# BMSDC Biodiversity Net Gain Guidance Note

## Introduction

This guidance has been prepared to support applicants, agents, and consultants in understanding BMSDC's approach to Biodiversity Net Gain (BNG). It provides an overview of the requirements that apply to all developments subject to BNG, including the LPAs definition of 'significant on-site enhancements', the process for securing and evidencing on-site and off-site biodiversity units, and the process for securing a Section 106 legal agreement. It is indicated that we do not provide guidance on habitat banks (Biodiversity Gain Sites) and currently do not enter into legal agreements to allow their registration on to the Biodiversity Gain Site Register.

The aim of this document is to ensure applications comply with statutory BNG requirements and local policy. It also gives instruction on the level of information the LPA expects to accompany planning applications, discharge of conditions, and post-permission BNG obligations.

Whilst we recognise the need to provide applicants with guidance on BNG, much of the required information is publicly available through government guidance and legislation. Applicants are expected to familiarise themselves with this material and understand the processes involved.

This guidance note therefore provides an overview of BMSDC's approach but should not be relied upon as a definitive manual. It remains the applicant's responsibility to ensure planning applications are accurate and compliant.

## General BNG Information:

Policies SP09 and LP16 now require applications to identify and pursue opportunities for securing a measurable biodiversity net gain, equivalent to a 10% increase. Biodiversity net gains is a statutory requirement set out under Schedule 7A (Biodiversity Gain in England) of the Town and Country Planning Act 1990. This legislation was inserted into the 1990 Act by Schedule 14 of the Environment Act 2021, and was amended by the Levelling Up and Regeneration Act 2023. The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024 made consequential amendments to other parts of the 1990 Act.

The Biodiversity Net Gain Planning Practice Guidance (PPG) sets out how mandatory biodiversity net gains should be applied through the planning process and Paragraph: 011 Reference ID: 74-011-20240214 sets out what information should be submitted as part of a planning application if the statutory biodiversity gain condition applies.

The planning authority will be required to secure a biodiversity gain condition as a pre-commencement requirement. The biodiversity gain condition has its own separate statutory basis, as a planning condition under paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990. This condition is included as standard on all relevant BMSDC decision notices where planning permission is granted. An informative note confirms whether the statutory Biodiversity Gain Condition applies to the development or whether it is exempt.

Paragraph 14(2) of Schedule 7A of the Town and Country Planning Act 1990 (as amended) and Articles 37C(2) and 37C(4) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 then sets out the requirements of the Biodiversity Gain Condition, which secures a 'Biodiversity Gain Plan'.

Therefore, in summary, the submission of a 'Biodiversity Gain Plan' will consist of the following information for non-phased development:

- A Biodiversity Gain Plan form using the Government's template
- The completed biodiversity metric - calculation tool (& condition assessment if using Statutory Biodiversity Metric – Calculation Tool)
- Completed pre-development and post-development habitat maps

In addition, the following information may also be required depending on whether the development contains significant on-site enhancements or whether off-site measures are required:

- Habitat Management and Monitoring Plan for significant on-site enhancements or off-site measures in blue line boundary land (where required).
- Legal agreement for monitoring and management of significant on-site enhancements or off-site measures in land owned by the applicant.
- Evidence of off-site units being allocated to a habitat bank on the biodiversity gain site register.
- Evidence of proof of purchase of Statutory Biodiversity Credits

A Habitat Management and Monitoring Plan (HMMP) will be required as part of the Biodiversity Gain Plan for all significant on-site enhancements, as well as off-site enhancements in blue line boundary land. The maintenance and monitoring covered by the HMMP is secured via legal agreement for a period of up to 30 years.

The monitoring of the post-development habitat creation and enhancement will need to be provided to the LPA at years 1, 3, 5, 10, 15, 20, 25, and 30, with any remedial action or adaptive management to be agreed with the LPA to ensure the aims and objectives of the Biodiversity Gain Plan are achieved.

**Significant On-Site Enhancements:**

BMSDC have now adopted a definition for 'significant on-site enhancements'. The following criteria confirm when a development is considered to be delivering significant on-site enhancements:

- At least one unit type (area habitat, hedgerow, or watercourse) has both an on-site baseline value of 5 units or more and a proposed on-site net increase of 0.5 units or more; and/or
- The gain relates to habitats of high or very high distinctiveness (as defined within the Statutory Biodiversity Metric User Guide); and/or
- In the case of major development, where the gain relates to habitats of medium distinctiveness

If the site is considered to be delivering significant on-site enhancements, the site will be subject to a monitoring fee, and will require the applicant enters into a s106 legal agreement, securing long-term maintenance, monitoring, and a monitoring fee payable to the LPA.

