

WHAT TO EXPECT
WITH MANDATORY
BIODIVERSITY NET
GAIN

February 2024

THIS WEBINAR WILL
BEGIN SHORTLY



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AGENDA

Biodiversity Net Gain and Planning – *Shannon Fuller, CLA Planning Adviser*

Creating and Selling Biodiversity Units – *Bethany Turner, CLA Environment Policy Adviser*

Biodiversity Net Gain and Tax Issues – *Jack Burroughs, CLA Private Client and Tax Adviser*

Panel Q&A – *chaired by Susan Twining, CLA Chief Land Use Policy Adviser*



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Chat

Raise Hand

Q&A

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Biodiversity Net Gain and Planning

Shannon Fuller – CLA Planning Adviser



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BIODIVERSITY NET GAIN

- The Environment Act 2021
- Mandatory 10% Net Gain for all development
- Maintained for 30+ years

When?

- 12th February 2024 – Major planning applications
- 2nd April 2024 – Minor planning applications
- November 2025 – Nationally significant infrastructure projects



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TYPES OF DEVELOPMENT

Major planning application	10 or more dwellings Sites of more than 1 hectare 1000 + square metres
Minor planning application (small sites)	1-9 dwellings Sites of less than 1 hectare Dwellings on less than 0.5 hectare other developments of less than 0.5ha or 5000 square metres
Nationally Significant Infrastructure Project	Nationally important projects of certain types or over a certain size as designated by the Secretary of State



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WHAT IS BNG?

“Creating and improving natural habitats. BNG makes sure development has a measurably positive impact on biodiversity compared to what was there before development.”

DEFRA

“Biodiversity net gain is a way of creating and improving biodiversity by requiring development to have a positive impact (‘net gain’) on biodiversity”

DLUHC



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THE THREE OPTIONS FOR PROVIDING 10% BNG

- On-site: BNG is identified within the approved red line boundary of the application site.
- Off-site: BNG is provided outside the red line boundary of the application site. This can be on the applicant's land or someone else's land.
- Statutory Biodiversity Credits: a last resort if you cannot achieve on-site or off-site BNG.



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BNG AND THE PLANNING SYSTEM

Planning permissions from 12th February 2024 shall be granted subject to a pre-commencement planning condition to secure 10% BNG.

NPPF: Chapters 11 and 15

Paragraph 180. Planning policies and decisions should contribute to and enhance the natural and local environment by:

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;



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SUBMITTING A PLANNING APPLICATION

1. Are the proposals exempt from providing BNG?
2. Do the proposals qualify for the small site metric?
3. Engage with an Ecologist
4. Undertake a baseline survey
5. Review your proposals – are you already providing some BNG?



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SUBMITTING A PLANNING APPLICATION

Statutory Biodiversity Metric

1. How many units does the habitat contain pre-development?
2. How many units are needed to replace the units of habitat lost + 10% net gain

The official statutory biodiversity metric tool **must** be used to demonstrate the number of biodiversity units for existing habitats and any habitat enhancements



