

1 Purpose of this guidance

The Environment Act 2021 introduces a series of amendments to the Town and Country Planning Act 1990 which legally require certain types of development to deliver Biodiversity Net Gain (BNG). This interim guidance sets out Westmorland and Furness Council’s current approach to BNG once it becomes mandatory.

This guidance will be updated periodically as new information on BNG is released by the UK Government. We are working on a standalone guidance note that will further clarify our approach to BNG. The guidance will be based on additional government guidance and secondary legislation, which is expected to be published in December 2023. It is our intention to release the guidance note before BNG becomes mandatory.

2. What is Biodiversity Net Gain?

Biodiversity Net Gain (BNG) is an approach to development and/or land management that leaves biodiversity in a measurably better state than before the development took place.

3. Does Westmorland and Furness Council already require Biodiversity Net Gain?

Currently we do not have a single unified local plan for the Westmorland and Furness Local Plan area; until replaced by newly adopted local plan policies within a new Westmorland and Furness Local Plan, the existing local plan policies within each former district area and at the former county level must continue to be applied. The table below shows which of the existing district local plans include policies on biodiversity gain alongside any relevant Supplementary Planning Documents that cover BNG. These policies will remain relevant until a new local plan is adopted.

District	Plan/Document	Details
Cumbria County Council	Cumbria Minerals and Waste Local Plan 2015-2030 (CMWLP)	Policy SP15 – Environmental Assets Policy DC16 – Biodiversity and Geodiversity
Barrow Borough Council	Biodiversity & Development Supplementary Planning Document – May 2018	Section 15 – Biodiversity Enhancement
	Affordable Housing and Developer Contributions Supplementary Planning Document – July 2022	Section 9 – Biodiversity Net Gain
	Barrow Borough Local Plan 2016-31	Policy N3 – provide net gains in biodiversity where possible

District	Plan/Document	Details
Eden District Council	Eden Local Plan 2014 - 2032	No existing policy on net gain. Policy ENV1 requires no net loss.
South Lakes District Council	Local Plan Development Management Policies – March 2019	Policy DM1 - General Requirements for all development. Policy DM4 - Green and Blue Infrastructure, Open Space, Trees and Landscaping.

4. When does BNG become mandatory and which developments are exempt?

The current phases for implementation of mandatory BNG are as follows:

- January 2024 (exact date tbc) – BNG becomes mandatory for **Major Development**.
- April 2024 (exact date tbc) – BNG becomes mandatory for **Minor Development**.
- November 2025 (exact date tbc) – BNG becomes mandatory for **Nationally Significant Infrastructure Projects (NSIPs)**.

For **full applications**, the mandatory BNG requirement will apply only to applications submitted **after** BNG takes effect in January 2024 for major applications or April 2024 for minor applications.

The approach for **outline applications** is:

- Outline applications submitted *and granted before* BNG takes effect – reserved matters do not need to consider BNG.
- Outline applications submitted *but not granted before* BNG takes effect – reserved matters must consider BNG.
- Outline applications submitted **after** BNG takes effect – outline application and reserved matters must consider BNG.

We have produced a table which outlines which development types will be exempted from BNG based on current understanding:

5. How is BNG calculated?

The Biodiversity Metric is used to calculate the value of all habitats within the development site (usually the red line boundary) for two scenarios; before and after development. The current version of the metric is [Biodiversity Metric 4.0](#), however this will likely be updated to become the statutory metric once BNG becomes mandatory. The values of the habitats are measured in 'biodiversity units'. The pre-development number of biodiversity units is compared to the post-development number of biodiversity units to assess if net gain is achieved.

6. How is BNG achieved?

Mandatory net gain is achieved when a project can demonstrate at least a 10% uplift on the pre-development biodiversity value of the site or, to put it another way, when the development provides 110% of the pre-development biodiversity value of the site.

7. Where can BNG be delivered?

BNG can be delivered:

- On site – by creating or enhancing habitats to generate additional biodiversity units within the red line boundary of the development site.
- Off site – by creating or enhancing habitats to generate additional biodiversity units outside the red line boundary of the development site.
- Via Statutory biodiversity credits – by paying to purchase biodiversity credits from the [UK Government's credit sales service](#). Two credits will be required for every one unit to be compensated for.
- Via a combination of the above.

8. How is BNG secured?

BNG delivered on site will likely be secured through planning conditions where possible. Off-site BNG will be secured through either a Section 106 agreement or a Conservation Covenant. Conservation Covenants are a new type of legal agreement between a landowner and a designated “responsible body” such as a public body, conservation charity or for-profit body which conserves (protects, restores or enhances) the natural or heritage features of the land. It is a private, voluntary agreement made for the public good, which is tied to the land and remains effective even if ownership of the land changes.

In all instances, the enhanced and/or created habitats will need to be secured for a minimum 30-year term. The term may need to be longer depending on the complexity of the compensatory habitat.

9. What is Westmorland and Furness Council's approach to BNG?

Our approach to net gain is set out below. The approach will be clarified further through an additional guidance note and subsequently, policies within a new local plan. The approach may be adjusted as new information becomes available.

