



# **BNG Condition**

## **PAS Biodiversity Net Gain (BNG)**

### **Condition Version ~~1.0~~2.0**

The Planning Advisory Service (PAS) commissioned Dentons to create a suite of sample agreement templates to facilitate securing biodiversity gains in the various ways allowed for by the Environment Act.

This template is provided for councils' teams to modify according to their council's standards and the specific requirements of individual developments. This template is aimed at providing a streamlined approach, enhancing the efficiency in drafting, and benefitting all stakeholders involved. [The Planning Practice Guidance recommends the use of planning conditions rather than planning obligations, a condition will serve the required purpose equally well. These template conditions reflect this recommended approach.](#)

#### **Important Notes:**

- This document is a template and serves as an initial guide.
- This template requires judgement and does not constitute planning or legal advice. It is essential to consult with colleagues and legal teams to review and appropriately modify the content.
- Local Planning Authorities (LPAs) should modify the template as needed for each specific development.

This template includes drafting notes to explain options for drafting and usage.

<b>Version 1.0 published:</b>	<del>5<sup>th</sup></del> July 2024
<b>Last updated:</b>	<del>5<sup>th</sup> July 2024</del> April 2025
Check for updates to this template on the PAS website	



## 1 Statutory Biodiversity Condition (Single Phase Development)

**Drafting Note:** Biodiversity Net Gain (BNG) of 10% for developments is a mandatory requirement in England under the Environment Act 2021, subject to some limited exceptions. Unless exempt, every planning permission granted pursuant to an application submitted after 12 February 2024 is deemed to have been granted subject to a pre-commencement condition requiring a Biodiversity Gain Plan to be submitted and approved by the local planning authority prior to commencement of the development.

The statutory biodiversity gain condition (and its reason for imposition) should not be included on decision notices. The statutory condition for non-phased development (considering the current template of the biodiversity gain plan and additional duties imposed on local authorities) below is purely for informational purposes.

Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out the biodiversity net gain information which needs to be included on ~~non-exempted~~ decision notices. The Planning Practice Guidance (Paragraph: 026 Reference ID: 74-026-20240214) provides a link to a document with suggested paragraphs to fulfil these requirements.

### 1.1 Deemed Condition

Development may not be begun unless:

- (a) a biodiversity gain plan has been submitted to the planning authority; and
- (b) The planning authority has approved the plan.

### 1.2 Key Requirements

#### 1.2.1 The biodiversity gain plan must include<sup>1</sup>:

- (a) 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;
- (b) the pre-development biodiversity value of the onsite habitat;
- (c) the post-development biodiversity value of the onsite habitat;
- (d) any registered offsite biodiversity gain allocated to the development and the biodiversity and the biodiversity value of that gain in relation to the development;
- (e) any biodiversity credits purchased for the development; and
- (f) any such other matters as the Secretary of State may by regulations specify.

#### 1.3 When calculating the post-development biodiversity value of a habitat, the planning authority can only take into account an increase in biodiversity value post-development where it is satisfied that the habitat creation or enhancements delivering the increase will be maintained for at least 30 years after the development is completed. This must be secured either by a planning condition, planning obligation, or conservation covenant<sup>2</sup>.

<sup>1</sup> Paragraph 14(2) of Schedule 7A TCPA 1990

<sup>2</sup> Paragraph 14(2) of Schedule 7A TCPA 1990

**Drafting Note:** To discharge the statutory condition, local authorities will need to be satisfied that the habitat creation and enhancements will be maintained for 30 years from the completion of development (Paragraph 9(3) of Schedule 7A of the Town and Country Planning Act 1990). Two issues should be borne in mind:

Firstly, neither the statutory definition of the biodiversity gain plan<sup>3</sup> nor the current DEFRA biodiversity gain plan template require management and maintenance measures to be specified. As a result, the statutory condition does not on its own secure compliance with the approved biodiversity gain plan (including the implementation of any habitat creation and enhancement works or their maintenance for a 30-year period). The DEFRA biodiversity gain plan template acknowledges a Habitat Management and Monitoring Plan (**HMMP**) can be annexed to the approved plan. The statutory condition does not require the HMMP to be approved even if it is attached therefore the delivery of the gain envisaged HMMP needs to be secured. This will need to be secured by condition or, where necessary, legal agreement. If any significant habitat creation and enhancement will occur onsite, this can be secured by condition. What constitutes "significant" or "non-significant" habitat enhancement is not defined within the Town and Country Planning Act 1990, but DEFRA has issued guidance on these concepts here. **The template condition below is an example of how onsite biodiversity net gain can be secured by condition; it may be used with a planning obligation securing any monitoring contribution.**

Secondly, the "completion of development" is not defined by the Town and Country Planning Act 1990. Local authorities may wish to agree on the meaning of "completion of development" with applicants and include its interpretation as an informative on decision notices. The "completion of development" could be the full implementation of the permission, but it is possible that a planning permission is never fully implemented (and thereby never triggering the 30-year monitoring period); alternative interpretations could be (but are not limited to) practical completion or first occupation of the development.

