

Report to	Planning Committee
Date	14 March 2024
By	Director of Planning (Interim)
Title of Report	Biodiversity Net Gain Technical Advice Note
Purpose of Report	The purpose of this report is for the Planning Committee to consider and approve the Biodiversity Net Gain (BNG) Technical Advice Note (TAN) (Appendix 1), the map in Appendix 2 for interim use to define 'High' Strategic Significance for the purposes of Biodiversity Net Gain, and delegate authority to the Director of Planning to make appropriate future changes to the TAN.

Decision

Recommendation: The Committee is recommended to:

- 1. Approve the Biodiversity Net Gain Technical Advice Note set out in Appendix 1 for publication subject to any changes proposed by the Committee;**
 - 2. Approve the map in Appendix 2 for publication for use in the interim definition of 'High' Strategic Significance for the purposes of Biodiversity Net Gain in the South Downs National Park.**
 - 3. Delegate authority to the Director of Planning, in consultation with the Chair of Planning Committee, to make any appropriate amendments to the TAN in response to changes in national guidelines and best practice over the next 12 months.**
-

Executive Summary

- Biodiversity Net Gain is now a mandatory requirement under a statutory framework introduced following the Environment Act 2021 and subsequent regulations and guidance.
- This requirement applies to major development applications submitted from 12th February 2024 and for non-major development from 2nd April 2024. Regulations and guidance list several exemptions (for example householder development).
- There are specific technical and procedural requirements associated with this legal requirement and some areas of the guidance require interpretation or additional information from local planning authorities to support implementation. It is therefore appropriate to update the Biodiversity Net Gain Technical Advice Note, originally published in 2022.
- Nationally, the implementation of BNG is an ongoing evolving matter. It will therefore be necessary to review and update the TAN in the future as new national policy and guidance is available and to address industry learning on key aspects of implementing BNG at a national and local level.

- The updated TAN provides guidance for applicants and decision makers on how BNG is to be achieved in the South Downs National Park in accordance with legislation and national and local policy on BNG and how BNG is expected to address the first purpose of the national park, making a meaningful contribution to nature recovery.
- It provides clarification on how the existing South Downs Local Plan Policy SD9(1)(b) should be applied.
- It provides clarification on how ‘strategic significance’ should be interpreted and applied in the calculation of BNG in the interim while Local Nature Recovery Strategies are developed by the Responsible Authorities.

I. Background

- I.1 The concept of development delivering a net gain for biodiversity has been part of national discussions for a long time. The principle has been in the National Planning Policy Framework (NPPF) since 2018. The South Downs National Park Authority (SDNPA) has been proactive in this, having had a policy requirement in place for applications to demonstrate that development proposals identify and incorporate opportunities for net gains in biodiversity (Policy SD9(1)(b)) since the adoption of the South Downs Local Plan in 2019. This has been supported by the Biodiversity Net Gain (BNG) Interim Technical Advice Note (TAN) published in early 2022.
- I.2 BNG is now a mandatory requirement under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021). The statutory framework for BNG has been designed as a post-permission matter through the imposition of a pre-commencement condition; once planning permission has been granted a Biodiversity Gain Plan must be submitted to and approved by the planning authority before commencement of the development. However, guidance is clear (Planning Practice Guidance Paragraph 002) that BNG is not just a post permission matter and to ensure the biodiversity gain objective is met and the condition can be successfully discharged, it is important that BNG is considered throughout the planning process.
- I.3 This applies to major development (10 or more homes or 0.5 hectares or more for residential and additional floorspace of 1,000m² or more or 1 hectare or more for non-residential) from 12th February 2024. It will apply to non-major development from 2nd April 2024. It is expected to apply to Nationally Significant Infrastructure Projects (NSIPs) in 2025. Some types of development are exempt from the requirements of biodiversity net gain. In summary, these are:
- Householder development.
 - Development granted planning permission by a development order; this includes permitted development rights.
 - Development subject to a de minimis exemption – development that does not impact priority habitat and impacts less than 25 square metres (e.g. 5m by 5m) of onsite habitat or 5 metres of linear habitats such as hedgerows.
 - Self-build and custom build development which consists of no more than 9 dwellings or is carried out on a site which has an area no larger than 0.5 hectares.
 - Urgent Crown development.
 - Development of a biodiversity gain site.
 - Development related to the high-speed railway transport network.
- I.4 There are specific technical and procedural requirements associated with this legal requirement and some areas of the guidance require interpretation or additional information from local planning authorities to support implementation. It is therefore appropriate to update the existing TAN to explain how these requirements will be addressed in the National Park. It is important to note that the implementation of BNG is an ongoing evolving matter. It will therefore be necessary to review and update the TAN periodically as new

