

# Oxon LNP Board Paper for Approval

<b>Title:</b>	Spotlight on Biodiversity Net Gain
<b>Author:</b>	Matt Whitney
<b>Date:</b>	14/09/2023

## Summary:

This paper presents the biodiversity net gain policy and implementation environment and considers the approach we should take in the coming months towards addressing some of the concerns, threats and opportunities related to BNG

## Actions for the Board:

- Endorse the principles
- Acknowledge work done to date
- Comment on the evidence base
- Endorse the LNP taking a strong stance on asking LPAs to adopt a level of at least 20% BNG

### 1. Introduction

Biodiversity Net Gain (BNG) is a policy which requires housing and infrastructure developers to leave the natural environment in a better state than pre-commencement. This policy has been operating to varying degrees across Oxfordshire for a number of years, indeed we are seen as front runners nationally.

The Environment Act 2023 requires all LPAs to ensure all developments deliver at least a 10% net gain in biodiversity. This will apply to all planning applications submitted post-November 2023.

### 2. DEFRA metric

The DEFRA metric is used to calculate biodiversity change and uses something called biodiversity units to do so. There are concerns that the DEFRA metric drives mediocrity. This is largely due to how it treats rare or particularly important habitats, which results in it favouring average grassland in average condition.

### 3. Onsite BNG

There are strong concerns that onsite delivery of BNG will be inadequately delivered, monitored and enforced, for reasons described in [this Oxford University paper](#). This risk could be mitigated by the recruitment of a county-wide resource, operating on behalf of all

# Oxon LNP Board Paper for Approval

the LPAs in Oxfordshire, who performs spot checks on developments to check whether the promised biodiversity measures have been implemented.

## 4. Offsite Concerns

Where a developer cannot achieve 10% net gain onsite (\*they must try to do so) they have the option of purchasing offsite biodiversity units. It is likely that offsite biodiversity net gain will be more stringently policed than onsite, with greater checks and balances, and therefore more reliably delivered. However, there are real challenges regarding delivery of offsite biodiversity net gain. These can be split into the following categories:

- Complicated nature of legal agreements used (Section 106, conditions, or conservation covenants)
- Paucity of biodiversity net gain offset sites (also known as habitat banks)

On top of all this, the government still has not released its guidance for BNG, nor has it provided LPAs with adequate funding or time to prepare for a smooth roll-out of the scheme.

## 5. Legal Agreements

One key issue which threatens the roll out of the new scheme is the lack a perfect statutory instrument of contract with which to discharge and agree conditions for planning permission, and agreements with landowners for offsite units. There are two options – S106 agreements (commonly used, but not yet for habitat banks, which are required post November) or conservation covenants (\*it is also possible that planning conditions may be used). As we don't yet know how the latter will work (due to late provision of guidance from government), S106 is the only known approach that will work.

OLNP Manager and partners are working to support LPAs to effectively and efficiently develop appropriate S106 agreements that can drive excellence in BNG delivery which providing a process which is as simple as possible for themselves, landowners and developers, including by sharing S106 examples that have been developed elsewhere in England.

## 6. Paucity of offset sites

Currently there is not a sufficient supply of offsite BNG units to meet projected planning requirements. There is a national fallback scheme, which has been priced so as to be extremely unattractive to developers (over double the cost of local units). Without swift action to increase the pipeline of BNG-ready sites, money from BNG could leave the county. There may also be a significant delay to planning applications being processed and approved, which could slow down the rate of housebuilding in the county, leaving us open to more unregulated developments from speculative applications.

One solution to this is described in another paper being presented to OLNP Board in Sept 2023 – the exploration of the establishment of an Oxfordshire Environment Fund, which would offer short term loans/grants to farmers/landowners to enable them to prepare to offer offsite BNG units to developers.

# Oxon LNP Board Paper for Approval

## 7. Guiding principles

OLNP's Biodiversity Net Gain group has drafted a set of guiding principles, which are included as an appendix to this paper. These are designed to combat some of the pressures described above, helping to ensure this policy delivers as much as it can for Oxfordshire's natural environment. **The Board is asked to endorse these principles.**

## 8. Offsite opportunity

Despite some of this gloom, there is real hope that the offsite elements of Biodiversity Net Gain can contribute meaningfully to nature recovery in Oxfordshire. [Research conducted by Leverhulme Centre for Nature Recovery](#) on behalf of Oxfordshire LNP demonstrates that it could deliver up to 13% of the estimate £800m required over the next ten years to ensure 30% of our county is managed for nature.

## 9. Increased ambition

This is an opportunity to be seized, and the same research also shows that a target of 20% BNG would contribute a further £108m towards this total. Over twenty LPAs across the country have already included this target in their adopted Local Plans, with many more expected to follow when the timelines for the Local Plans allow.

