

Hertsmere Local Plan



Biodiversity Net Gain



Supplementary Planning Document

January 2024

Temporary front cover

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1. Introduction

“Developers must deliver a biodiversity net gain of 10%. This means a development will result in more or better quality natural habitat than there was before development.” Department for Environment, Food and Rural Affairs (DEFRA), 2023

- 1.1 Biodiversity Net Gain (BNG) is an approach to development that seeks to leave the natural environment in a measurably better state than it was before the development occurred. It aims to deliver improvements through habitat creation or enhancement after firstly avoiding and then mitigating harm.
- 1.2 The passing into law of the Environment Act (2021) means that local authorities will have a legal duty to require that development takes place in a way that sees biodiversity increased rather than diminished.
- 1.3 Under the statutory framework for biodiversity net gain, every grant of planning permission is deemed to have been granted subject to a general biodiversity gain condition to secure the biodiversity gain objective. This objective is for there to be at least a 10% increase on the pre-development biodiversity value of the application site. This increase can be achieved through onsite biodiversity gains, registered offsite biodiversity gains, statutory biodiversity credits, or any combination of these.
- 1.4 BNG will apply to most new major development under the Town and Country Planning Act (TCPA) from late January 2024, and to smaller sites (with certain exemptions) from April 2024. At the time of writing, it is understood that reserved matters will not be required to fulfil the mandatory requirement for BNG if the outline permission was approved prior to the relevant provisions of the Environment Act coming into force.

Purpose of this guidance

- 1.5 This Supplementary Planning Document sets out the approach that will be taken to BNG in Hertsmere, within the context of national legislation, the National Planning Policy Framework and local planning policy. This guidance should also be read in conjunction with the relevant sections of the Planning Practice Guidance¹ and the suite of guidance published by Defra and Natural England².
- 1.6 The draft Planning Practice Guidance (29/11/2023) states that biodiversity net gain has only been commenced for planning permissions granted in respect to an application made after BNG becomes mandatory in January 2024 (subject to Parliamentary timetabling). Permissions granted for applications made before this date are not subject to biodiversity net gain.

¹ Draft biodiversity net gain planning practice guidance: <https://www.gov.uk/guidance/draft-biodiversity-net-gain-planning-practice-guidance>

² Biodiversity net gain: <https://www.gov.uk/government/collections/biodiversity-net-gain>

- 1.7 The approach set out in this SPD will also underpin the Council's approach to habitat loss on development sites. Policy CS12 of the Core Strategy (The Enhancement of the Natural Environment) requires the conservation and enhancement of biodiversity but where habitat loss on development sites cannot be avoided, that loss will be need to be offset in addition to the BNG required. The mitigation hierarchy set out in this SPD will apply to the mitigation required for habitat loss.

Principles of BNG

“...a measurable target for development projects where impacts on biodiversity are outweighed by a clear mitigation hierarchy approach to first avoid and then minimise impacts, including through restoration and / or compensation”³

- 1.8 Ten key principles of good practice for achieving BNG have been collectively established by three major environment-related professional bodies (CIEEM, CIRIA and IEMA). These principles are:
- **Principle 1. Apply the Mitigation Hierarchy**
 - Do everything possible to first avoid and then minimise impacts on biodiversity
 - **Principle 2. Avoid losing biodiversity that cannot be offset by gains elsewhere**
 - **Principle 3. Be inclusive and equitable**
 - Engage stakeholders early, and involve them in designing, implementing, monitoring and evaluating the approach to Net Gain
 - **Principle 4. Address risks**
 - Mitigate difficulty, uncertainty and other risks to achieving Net Gain
 - **Principle 5. Make a measurable Net Gain contribution** (this is now 10% as set by the Environment Act 2021)
 - **Principle 6. Achieve the best outcomes for biodiversity**
 - by using robust, credible evidence and local knowledge to make clearly-justified choices
 - **Principle 7. Be additional**
 - Achieve nature conservation outcomes that demonstrably exceed existing obligations (i.e. do not deliver something that would occur anyway)
 - **Principle 8. Create a Net Gain legacy**
 - Ensure Net Gain generates long-term benefits
 - **Principle 9. Optimise sustainability**

³ CIEEM Biodiversity Net Gain Good practice principles for development: <https://cieem.net/resource/biodiversity-net-gain-good-practice-principles-for-development-a-practical-guide/>

- Prioritise Biodiversity Net Gain and, where possible, optimise the wider environmental benefits for a sustainable society and economy
- **Principle 10. Be transparent**
 - Communicate all Net Gain activities in a transparent and timely manner, sharing the learning with all stakeholders.