national policy and guidance is available and to address industry learning on key aspects of implementing BNG at a national and local level.

2. Approach of the BNG TAN Update

2.1 The purpose of this updated TAN is to provide guidance for applicants and decision makers on how BNG is to be achieved in the South Downs National Park in accordance with legislation and national policy on BNG and in accordance with existing South Downs Policy and how BNG is expected to make a meaningful contribution to nature recovery.

2.2 The updated TAN is in Appendix I and contains the following information:

- An overview of mandatory BNG requirements – this does not seek to repeat the extensive national policy and guidance that will continue to evolve, but instead gives an overview of key points and signposts to fuller detail.
- Overarching principles - The key principles that are expected to be applied and demonstrated by BNG proposals to meet the first purpose of the National Park: ‘to conserve and enhance the natural beauty, wildlife and cultural heritage of the area’. These include seven principles for a landscape-led approach and guidance on achieving meaningful BNG for nature recovery.
- Major Applications – Key principles specifically for major applications.
- Small Sites – Interim position BNG requirements for small sites applications pre-02 April 2024. This section will be updated in due course following further information from government.
- Securing and monitoring BNG – Key principles for how BNG will be secured.

2.3 This TAN will be a material consideration that will be taken into account by decision makers both at the Authority and at the host authorities working on our behalf when determining planning applications that are within the scope of BNG requirements.

3. South Downs Local Plan Policy SD9 (Biodiversity and Geodiversity)

3.1 Paragraphs 2.3-2.5 of the updated TAN provide clarification on the application of South Downs Local Plan Policy SD9. Policy SD9(1)(b) requires it to be demonstrated that development proposals identify and incorporate opportunity for net gains in biodiversity. SD9(1)(b) as currently worded applies to all types of applications and section 38(6) of the Planning and Compulsory Purchase Act 2004 says that the determination of planning applications must be made in accordance with the development plan unless material considerations indicate otherwise.

3.2 Paragraph 020 of the Planning Practice Guidance (PPG) states: ‘It would be inappropriate for decision makers to continue to give weight to aspects of existing local policies related to biodiversity gains which are inconsistent with the statutory framework for biodiversity net gain...’. The TAN acknowledges the conflict with wording in Policy SD9 and recognises the role of the PPG advice and statutory provisions as material considerations which indicate that BNG should not be applied to exempted development such as householder applications.

3.3 Other policy requirements in the SDLP for biodiversity still apply, including other provisions within Policy SD9, and Policy SD2 (Ecosystem Services).

4. Strategic Significance

4.1 Paragraphs 2.20-2.26 and Tables 1 and 2 of the updated TAN provide clarification on strategic significance. Strategic significance is one of the inputs of the Statutory Metric used to calculate Biodiversity Net Gain. It is a multiplier within the calculation that responds to the local significance of the habitat based on its location and the habitat type. This multiplier is applied to the baseline (the current habitats) and the proposed post development (the proposed habitat enhancement and creation) calculations.

4.2 The Statutory Metric User Guidance published in February 2024 advises that Local Nature Recovery Strategies (LNRS), when published, will be used to assign strategic significance. In this area, the Responsible Authorities for preparing LNRS are the County and Unitary

Councils. Current timetables indicate that publication of approved LNRS is likely to be during summer 2025.

