



BNG Condition for Phased Development

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.

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Check for updates to this template on the PAS website	

1 Statutory Biodiversity Condition (Phased 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 - **however** there is a modified regime for phased development (The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024): i) under an outline planning permission, where reserved matters for subsequent approval has the effect of requiring or permitting development to proceed in phases; or ii) any planning permission which is subject to conditions having the effect of requiring or permitting development to proceed in phases.

Local authorities should therefore consider whether the development will be carried out in phases and what constitutes a phase. Not all phasing will be spatially defined so local authorities may wish to agree what constitutes a phase with applicants.

If the development is phased, it will be subject to three deemed statutory biodiversity gain conditions. These conditions (and reasons for imposition) should not be included on decision notices- they will be deemed to be included. The form of these deemed statutory conditions for phased development (considering the current templates of the overall and phase biodiversity gain plan ([see the](#) Biodiversity gain plan templates) and additional duties imposed on local authorities) below is constructed from the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 purely for informational purposes.

The statutory biodiversity gain conditions (and their reason for imposition) should not be included on decision notices. The statutory condition for phased development (considering the current template of the overall and phase biodiversity gain plans 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 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.

The statutory conditions below have been set out on the assumption that there is no irreplaceable habitat onsite. If there is irreplaceable habitat onsite, the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 should be reviewed to understand what the overall and phase biodiversity gain plan should contain. It assumes that on-site BNG secured by these conditions is significant. See guidance from DEFRA on significant and non-significant BNG [here](#).

1.1 Deemed Conditions

1.1.1 Development may not be begun unless:

- (a) either:
 - (i) a biodiversity gain plan for that overall development has been submitted to the planning authority; and
 - (ii) the planning authority has approved that plan;
- (b) or:
 - (i) a biodiversity gain plan for the overall development has been approved;
 - (ii) permission has been granted on an application made under section 73¹; and

¹ All references to section 73 or its subparagraphs refers to section 73 of the Town and Country Planning Act 1990.

- (iii) the earlier biodiversity gain plan for that overall development is regarded as approved under section 73(2C) and (2D) for the purpose of the permission granted under section 73.

A biodiversity gain plan is a plan which:

- (a) relates to the development for which planning permission is granted;
- (b) specifies the following matters:
 - (i) 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;
 - (ii) the pre-development biodiversity value of the onsite habitat;
 - (iii) any registered offsite biodiversity gain allocated to the development before the date of submission of the biodiversity gain plan and the biodiversity value of that gain in relation to the development;
 - (iv) any registered offsite biodiversity gain proposed to be allocated to the development and the biodiversity value of that gain in relation to the development;
 - (v) any biodiversity credits purchased before the date of submission of the biodiversity gain plan;
 - (vi) any biodiversity credits proposed to be purchased for the development;
 - (vii) the post-development biodiversity value of the onsite habitat for the overall development;
 - (viii) except in a section 73 case, the post-development biodiversity value of the onsite habitat for each phase of development;
 - (ix) in a section 73 case, the post-development biodiversity value of the onsite habitat for each phase of development (whether begun or otherwise); and
 - (x) such other matters as the Secretary of State may by regulations specify.

[Drafting Note: Attention is drawn to the additional requirements on phase and overall biodiversity gain plans as set out in the Article 37\(5\) of The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015.](#)

1.1.2 No phase of development may be begun unless the following has been met in respect of that phase:

- (a) either:
 - (i) a biodiversity gain plan for that phase has been submitted to the planning authority; and
 - (ii) the planning authority has approved that plan;

2 General Onsite Biodiversity Conditions

2.1 Option 1: Mandatory BNG delivery by development phase

- 2.2 [Any phase biodiversity gain plan shall be in accordance with the Overall Biodiversity Gain Plan approved or the purposes of paragraph 13 of Schedule 7A of the Town and Country Planning Act or such revised version of the overall gain plan submitted to and approved in writing by the local planning authority.]