Further information about these principles can be found on the [CIEEM website](#)⁴:

⁴ CIEEM Biodiversity Net Gain Good practice principles for development: <https://cieem.net/resource/biodiversity-net-gain-good-practice-principles-for-development-a-practical-guide/>

2. Legislation and Policy

Legislation

Environment Act

2.1 The Environment Act (2021)⁵ makes the achievement of biodiversity gain mandatory. It does not change existing legal protections for important habitats and wildlife species, and maintains the mitigation hierarchy of avoiding impacts first, then mitigating and only compensating as a last resort.

Statutory Instruments

2.2 As result of the Act, amendments to the TCPA are required, as well as the introduction of secondary legislation; these are expected to be taken through the Parliamentary process in January 2024, and are listed below.

- The Biodiversity Gain Site Register Regulations 2023⁶.
- The Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024
- The Biodiversity Gain Requirements (Exemptions) Regulations 2023
- The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2023
- The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024

Natural Environment and Rural Communities Act 2006

2.3 This Act places a duty on local authorities and other bodies in England to conserve and enhance biodiversity and have regards to it as far as is consistent with their functions.

National Planning Policy

National Planning Policy Framework (NPPF)

2.4 The NPPF requires that planning policies and decisions contribute to and enhance the natural environment, minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

2.5 When determining planning applications, local planning authorities should support development whose primary objective is to conserve or enhance biodiversity. Opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or, where appropriate, enhance public access to nature.

⁵ [Environment Act 2021 \(legislation.gov.uk\)](https://legislation.gov.uk)

⁶ [The Biodiversity Gain Site Register Regulations 2024 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

Planning Practice Guidance (PPG)

2.6 The Draft PPG, issued November 2023, provides more detail about how BNG will be applied through the planning process, including the types of planning applications that are within the scope of BNG, determination of planning applications, submission and determination of Biodiversity Gain Plans, appeals and phased development.

Circulars and other guidance

2.7 Circular 06/2005 (Biodiversity and geological conservation) complements PPG and the NPPF providing guidance relating to planning and nature conservation in England.

National Design Guide

2.8 The National Design Guide (2021)⁷ supports the principles of BNG, stating that well-designed developments include site-specific enhancements to achieve biodiversity net gains at neighbourhood, street and household level.

Natural England Biodiversity Metric

2.9 The statutory (official) biodiversity metric⁸ is a way of measuring biodiversity value in standardised biodiversity units for the purposes of BNG, and it calculates how many units are needed to replace any lost habitat and achieve 10% BNG through the creation or enhancement of habitat.

Other guidance from Defra and Natural England

2.10 [to be updated following publication of final DEFRA guidance; draft guidance issued on 29/11/2023]

Local Planning Policy

Hertsmere Local Plan

2.11 This SPD should be read in conjunction with the adopted Hertsmere Local Plan. The key policies are listed below, but it is important to consider the Local Plan as a whole as biodiversity is an important thread running throughout the plan.

Local Plan Core Strategy (2013)⁹

- Policy SP1 Creating sustainable development
- Policy CS12 The Enhancement of the Natural Environment
 - these two policies require the conservation and enhancement of existing habitats and creation of new habitats.