- 4.3 In the absence of LNRS, The Statutory Metric User Guidance says it is for Local Planning Authorities to assign strategic significance using guidance within the User Guide. The TAN proposes that for this interim period, land within Biodiversity Opportunity Areas or designated sites such as Sites of Special Scientific Interest or Local Wildlife Sites, can be scored as 'High' for strategic significance. This is on the basis that these are well established, known, understood, and applied in Planning, are referred to in the South Downs Local Plan, and are expected to inform the development of LNRS. Appendix 2 shows Biodiversity Opportunity Areas and designated sites in the South Downs National Park.
- 4.4 Strategic significance categories of 'medium' and 'low' are also defined in the TAN for this interim period before the publication of approved LNRS. Once LNRS are approved 'high' strategic significance will be limited to land identified within the LNRS and the 'medium' category will disappear. This could mean that some sites for off-site BNG provision are scored differently during this interim period than they will be once the LNRS are approved. It also provides an incentive for landowners to submit their sites for inclusion within the LNRS.

5. Conclusion

- 5.1 Biodiversity Net Gain is a national legislative requirement, but there are some opportunities for local variations in how it is applied. It is important that BNG is applied in a way that furthers the purposes and priorities of the South Downs National Park, and the BNG TAN is an opportunity to set this out and make it clear to applicants and decision-makers. Given the importance of nature recovery to the National Park, and the significance of the new legislation together with the need to guide applicants, it was considered important to bring this revised TAN to Planning Committee for approval. However, the national picture is still evolving, and it will be important to keep the TAN up to date with changes. To enable us to do this quickly and efficiently, members are asked to delegate future changes to the TAN to the Director of Planning (Interim).

6. Other implications

Implication	Yes*/No
Will further decisions be required by another committee/full authority?	No.
Does the proposal raise any Resource implications?	Not arising from the updated TAN itself. Some funding has been provided from DEFRA towards SDNPA's costs in implementing BNG in the National Park.
How does the proposal represent Value for Money?	The Biodiversity Net Gain Technical Advice Note provides clarity on the expectations and implementation of Biodiversity Net Gain by SDNPA.
Which PMP Outcomes/ Corporate plan objectives does this deliver against	The Biodiversity Net Gain Technical Advice Note supports the delivery of Biodiversity Net Gain, which is one key way in which Planning contributes to the corporate priority of Nature Recovery.
Links to other projects or partner organisations	n/a

Implication	Yes*/No
How does this decision contribute to the Authority's climate change objectives	The Biodiversity Net Gain Technical Advice Note supports the delivery of creation and enhancement of habitats, with particular guidance on landscape led BNG and meaningful BNG which supports the objective of building resilient into ecological networks.
Are there any Social Value implications arising from the proposal?	None.
Have you taken regard of the South Downs National Park Authority's equality duty as contained within the Equality Act 2010?	Yes. No implications identified.
Are there any Human Rights implications arising from the proposal?	None.
Are there any Crime & Disorder implications arising from the proposal?	None.
Are there any Health & Safety implications arising from the proposal?	None.
Are there any Data Protection implications?	None.

7. Risks Associated with the Proposed Decision

Risk	Likelihood	Impact	Mitigation
Without the TAN, lack of clarity on key aspects of implementation causing delay and/or difficulty in the determination of planning applications and resource implications associated with officer time addressing this.	Likely	Moderate	Provision of the TAN and the guidance therein.

Risk	Likelihood	Impact	Mitigation
Potential challenge on aspects of content in the TAN	Possible	Moderate	The implementation of BNG is an ongoing evolving matter. It will therefore be necessary to review and update the TAN as new national policy and guidance is available and to address industry learning on key aspects of implementing BNG at a national and local level.

MIKE HUGHES
Director of Planning (Interim)
South Downs National Park Authority

Contact Officer: Katharine Stuart, Planning Policy Lead
 Tel: 01730 819281
 Email: Katharine.stuart@southdowns.gov.uk

Appendices
 1. Biodiversity Net Gain Technical Advice Note
 2. Biodiversity Opportunity Areas and Designated Sites Map

SDNPA Consultees Chief Executive (Interim); Legal Services.
 External Consultees None
 Background Documents None