9.1 Amount of net gain required

Development should deliver a minimum of 10% net gain in line with mandatory requirement.

9.2 Spatial priority for compensation

Compensatory enhancement and/or creation of habitats should be delivered on site as the first priority. Delivery of compensation off-site may be considered first priority in certain circumstances; this will be assessed on a case-by-case basis.

Wherever possible, compensatory habitat provision to achieve BNG should seek to achieve multiple benefits, such as Sustainable Drainage Systems (SuDS), Natural Flood Management (NFM), access to nature, carbon sequestration. Stacking benefits in this way will minimise pressure on finite land resources and will be strongly encouraged in applications.

9.3 Spatial Risk

All proposals must have regard to the spatial risk scores set out within the latest version of the Biodiversity Metric user guide which can be found on Natural England's Access to Evidence website. The Local Planning Authority (LPA) in the context of the current (Metric 4.0) guidance should be regarded as the Westmorland and Furness Council area excluding the Lake District National Park and Yorkshire Dales National Park.

[National Character Areas \(NCA\)](#) are defined by a unique combination of landscape, biodiversity, geodiversity, history, and cultural and economic activity. Their boundaries follow natural lines in the landscape rather than administrative boundaries.

We are working on a standalone guidance note that will further clarify our approach to BNG. The note will include detailed guidance on how spatial risk should be determined for planning applications within Westmorland and Furness.

9.4 Strategic significance

All proposals must have regard to the strategic significance scores set out within the latest version of the Biodiversity Metric user guide. Sufficient evidence will need to be provided to support decision making in relation to attributing the strategic significance category within the metric.

We are working on a standalone guidance note that will further clarify our approach to BNG. The note will include detailed guidance on how strategic significance should be determined for planning applications within Westmorland and Furness.

9.5 Statutory credits

Use of the government credit scheme will be regarded as a last resort. If a proposal relies on statutory credits for compensating for biodiversity loss, then robust evidence will need to be

submitted with the planning application to demonstrate why on-site or off-site units cannot be created or purchased.

10. What does Westmorland and Furness Council require to support BNG applications?

We expect the national validation checklist to be updated to accommodate BNG requirements. We are currently in the process of updating our own validation lists to align with BNG ahead of January 2024.

The UK government will mandate through secondary legislation that certain core biodiversity gain information must be provided with the application for planning permission. The secondary legislation is expected to be published on 30 November 2023; our present position is that the following documents will need to be submitted with planning applications:

- BNG statement – to include:
 - baseline habitat survey report and map following UKHab methodology;
 - all condition assessment sheets used to support metric calculations;
 - steps taken to minimise adverse biodiversity impacts following the mitigation hierarchy;
 - the proposed approach to enhancing biodiversity on-site;
 - any proposed off-site biodiversity enhancements (including the use of credits) that have been planned or arranged for the development;
 - if credits are to be used, a strong justification as to why on-site/off-site units cannot be delivered; and
 - how Rules, 1, 4 and 5 of the statutory biodiversity metric have been complied with.
- A completed statutory biodiversity metric spreadsheet that covers all on-site/off-site baseline and post development conditions. The metric must:
 - be supplied as an Excel spreadsheet, screenshots or PDF versions will not be acceptable;
 - be supplied with all start page details filled out;
 - be supplied with no input error/rules and principles not met flags (ie red boxes) unless the application is an outline application or relies on statutory credit purchase and the reasons for the red boxes in the metric are clearly stated in the BNG statement.

We encourage developers to use our pre-application advice service with respect to applications that are covered by mandatory BNG requirements.

A biodiversity gain plan will also need to be submitted to demonstrate in more detail how proposals meet the statutory regulations. The biodiversity gain plan can be submitted:

- With your planning application or before permission is determined; in this case, assuming permission is granted and the plan is approved, the net gain condition will be immediately discharged and development can commence; or
- Alternatively, after planning permission is granted, but before commencement of development.

The UK Government produced a [draft template for the gain plan and accompanying guidance for developers and local authorities](#) on 26 October 2023. These documents detail the information that must be provided in the gain plan. We require the latest version of the published gain plan template to be used.

The following information should be submitted in addition to completion of the template:

- Completed metric calculation tool.
- Pre-development and post-development plans, showing the location of onsite habitat and drawn to an identified scale and showing the direction of North.
- Approved compensation plan (if irreplaceable habitats are impacted).
- Reference number(s) from the national gain sites register (if applicable).
- Statutory biodiversity credits eligibility evidence in the form of correspondence from habitat providers (if applicable)
- Statutory biodiversity credits proof of purchase (if applicable).
- Habitat Management and Monitoring Plan (HMMP) for all on site and off site compensation.

11. What other key principles and rules should be followed

You should have regard to the rules and principles set out in the current version of the biodiversity metric user guide as these will be used to assess biodiversity statements and gain plans. It is recommended that where evidence is required to demonstrate compliance with the metric rules and principles (eg evidence of competency) this is provided within the biodiversity statement and/or gain plan.