2.12 Local Plan Site Allocations and Development Management Policies (2016)¹⁰

- Policy SADM10 Biodiversity and Habitats – expects development to avoid significant harm to sites of importance for ecology, geology and biodiversity;

⁷ [National Design Guide \(2021\)](#)

⁸ [Calculate biodiversity value using the biodiversity metric - GOV.UK \(www.gov.uk\)](#)

⁹ [Core Strategy DPD 2013 \(hertsmere.gov.uk\)](#)

¹⁰ [FINAL-ADOPTED-SADM-01-02-2017.pdf \(hertsmere.gov.uk\)](#)

- Policy SADM12 - Trees, Landscaping and Development – development should not result in the loss of healthy, high quality trees and hedgerows.
- Policy SADM15 - Sustainable Drainage Systems – the design of new development should include sustainable drainage measures which achieve multiple benefits, including benefits for biodiversity.
- Policy SADM16 – Watercourses – development on sites that contain a watercourse or are situated next to a watercourse will conserve or improve the natural environment of the watercourse and areas of water, and should provide opportunities to support river restoration and enhancement within the catchment of the watercourse.
- Policy SADM37 - New and Improved Open Spaces – Open space provision must maximise biodiversity benefits.

Other considerations

Climate Emergency

- 2.13 The council declared a climate change emergency in 2019¹¹, and the associated strategy document¹² recognised the role of the planning system in offsetting greenhouse gas emissions, improving biodiversity and building climate resilience.

Biodiversity Action Plan

- 2.14 Hertfordshire Biodiversity Action Plan, Revised (2006) looks to maintain, restore, enhance and increase where appropriate, priority habitats, and populations of priority species

Local Nature Recovery Strategy (LNRS)

- 2.15 The LNRS is currently being prepared by Herts Ecology, and expected to be published around Autumn 2025. It will indicate priority areas for ecological improvement across Hertfordshire, and once published will be used to determine Strategic Significance element within the Defra BNG Metric.

Herts Ecological Network (HEN) Mapping

- 2.16 This mapping project, carried out by Herts and Middlesex Wildlife Trust, produced an inventory of habitats in Hertfordshire, which was used to generate potential habitat network maps. These maps identify the spatial relationships between habitats, and where the highest priorities are for expanding and linking habitats. This strategic approach ensures that efforts can be targeted to where they are of most potential benefit, and should be used as an interim measure when considering proximity in the 'strategic significance uplift' part of the metric in lieu of the LNRS.

¹¹ <https://hertsmere.moderngov.co.uk/ieListDocuments.aspx?CId=106&Mid=10541&Ver=4>

¹²

<https://hertsmere.moderngov.co.uk/documents/s52037/20200916FC06appA1%2020200626%20Climate%20Change%20and%20Sustainability%20Strategy%20Final.pdf>

New Hertsmere Local Plan

- 2.17 A new Hertsmere Local Plan is being produced. We have already carried out public engagement on four occasions since 2017, including consulting on broad issues and options and a long list of potential sites for housing and employment. A full draft Hertsmere Local Plan was consulted upon (Regulation 18) in autumn/winter 2021, and a large number of objections were received, primarily in relation to the issue of releasing land in the green belt land to help meet the borough's housing target. This prompted the council to take a decision in early 2022 to pause work on the plan and await further clarity from central government on policy issues, including the standard method for calculating local housing targets and policy surrounding green belt boundary changes.
- 2.18 An updated Local Development Scheme and new direction of travel were agreed by the Council's Cabinet in November 2023. The new draft Local Plan needs to be submitted to the Secretary of State by June 2025, with adoption of the final version of the new Local Plan, covering up until 2040, expected by the end of 2026.
- 2.19 This SPD will need to be updated once a new Local Plan has been adopted, in particular if the new plan includes a BNG target higher that exceeds the mandatory 10%.

3. Planning application requirements

- 3.1 Applicants will need to provide appropriate information to demonstrate a commitment to delivering BNG. Sufficient, suitable and robust information must be provided to enable the effects on biodiversity to be assessed. Proposals which do not include enough information to allow the Council to make an informed decision may be delayed when being determined.

Seeking BNG in Hertsmere

- 3.2 The PPG sets out that statutory BNG will only apply for applications made after the date that BNG becomes mandatory in January 2024 (date subject to parliamentary timetabling). Permissions granted for applications made before this date are not subject to statutory biodiversity net gain.
- 3.3 The council expects that all relevant applications (see the exemptions section below) received before this date will aim to achieve **at least 10% net gain during the transition period** and for types of planning permission not yet subject to the statutory framework, as per paragraph 017 of the PPG¹³.

Amount of net gain

- 3.4 The precise level of BNG required for each proposed development scheme will be set **by negotiation with the LPA** and should form part of pre-application discussions. In Hertsmere this is expected to be a *minimum* of 10%.