**Monitoring Fee**
The Councils can secure a fee to cover their monitoring costs. If the site is considered to be delivering significant on-site enhancements or off-site enhancements on applicant owned land, the following fees apply:

Category 1: Minor Developments
- Up to 9 dwellings
- Up to 999 m2 floor space
- £11,983 (lump sum)

Category 2: Major Developments
- 10- 49 dwellings
- 1,000 – 2,499 m2 floor space
- £14,904 (lump sum)

Category 3: Large Major Developments
- 50-199 dwellings
- 2,500- 4,999 m2 floor space
- £26,497 (lump sum)

Category 4: Strategic Developments
- 200 or more dwellings
- 5,000 m2 floor space and above
- £40,000 (lump sum)

**Section 106 Legal Agreements**

Where a legal agreement is required as part of the BNG process, the applicant will be asked to provide their solicitor's contact details. These will be passed to the Council's legal team, who will confirm whether the first draft of the agreement will be prepared by the Council or the applicant's solicitor.

**Application Process for Non-Significant On-site Enhancements**

To avoid errors or delays, the following process has been put in place:

- At DOC stage, the finalised metric and Biodiversity Gain Plan form must be reviewed and approved. Once approved, the statutory condition will be fully discharged.

**Application Process for Significant On-site Enhancements**

If significant on-site enhancements are proposed (see definition of significance above), the site will be subject to a monitoring fee, and will require the applicant enters into a s106 legal

agreement, securing long-term maintenance, monitoring, and a monitoring fee payable to the LPA.

To avoid errors or delays, the following process has been put in place:

- At DOC stage Biodiversity Gain Plan information including the Biodiversity Gain Plan form, finalised metric, and the finalised HMMP must firstly be reviewed and approved, with the exception of the legal agreement. Once approved, the statutory condition will be part discharged.
- The applicant must then provide a draft s106 and enter into it once it has been agreed with the LPA. The statutory condition will then be discharged in full following the delivery of the approved s106 agreement.

**Application Process for Off-Site Applicant Owned Land**

If enhancements are proposed off-site (e.g. on land within the applicant's control or on land where the applicant has an agreement with the landowner), the site will be subject to a monitoring fee, and will require the applicant enters into a s106 legal agreement, securing long-term maintenance, monitoring, and a monitoring fee payable to the LPA.

To avoid errors or delays, the following process has been put in place:

- At DOC stage Biodiversity Gain Plan information including the Biodiversity Gain Plan form, finalised metric, and the finalised HMMP must firstly be reviewed and approved, with the exception of the legal agreement. Once approved, the statutory condition will be part discharged.
- Prior to registering the gain site, the applicant must provide a draft s106 and enter into it once it has been agreed with the LPA
- The applicant can then register the gain site on the national biodiversity gain sites register and then apply to record the allocation of offsite biodiversity gains to the proposed development.
- The statutory condition will then be discharged following evidence that the site has been registered on the biodiversity gain site register and all other matters have been addressed.

**Application Process for Habitat Bank Land:**

Where off-site units are purchased from a habitat bank, the legal agreement will already be secured between the relevant LPA / responsible body and the habitat bank delivery body.

To avoid errors or delays, the following process has been put in place:

- At DOC stage the finalised Metric must firstly be reviewed and approved.
- The applicant should only then purchase the relevant biodiversity units from a habitat bank.
- The habitat bank landowner should then record the allocation of offsite biodiversity gains to the proposed development. The applicant is responsible for ensuring this allocation is correctly completed and that the Statutory Biodiversity Metric – Calculation Tool and Biodiversity Gain Plan form is updated to reflect the off-site units secured.

- The statutory condition will then be discharged following evidence that the off-site units have been allocated on the biodiversity gain site register, and all other matters have been addressed.

Please note that the DOC stage may involve both significant on-site enhancements and the use of habitat bank land. Where this applies, the requirements for both processes should be followed.

**Application Process for Statutory Biodiversity Credits:**

If Statutory Biodiversity Credits are proposed, then this should be a last resort option for developers who are unable to use on-site or off-site units to deliver BNG. In addition, the LPA should be informed of the intention to buy statutory credits, to confirm it approves this approach.

To avoid errors or delays, the following process has been put in place:

- Following support from the LPA, the applicant should Apply to purchase credits and submit the proof of purchase with the Biodiversity Gain Plan.
- The units shortfall tab should also be updated within the Statutory Biodiversity Metric – Calculation Tool, to demonstrate that a 10% measurable biodiversity net gain will be secured following the provision of statutory credits.
- The statutory condition will then be discharged following the LPAs approval that they support the submitted metric and proof of purchase, and that all other matters have been addressed.