**This paper therefore proposes that all LPAs in Oxfordshire adopt this target, and that the LNP work hard to support them to do so.** This has already been happening across the partnership, but this paper **asks the Board for suggestions of further actions that can be taken to influence LPAs to adopt this higher target.**

## 10. Oxfordshire LPAs' support for nature vs perceived impacts on viability

All LPAs in Oxfordshire have declared a climate emergency. Some have declared ecological emergency, while others have included the ecological emergency in their climate emergency declarations. All have corporate targets and priorities for nature recovery, and ambitious policies in their local plans.

This should make 20% an easy ask, but it is not proving to be the case. One of the main reasons for this is the perceived impacts on financial viability of developments. Studies have been conducted in other parts of the country demonstrating that an increase from 10% BNG to 20% BNG would have a 'negligible' material impact on viability. OLNP has shared an example of this study with LPA ecologists.

## 11. Conclusion

BNG has potential to deliver gains for nature in Oxfordshire, but there are barriers to maximising these gains. OLNP continues to work hard with LPAs, funders, farmers and wider partners to break down these barriers.

# Oxon LNP Board Paper for Approval

## 12. Appendix – Proposed BNG Principles

### Guiding Principles

1. Work towards a co-ordinated county-wide approach for BNG, ensuring consistency across the Local Nature Recovery Strategy (LNRS) area. This could involve a common policy framework for implementation of BNG, and harmonisation of BNG policy in local plans. OLNP is pleased to work with local authorities' planners to develop this framework and policy.
2. Target offsite BNG towards the areas that are most important for nature recovery. LNRS spatial prioritisation should be used as a multiplier in the DEFRA metric, ensuring it is more favourable for offsite gains to be delivered in areas identified by the LNRS as high priority.
3. Favour BNG schemes which create priority habitat and other non-spatial LNRS-related priorities, helping to meet the national and local targets.
4. Ensure onsite BNG delivery is assessed accurately through the production of guidance on the type and condition of habitats that are commonly delivered within residential and commercial developments.
5. Be precautionary in BNG predictions to ensure the uplift potential is not over-estimated. Is it realistic to expect that for the vast majority of developments only low and medium distinctiveness habitats will be achieved in poor or moderate condition. Any project with greater ambitions would need to be supported with detailed method statements prior to determination of planning applications.
6. Put procedures / checks in place to ensure quality information is provided from developers and that metrics (both onsite and offsite) have been completed by competent and qualified individuals.
7. LPAs should aim to adopt a minimum requirement for BNG of greater than 10%. OLNP has produced an evidence base to support LPAs in securing this ambition through local plans.
8. Third party verification is required at certain points in the monitoring process for onsite and offsite BNG Agreements to ensure landowners do not "mark their own homework".
9. Establish a system of spot checking BNG agreements and delivery (onsite and offsite) to help raise standards, along with implementing a system to deal with non-delivery. This could be delivered by an existing organisation (eg TOE/BBOWT), or a new resource located within an organisation (eg OCC, OLNP).
10. Adopt a 'biodiversity first' approach when applying policy. Biodiversity gain should take precedence and not lose out to public space, developer concerns, proximity to development, etc. This needs further explanation if it's to be useful.

# Oxon LNP Board Paper for Approval

11. Avoid good quality agricultural land being used for BG (except where clear rationale e.g. connecting corridor).
  
12. Agree an approach to Open Mosaic Habitat (OMH). OMH on previously developed land is classed as 'Highly Distinctive' in the Defra 3.1 metric. While there is no doubt that this is an important habitat, it is arguably the type of habitat most often created, as urban sites are left derelict. Trading rules in the metric suggest that the loss of OMH should be compensated for by the gain of the same habitat. However, securing a site appropriate for OMH creation is problematic from a price perspective as nearly all will be appropriate for development. Additionally, creating OMH on land that has never had a hard surface is likely to involve the introduction of aggregate or substrate and removal of topsoil etc. Is the introduction of man-made elements into a "green" habitat appropriate? A policy could be adopted to compensate for losses of OMH with the creation of other habitat classified as highly distinctive by the metric e.g. lowland meadow, lowland mixed deciduous woodland or lowland heathland.

In some instances it will be appropriate for like-for-like to be required; wherever existing and high quality OMH habitat is being impacted it would be right for this to be directly offset. However, where OMH was once present or is obviously in an advanced state of succession, this would seem to be needlessly restrictive. Exactly where to draw the line is challenging and, if this approach is to be adopted in some instances, a process to approve the use of this approach should be agreed.