Application size thresholds in advance of statutory net gain

- 3.5 The council will require at least **10% net gain** on all major developments. On 'smaller' developments (5-9 units/0.5 hectares residential or 1,000 sq m/1 hectare commercial), at least 10% will be actively sought, in advance of the introduction of mandatory BNG for small sites in April 2024 when all new 'small' developments creating at least one additional net dwelling / net additional commercial floorspace should secure at least 10% net gain. All such applications should be accompanied by a completed biodiversity net gain metric and report.
- 3.6 In areas of high ecological significance, the Planning Authority may require the delivery of BNG even when the application is under the minimum threshold for residential dwellings or commercial development.
- 3.7 BNG is strongly encouraged on all other types and sizes of development, in particular those which are not subject to the exemptions set out above.

¹³ Draft biodiversity net gain planning practice guidance: <https://www.gov.uk/guidance/draft-biodiversity-net-gain-planning-practice-guidance> Paragraph: 017 Reference ID: 74-017-2023

Exemptions

- 3.8 The general biodiversity gain planning condition does not apply to the following types of applications/development, as set out in The Biodiversity Gain Requirements (Exemptions) Regulations 2024¹⁴:
- small developments where an application for planning permission is made or has been granted before 1st April 2024, including Section 73 applications relating to an original application submitted before 1st April 2024 (although the Council will be applying the 10% net gain on ‘smaller’ developments as set out in paragraph 3.5 and as set out in the previous draft SPD (2021) on applications submitted or determined before 1st April 2024.
 - developments with no impact on priority habitat and where it impacts on less than 25 sq m of habitat with biodiversity value greater than zero / less than 5 metres in length of linear habitat
 - householder applications
 - the high-speed railway network
 - self-build and customer build development of no more than 9 dwellings and on an area of no more than 0.5 hectares
 - off-site gain developments i.e. developments which fulfil the biodiversity net gain requirement arising in relation to another development
- 3.9 The PPG sets out the information that applicants should submit where they consider the statutory biodiversity gain condition does not apply to a development. Applicants are expected to complete the relevant section of the planning application form to set out which exemptions or transitional provisions apply to the application, bearing in mind that Hertsmere is seeking BNG on applications, including non-major applications.

Pre-application discussions

- 3.10 Applicants are encouraged to engage with local planning authorities before an application is submitted in order to identify, understand and seek to resolve issues before submission. Biodiversity should be a key part of the design of a scheme from the outset and applicants need to demonstrate that the mitigation hierarchy **set out in this SPD** has been followed throughout the design process before any discussions are held with the LPA.
- 3.11 The Council encourages that the amount of net gain, its type and location will have been secured prior to submission of a planning application, and a draft Conservation Covenant or S106 agreement is expected as part of the planning application documents.

¹⁴ The Biodiversity Gain Requirements (Exemptions) Regulations 2024:
https://assets.publishing.service.gov.uk/media/65662475312f400013e5d533/The_Biodiversity_Gain_Requirements_Exemptions_Regulations_2024.pdf

- 3.12 It is expected that applicants will use the latest version of the DEFRA Biodiversity metric¹⁵ to determine the impacts of the proposal on biodiversity before a planning application is submitted. Applicants may find the following references useful in supporting their baseline:
- Hertfordshire County Council Building Futures landscape and biodiversity principles¹⁶
 - Hertsmere Landscape and Visual Sensitivity Assessment and Landscape Appraisals¹⁷
 - Hertfordshire Environmental Records Centre (HERC)¹⁸
 - MAGIC, Defra's online mapping service which includes spatial information about habitats, species and designations.¹⁹
- 3.13 Applicants should refer to advice from Natural England on development affecting protected sites and species²⁰.

Information required to accompany a planning application

Where statutory BNG does not apply to an application

- 3.14 Where applicants consider that the development would not be subject to the general biodiversity gain condition, [Article 7 of The Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#) provides that the applicant must provide a statement as part of the planning application setting out why they believe this is the case.
- 3.15 An applicant would be expected in this statement to set out what exemption(s) or transitional provision(s) apply to the development. In some cases, the exemption or transitional provision will be evident as they relate to the type of permission: the planning application form for household development already includes a pre-populated statement. In other cases, evidence may need to be provided.
- 3.16 The planning application form is due to be updated to incorporate biodiversity net gain in due course, and example scenarios are provided within the [Draft biodiversity net gain planning practice guidance](#)²¹, so are not repeated here.

