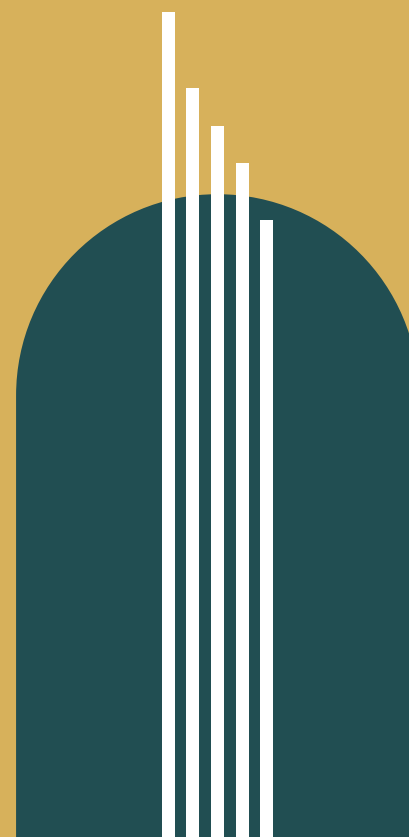
1. Information about the steps taken or to be taken to minimise the adverse effect of the development on the biodiversity of the onsite habitat and any other habitat,
2. The pre-development biodiversity value of the onsite habitat,
3. The post-development biodiversity value of the onsite habitat,
4. Any registered offsite biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development,
5. Any biodiversity credits purchased for the development, and
6. Such other matters as the Secretary of State may by regulations specify.

A Developer can achieve Biodiversity Net Gain by:

1. Creating biodiversity on-site (within the red line boundary of the development site).
2. If it is not possible to meet the 10% target on-site, a Developer can deliver some of it off-site, either on their own land or they can buy off-site units on the market.
3. If the Developer cannot achieve on-site or off-site Biodiversity Net Gain, then they can buy statutory biodiversity credits (from the government) as a “last resort”.

Any Developer that does not meet the requirements may be in breach of planning conditions, planning obligations or a legal agreement. The Local Planning Authority could take enforcement action against a Developer.

If you need any advice relating to your Biodiversity Net Gain obligations then please contact Tim Seal, Head of Construction on tseal@ridgemont.co or call him on 0203 909 9592.





Sign up to our
newsletter full of
engaging free content!



Avoid missing out on the latest
news by following us on
LinkedIn!

Our offices

24 Greville Street, London, EC1N 8SS

St Nicholas House, 31-34 High St, Bristol, BS1 2AW (appointment only)

+44 (0) 203 909 9590

contactus@ridgemont.co

www.ridgemont.co



RIDGEMONT