Your attention is drawn to the principles set out in the current version of the biodiversity metric user guide. In particular to Principle 1:

“This metric does not change existing biodiversity protections, statutory obligations, or policy requirements. The use of this metric does not override the ecological mitigation hierarchy and other requirements (such as consenting or licensing processes, for example woodlands).”

The mitigation hierarchy is set out below:

Priority	Stage	Guidance
1	Avoid	Avoid harm to biodiversity features. This could be assessing a range of sites and selecting the one with lower value features. Within a site this could be redesigning a proposal so that it avoids impacts on the most ecologically valuable features eg habitats of high distinctiveness or supporting protected species.
2	Minimise	If it is not possible to avoid all adverse effects, action should be taken to minimise effects for example by reducing habitat loss as far as practicably possible, carrying out works under a protective plan such as a Construction Environmental Method Statement (CEMP) or carrying out works when species are not present or during less sensitive periods (with due respect to their ecology and/or protective legislation).
3	Compensate	Only as a last resort, and in agreement with external stakeholders where possible, compensate for losses that cannot be avoided. If compensating for losses within the development footprint is not possible or does not generate the most benefits for nature conservation, then offset biodiversity losses by gains elsewhere.

Statutory obligations in relation to biodiversity include compliance with legislation relating to the protection of site, protection of species and preventing the spread of invasive non-native species including. The main legislation being:

- The Conservation of Habitats and Species Regulations 2017 (as amended); and
- Wildlife and Countryside Act 1981 (as amended).

12. How can I obtain biodiversity units to offset my development?

Biodiversity units can be obtained from a range of sources including:

- Your own off-site land.
- Third party land owners.
- Commercial habitat banks and bespoke habitat providers.

It is up to you as the developer to source your own units to offset the effects of your development. Please note that the spatial location of off-site units determines their value; your attention is drawn to the spatial risk scores set out within the latest version of the Biodiversity Metric user guide (see also section 9.2).

All sites providing off-site habitat units must be registered on the national Biodiversity Gain Sites Register which will become available in January 2024, once BNG becomes mandatory.

13. How will sites delivering BNG be monitored?

Sites delivering BNG will need regular field monitoring to assess whether enhanced or created habitats are on target to meet the objectives of the corresponding biodiversity gain plan. Reports detailing the outcomes of field monitoring will be required to be reported back to the planning authority following the schedule set out in the approved HMMP.

We will use the monitoring reports to assess whether we need to undertake our own monitoring of gain sites and plan these accordingly. As part of our enhanced Biodiversity Duty, under the Natural Environment and Rural Communities (NERC) Act 2006 (as amended), we will also be required to regularly report on the implementation of mandatory BNG and will carry out our own internal monitoring to collect the required data.

14. Table of planning application types and conditions for exemption from BNG

Development Category	Development Type	Qualifying Notes	Exempt from BNG?	Conditions for Exemption
Permitted Development	All permitted development	The General Permitted Development Order, gives permission to carry out certain items such as extensions, rear dormers, erect fences, porches, outbuildings, satellite dishes, demolition etc.	Most applications	Always exempt - unless permitted development rights restricted due to location eg within a conservation area or Area of Outstanding Natural Beauty
Prior Approval	Telecommunications	-	Potentially	The site contains less than 25sqm of any non-priority habitat or less than 5m of watercourse or hedgerow
	Agricultural	-	Potentially	The site contains less than 25sqm of any non-priority habitat or less than 5m of watercourse or hedgerow
	Household extensions	-	All applications	Always exempt
Planning Application Required	Householder	-	All applications	Always exempt
	Small scale self-build and custom house building	-	All applications	Always exempt
	Biodiversity gain sites	Where habitats are being enhanced for wildlife.	All applications	Always exempt

Development Category	Development Type	Qualifying Notes	Exempt from BNG?	Conditions for Exemption
	Change of use	-	Potentially	The site contains less than 25sqm of any non-priority habitat or less than 5m of watercourse or hedgerow
	Minor Planning Application	Residential sites less than 1 ha - development of between one and nine dwellings.	Potentially	Application submitted before April 2024 The site contains less than 25sqm of any non-priority habitat or less than 5m of watercourse or hedgerow
		Residential sites less than 0.5 ha - development where number of units is unknown.		
		Non-residential sites where floorspace to be created is less than 1,000 sqm.		
		Non-residential sites less than one hectare.		
		Changes of use less than 1,000 sqm.		
		Gypsy and traveller sites – up to nine pitches.		
	Major Planning Application	Residential development of between 10 or more dwellings.	Potentially	Application submitted before April 2024 The site contains less than 25sqm of any non-priority habitat or less than 5m of watercourse or hedgerow
		Residential development on a site area of 0.5 ha or more and the number of dwellings is unknown.		

Development Category	Development Type	Qualifying Notes	Exempt from BNG?	Conditions for Exemption
		Development of floorspace of 1,000 sqm or more		
		Development on sites over 1 ha or more		
		Change of use over 1,000 sqm or more		
		Waste development		
<p>Glossary: Priority Habitat – Habitats of Principle Importance listed under Section 41 of the Natural Environment and Rural Communities (NERC) Act 2006 (as amended).</p>				