Drafting Note: As explained in paragraph 3.3.1 of the Key Requirements Annex of this resource below, this is not a statutory requirement; imposing this may give additional certainty that the Biodiversity Gain Objective for the development will be met. It also provides flexibility for subsequent approvals of an overall gain plan [as plans may change over time](#).

- 2.3 No phase of development shall commence until a [Habitat Management and Monitoring Plan (the **HMMP**)], prepared in accordance with the approved Phase Biodiversity Gain Plan for that phase 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 PPG² 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.

[This template condition is drafted so that each phase has its own corresponding HMMP but this is not a legal requirement – the HMMP could itself be phased and those HMMP phases need not align with the development's phasing. If adopting this approach, care should be taken to understand whether the HMMP does in fact secure the post-development biodiversity value at the time any relevant phase biodiversity gain plan could be submitted for approval.](#)

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

Drafting Note: As stated in paragraph 3.4.1 of the drafting notes in the Key Requirements Annex below, 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.

- 2.4 Notice in writing shall be given to the Council when the [HMMP] works for any phase have started.

² PPG 015 Reference ID: 74-015-20240214

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) for a phase can itself be set out in phases, so there may be different completion dates for different habitat types or phases of the HMMP (or equivalent plan). 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.

- 2.5 No [] [of/for] that phase shall take place until:
- (a) the habitat creation and enhancement works set out in the approved [HMMP] for that phase have been completed; and
 - (b) a completion report, evidencing the completed habitat enhancements for that phase, has been submitted to, and approved in writing by the Local Planning Authority.

- 2.6 The created and/or enhanced habitat specified in the approved [HMMP] for that phase shall be managed and maintained in accordance with the approved [HMMP] for that phase.

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 2.5. This allows local authorities to enforce against the non-compliance of the HMMP or equivalent plan.

- 2.7 Monitoring reports shall be submitted to local planning authority in writing in accordance with the methodology and frequency specified in the approved [HMMP] for that phase.

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.

2.8 Option 2: Mandatory BNG delivery within sitewide strategic control

Drafting Note: This template presents an option for securing biodiversity net gain across a multi-phase development site where the decision maker wishes to impose strategic control over the entire site in respect of landscape or ecological matters to ensure that each phase's mandatory BNG requirement is delivered in a way which aligns with a wider strategic plan such as an Outline Landscape Ecological Management Plan (**OLEMP**).

Large developments can span multiple habitats, waterways, and ecologically sensitive areas. A decision maker may decide this strategic level of control is appropriate to ensure the development progresses in a coordinated, sustainable, and/or policy compliant manner. [Unlike Option 1, this option is appropriate where there is sufficient information about the overall development and phasing to enable strategic control by conditions.](#)

The option below is an illustrative example for how mandatory BNG could be secured alongside sitewide strategic control that is sometimes sought for large multi-phase developments.

- 2.9 [Any phase biodiversity gain plan shall be in accordance with the Overall Biodiversity Gain Plan approved or the purposes of paragraph 13 of Schedule 7A of the Town and Country Planning Act or such revised version of the overall gain plan submitted to and approved in writing by the local planning authority.]

3 Annex: Key Requirements

3.1 Overall and phase Biodiversity Gain Plan

3.1.1 The requirements for local planning authority to observe when approving an overall or phase biodiversity gain plan are contained in the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 and the Town and Country Planning Act 1990. This section sets out a few key requirements which can inform the drafting of conditions or subsequent approvals under the conditions.

3.2 Approving the Overall Biodiversity Gain Plan

3.2.1 A planning authority must only approve the overall biodiversity gain plan if, and only if, it is satisfied that the **Biodiversity Gain Objective**⁴ will be met.