## 2 General Onsite Biodiversity Conditions

- 2.1 The Biodiversity Gain Plan shall be prepared in accordance with the [ ] dated [ ] and prepared by [ ].

**Drafting Note:** This is not a statutory requirement but unless imposed there would be no requirement that the Biodiversity Gain Plan submitted for approval to be in accordance with any biodiversity or ecological information submitted with the planning application. This may not be appropriate for some outline planning permissions where the post-development biodiversity value will not be known until reserved matters have been approved.

- 2.2 The development shall not commence until a [Habitat Management and Monitoring Plan (the **HMMP**)], prepared in accordance with the approved Biodiversity Gain Plan [has been submitted to, and approved in writing by, the local planning authority](#) and including:

**Drafting Note:** A scheme is needed which will set out the actions needed to create and enhance habitat onsite as well as maintain it for 30 years from the "completion of development."

This could be a habitat management and monitoring plan (which is recommended by the PPG<sup>4</sup> for significant onsite habitat enhancement or creation). It could be another plan (e.g., a landscape ecological management plan) that sets out actions for creation, enhancement, and maintenance. This template uses an HMMP, but if an alternative plan type is sought, these references need to be changed throughout the proposed condition.

- (a) a non-technical summary;
- (b) the roles and responsibilities of the people or organisation(s) delivering the [HMMP];
- (c) the planned habitat creation and enhancement works to create or improve habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan;

<sup>3</sup> Paragraph 14(2) of Schedule 7A TCPA 1990

<sup>4</sup> PPG 015 Reference ID: 74-015-20240214

- (d) the management measures to maintain habitat in accordance with the approved Biodiversity Gain Plan for a period of 30 years from the completion of development; and

**Drafting Note:** As stated in the drafting note above, local authorities may wish to agree an informative specifying the meaning of "the completion of development".

- (e) the monitoring methodology and frequency in respect of the created or enhanced habitat to be submitted to the local planning authority<sup>7</sup>.

~~has been submitted to, and approved in writing by, the local planning authority.~~

2.3 Notice in writing shall be given to the Council when the: [HMMP] works have started.

~~(a) [HMMP] has been implemented; and~~

~~(b) habitat creation and enhancement works as set out in the [HMMP] have been completed.~~

**Drafting Note:** This is not a statutory requirement. Local authorities may wish to have knowledge of when the habitat enhancement and creation works have been implemented and completed so they can more easily enforce against any non-compliance with the plan.

The HMMP (or equivalent plan) can be set out in phases, even if the development is not phased, so there may be different completion dates for different habitat types or phases. This condition is drafted to require notification when all the habitat creation and enhancement has been completed. Local authorities should consider whether notification on completion of each HMMP phase or habitat type is needed.

2.4 No [ ] shall take place until:

- (a) the habitat creation and enhancement works set out in the approved [HMMP] have been completed; and
- (b) a completion report, evidencing the completed habitat enhancements, has been submitted to, and approved in writing by the Local Planning Authority.

2.5 The created and/or enhanced habitat specified in the approved [HMMP] shall be managed and maintained in accordance with the approved [HMMP].

**Drafting Note:** This is not a statutory requirement. The created and enhanced habitat need only be maintained for 30 years after "the completion of development." If local authorities choose to agree a meaning for "completion of development" with applicants, they may also wish to agree timeframes for the creation of the habitat creation and enhancement works as set out in paragraph 2.4. This allows local authorities to enforce against the non-compliance of the HMMP or equivalent plan.

2.6 Monitoring reports shall be submitted to local planning authority in writing in accordance with the methodology and frequency specified in the approved [HMMP].

**Reason:** To ensure the development delivers a biodiversity net gain on site in accordance with Schedule 7A of the Town and Country Planning Act 1990 [and policy [ ] ].

**Drafting Note:** The reason should include any other relevant policy references from the development plan. It should also be noted that trigger for completion of the habitat enhancements may vary depending on the types of habitats included in the HMMP (or equivalent plan). Consideration will therefore need to be given on when certain elements of BNG will need to come forward before others.

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<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> PAS Template BNG Condition_05 July 2024 v1.0 (5).docx	
<b>Modified DMS:</b> iw://ukdms.dentonwildesapte.com/SLO_ACTIVE/84862241/3	
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