What information is submitted with a planning application for a development subject to biodiversity net gain?

- 3.17 Where development would be subject to the general biodiversity gain condition, the application must be accompanied by minimum information set out in Article 7 of The Town and Country

¹⁵ [Biodiversity metric: calculate the biodiversity net gain of a project or development - GOV.UK \(www.gov.uk\)](#)

¹⁶ HCC Building Futures (<https://www.hertfordshire.gov.uk/microsites/building-futures/a-sustainable-design-toolkit/technical-modules/landscape-and-biodiversity/basic-principles.aspx>)

¹⁷ Hertsmere Landscape Sensitivity Assessment and Outline Landscape Appraisals: [hertsmere.gov.uk/Documents/09-Planning--Building-Control/Planning-Policy/Local-Plan/Landscape-Sensitivity-Assessment-Final-Report.pdf](https://www.hertsmere.gov.uk/Documents/09-Planning--Building-Control/Planning-Policy/Local-Plan/Landscape-Sensitivity-Assessment-Final-Report.pdf)
<https://www.hertsmere.gov.uk/Documents/09-Planning--Building-Control/Planning-Policy/Local-Plan/Outline-Landscape-Appraisals-Report-Sept-2020.pdf>

¹⁸ [Herts Environmental Records Centre | Biodiversity data for Hertfordshire \(hercinfo.org.uk\)](#)

¹⁹ [MAGIC \(defra.gov.uk\)](#)

²⁰ [Planning and development: Protected sites and species - detailed information - GOV.UK \(www.gov.uk\)](#)

²¹ Draft biodiversity net gain planning practice guidance: <https://www.gov.uk/guidance/draft-biodiversity-net-gain-planning-practice-guidance#biodiversity-net-gain-submitting-a-planning-application>

Planning (Development Management Procedure) (England) Order 2015, described in the PPG²² and summarised here:

- A statement indicating that the applicant considers planning permission would be subject to the biodiversity gain condition
- The pre-development biodiversity value of onsite habitats on the date of the application (or if using an earlier date include the reasons for doing so) using the most recent iteration of the Defra Biodiversity Metric, including the completed metric tool in a full spreadsheet form to allow interrogation by the LPA
- A statement addressing any degradation of the site
- A description of any irreplaceable habitat on the site
- A plan showing onsite habitat on the date of the application, including any irreplaceable habitat.

3.18 Further information may be required to assist with the consideration of the proposed BNG on the site as part of the planning application, particularly where onsite delivery will form a part of the application, as there will need to be detailed consideration of the site layout and plans.

3.19 If planning obligations are going to be used, it is good practice to submit information at application stage, and ideally during pre-application discussions.

- If a significant increase in onsite biodiversity enhancements are required, applicants are encouraged to provide a draft Habitat Management and Monitoring Plan as part of the application
- If offsite provision of biodiversity gains is proposed on a specific site, then applicants are encouraged to provide the local planning authority with draft heads of terms.

Matters for consideration

3.20 Matters for consideration may include the following:

- the appropriate balance expected between onsite gains, off-site gains and the use of statutory biodiversity credits for the development, taking account of the biodiversity gain hierarchy
- whether the type and location of any significant onsite habitat enhancements proposed for onsite gains are appropriate, taking into account other policies to support biodiversity (including local nature recovery strategies) and other wider objectives; and
- any planning conditions which need to be imposed to secure any significant onsite habitat enhancements, including any conditions requiring the maintenance of the enhancement for at least 30 years after the completion of the development.