3.2.2 In a **Section 73 Case**⁵, a planning authority must only approve the overall biodiversity gain plan if, and only if, it is satisfied that the post-development biodiversity value of the onsite habitat of any phases that have been begun is at least the value specified in the plan most recently approved for that phase, unless the conditions subject to which planning permission has been granted under section 73 affect the post-development biodiversity value of the onsite habitat as specified in that biodiversity gain plan.

3.3 Approving the Phase Biodiversity Gain Plan

3.3.1 The phase biodiversity gain plan confirms progress towards the Biodiversity Gain Objective for the whole development once clear proposals for each phase have been developed. A planning authority must only approve a phase biodiversity gain plan if, and only if, it is satisfied that the Biodiversity Gain Objective will be met for the development.

Drafting Note: It is not a statutory requirement that the phase biodiversity gain plan submitted for approval is in accordance with the approved overall biodiversity gain plan. A local authority may have more certainty that the Biodiversity Gain Objective will be met if the approved overall biodiversity gain plan is required to be amended when a phase biodiversity gain plan is submitted for approval and it is not in accordance with the approved biodiversity gain plan.

~~3.3.2 The approval of phase biodiversity gain plans is dependent on previously commenced phases achieving the biodiversity value as set out in their respective phase biodiversity gain plans. A planning authority must only approve a phase biodiversity gain plan if, and only if, it is satisfied that the post-development biodiversity value of the onsite habitat for any phase which has been begun is at least the value specified in the biodiversity gain plan most recently approved for that phase.~~

⁴ This objective is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat as measured in the statutory biodiversity metric.

⁵ "a Section 73 Case" means "a case where the biodiversity gain plan is required to be submitted for the purpose of complying with a statutory condition, subject to which permission has been granted on an application made under section 73 (determination of applications to develop land without complying with conditions previously attached)."

3.3.2 Additionally, a planning authority must only approve a phase biodiversity gain plan if (and assuming there is no irreplaceable habitat onsite):

- (a) the phase biodiversity gain plan submitted for approval specifies at least the post-development biodiversity value of the onsite habitat in the biodiversity metric for that phase; and
- (b) the most recently approved phase biodiversity gain plan (for a phase which has begun) specifies at least the post-development value of the onsite habitat in the biodiversity metric for that phase (subject to rules about section 73 permissions discussed in paragraph 3.3.4).

3.3.3 The requirements specified above in paragraph 3.3.2 should not be misconstrued as requirements that previously commenced phases must achieve target condition before any subsequent phase biodiversity plans are approved by a local authority. These can instead be understood as a requirement that the post-development biodiversity value calculated in any biodiversity metric (through the implementation and carrying out a HMMP or its equivalent via condition or planning obligation) accords with the post-development biodiversity value specified in that phase's biodiversity gain plan (whether already approved or being under determination for approval).

3.3.4 ~~3.3.3~~ The achievement of previous phase's biodiversity values is not required if, in a Section 73 Case, the conditions subject to which planning permission have been granted under section 73 affect the post-development biodiversity value of the onsite habitat. In a Section 73 Case however, a planning authority would still need to be satisfied that the Biodiversity Gain Objective will be met for the development.

3.4 Calculating Post-Development Biodiversity Value

3.4.1 When calculating the post-development biodiversity value of a habitat for the purpose of discharge any statutory condition (and also in a Section 73 Case), 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.

Drafting Note: To discharge the statutory conditions, 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 phase biodiversity gain plan⁶ nor the current DEFRA phase biodiversity gain plan template require management and maintenance measures to be specified. As a result, the statutory conditions do not on its own secure compliance with the approved overall or phase 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 conditions do not require the HMMP (or its equivalent plan) to be approved even if it is attached therefore the delivery of the gain envisaged HMMP (or its equivalent plan) 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 conditions in this resource are an example of how**

⁶ Paragraph 14(2) of Schedule 7A TCPA 1990 as modified by the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024

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, especially a phased 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/ phase of development.~~
[See the Planning Practice Guidance on this point \(Paragraph: 022 Reference ID: 74-022-20240214\).](#)