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POST PLANNING PERMISSION

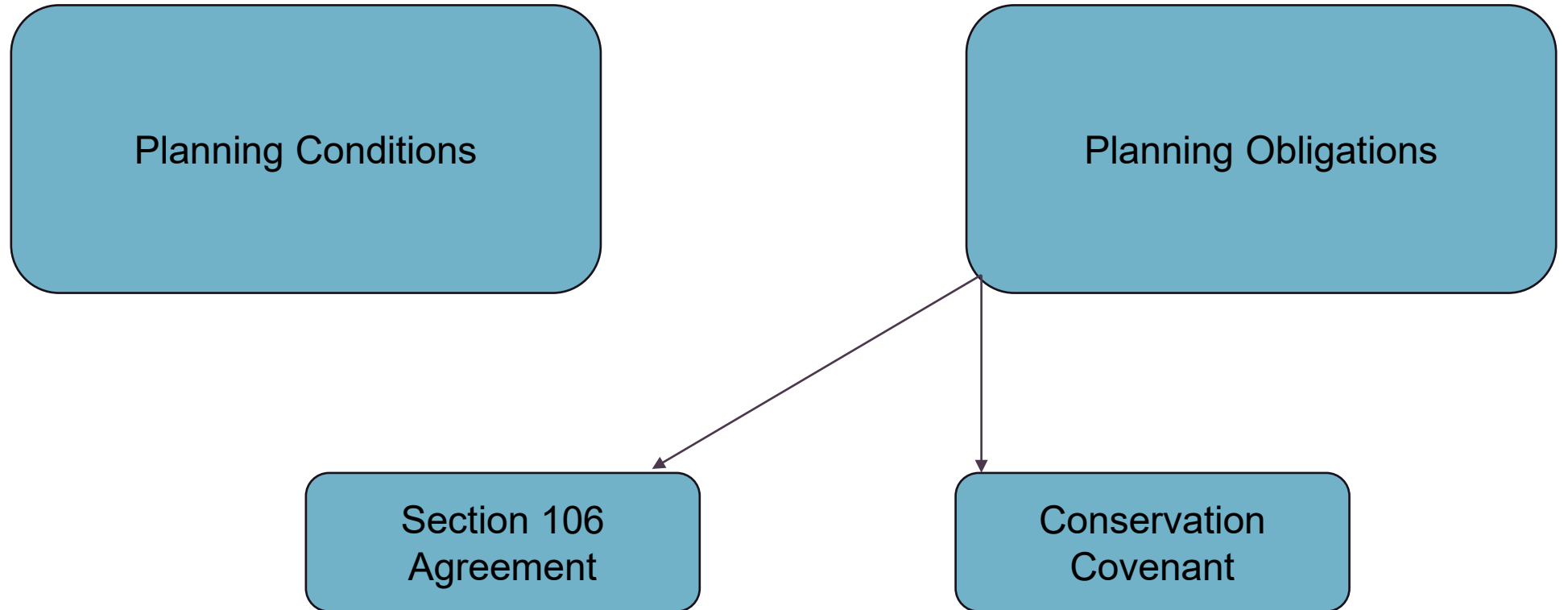
Submit a Biodiversity Gain Plan

- Via discharge of condition application, prior to development
- Set out the pre- and post-development biodiversity values
- Any registered off-site gains / credits purchased
- How the 10% gain will be met
- DEFRA Template



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SECURING BNG



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Creating and Selling Biodiversity Units

Bethany Turner – CLA Environment Policy Adviser



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WHAT ARE OFFSET MARKETS?

Compliance

Voluntary

Biodiversity
Net Gain

Nutrient
Neutrality

Carbon
Markets

Nature
Markets



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BASICS OF OFF-SITE BNG

- Mandatory for most developments from 12 February 2024
- Compensate for biodiversity loss plus a minimum 10%
- Measured by Biodiversity Metric
- Different types of biodiversity unit



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ROUTES TO THE BNG MARKET



Develop own projects, create nature units for sale, now or in the future, either as a sole landowner or as a joint venture



Work with a project developer and enter into a management agreement to deliver specified nature units



Lease land for others to create nature units for sale now or in the future



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ACCESSING THE BNG MARKET

Natural
Capital
Baseline
Assessment

Assess
local/national
market
opportunities

Training,
knowledge
and advice

Develop
projects and
route to
market

Negotiation
and
agreements



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MARKET REALITIES

- Preference for on-site BNG, so demand for off-site BNG will vary
- Value will vary depending on number and type of biodiversity units
- Lots of costs to consider



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INTERACTION WITH GOVERNMENT SCHEMES

Environmental Land Management schemes

Sustainable
Farming
Incentive

Countryside
Stewardship

Landscape
Recovery



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OTHER CONSIDERATIONS

- Does it fit with your business plans?
- What skills and equipment is needed?
- What are upfront and annual costs?
- What happens at the end of the contract?
- What is the likely impact on land value and holding value?
- What professional advice is needed?



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Biodiversity Net Gain and Tax Issues

Jack Burroughs – CLA Private Client and Tax Adviser



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HOW WILL PAYMENTS BE TAXED?

- No specific rules or guidance so far – can only rely on general principles of accountancy and tax
- Is the payment capital or revenue in nature?
- If made in return for the disposal or part disposal of a capital asset, this is a capital payment and so subject to Capital Gains Tax
- If not, will be revenue – e.g. usually trading income or property income
- Accrual accounting principles may be used to apportion payment over the period of a contract
- Make sure to involve accountant at the point of drafting the agreement! They should be able to ensure that the agreement is clear as to the nature of payments, and so avoid ambiguity and cost later on.



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IS IT SUBJECT TO VAT?

- No guidance yet from HMRC
- DEFRA consultation response: “Biodiversity units will be subject to VAT when they are sold.”
- BUT - HMRC say they were not consulted and do not consider it binding on them
- Logically, it seems like the supply of BNG units would be subject to VAT.
- This seems to be the opinion of most professionals at the moment.



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WHAT ARE THE INHERITENCE TAX IMPLICATIONS?

Agricultural Property Relief

- Is land being taken out of agricultural use?
- If so, no APR on that part of the land
- May also risk APR on the farmhouse – needs to be character appropriate to the area of land actually being farmed

Business Property Relief

- Is the delivery of BNG a trading or investment activity? Probably depends on particular facts.
- Consider impact on the wider business – will the business be mainly trading, or mainly investment?
- BPR is ‘all or nothing’ for each business – if necessary, split off into separate entity



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Q&A



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CLA RESOURCES

- [Natural Capital Directory](#)
- BNG Guidance Notes:
 - [GN01-24 Biodiversity Net Gain: Planning considerations](#)
 - [GN02-24 Biodiversity Net Gain: Creating and selling off-site biodiversity units](#)
- Phone or email advice from our team of specialist advisers



GN02-24 Biodiversity Net Gain: Creating and selling off-site biodiversity units (England only)

This Guidance Note provides information for CLA members who are interested in entering the Biodiversity Net Gain Market by selling off-site biodiversity units to developers.



GN01-24 Biodiversity Net Gain: Planning considerations (England only)

This Guidance Note provides information and considerations for CLA members that are undertaking development and submitting planning applications.

CONTACT DETAILS

shannon.fuller@cla.org.uk for questions about BNG and planning

bethany.turner@cla.org.uk for questions about creating and selling biodiversity units

jack.burroughs@cla.org.uk for questions about BNG and tax

susan.twining@cla.org.uk for questions about nature markets



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