3.21 The PPG sets out what would normally be constitute a significant (onsite) enhancement defining these as

- habitats of medium or higher distinctiveness in the biodiversity metric

²² Draft biodiversity net gain planning practice guidance: <https://www.gov.uk/guidance/draft-biodiversity-net-gain-planning-practice-guidance> Paragraph: 009 Reference ID: 74-009-2023

- habitats of low distinctiveness which create a large number of biodiversity units relative to the biodiversity value of the site before development
 - habitat creation or enhancement where distinctiveness is increased relative to the distinctiveness of the habitat before development
 - areas of habitat creation or enhancement which are significant in area relative to the size of the development
 - enhancements to habitat condition, for example from poor or moderate to good
- 3.22 Prior to the determination of the planning application, the Council will also want to discuss with the applicant whether any section 106 planning obligations are required to secure either significant onsite habitat enhancements or offsite gains for the development.
- 3.23 For some planning applications (e.g. applications for outline planning permission where landscaping and layout are reserved matters), the implications for existing onsite habitats and the contribution to onsite gains may be uncertain at the time of the determination of the application. The Council will therefore consider what subsequent approvals will be necessary to ensure significant onsite habitat enhancements are appropriately secured.
- 3.24 So that impacts on biodiversity interests can be properly assessed using the biodiversity metric, applicants are required to submit the following information to the Council.
- The full metric spreadsheets must be shared with the Council. These will be published on the planning application section of the Council's website alongside other supporting documents. The full original metric spreadsheet will be required, and not a summary or a screenshot.
 - Screenshots or other images cannot be accepted because the Council needs to be able to review and check the metric spreadsheets in consultation with its ecological advisors.
 - Before the planning application can be approved, the applicant must demonstrate that appropriate ecological measures will be delivered and maintained either on the development site or on an appropriate recipient / compensatory site.
 - A management plan will be required to show that the gain will be maintained over the required duration (which the Environment Act sets at a minimum of 30 years).
- 3.25 Table 1 below sets out what information should be provided with an application. If later scrutiny by ecological specialists determines that insufficient detail has been provided, the application will not be determined. Information regarding the detail required for each component follows this table.

Table 1. Checklist for ecological information needed to demonstrate a biodiversity net gain

Full ecological report , not a preliminary ecological report (PEA). BS42020 compliant.	Pre- determination (PD)	4.1
Records search from HERC ²³	PD	4.1
Full biodiversity metric , excel version, not summary or screenshot	PD	4.4
All habitats identified with UK Habitats Classification methodology . Mapped, referenced, evidenced and linked to the lines in the metric. GIS layers provided if possible	PD	4.2
Evidence of how mitigation hierarchy has been considered	PD	4,3
On-site avoidance, mitigation, compensation and enhancements for habitats definitively stated and marked on plans	PD	4.2 4.3 Appendix 5 section E
Clear indication of net habitat losses or gains in habitat units and percentages	PD	4.4, 4.2, Appendix 5, section C
Species surveys completed with emphasis on priority species and species of conservation concern for Hertfordshire	PD	2.6,
Clear indication of impacts on species	PD	Appendix 5 section G4
On-site or offsite avoidance, mitigation, compensation and enhancements for species definitively stated and marked on plans	PD	4.2, 4.3
Biodiversity Net Gain Plan (BGP) including management required to achieve stated habitat condition. Liaison with Landscape Architect required to ensure landscape plans fulfil the requirements of both disciplines	PD sections A, B, C, D and E, fully completed, sections F, G, H completed as far as possible. Predevelopment condition sections F, G, H, management fully completed. section I is optional.	6.2 Appendix 5
If insufficient habitat units available on-site, details of biodiversity offset to deliver a net gain of 10% minimum provided, with metric trading rules satisfied	PD	5

²³ See **Section xx** for interpretation of HERC data within the BNG Matrix.

Evidence that management and funding has been secured for 30 years minimum	PD or by condition (BGP section G5)	Appendix 5 section B
If biodiversity offset not provided, detail of habitat shortfall required to deliver a 10% net gain provided to enable LPA to cost delivery	PD	7
Financial agreement with the LPA to deliver shortfall in place e.g.: <ul style="list-style-type: none"> Section 106 agreement wording if securing an offset site via the planning authority Covenants (or equivalent legal contracts) securing any unreceipted biodiversity net gain commitments Details of future ownership and stewardship Biodiversity Financial Contribution agreed with SLA (see section 6 of the SPD) 	By condition or S106	Appendix 5 section B
Habitat Management and Monitoring Plan in place. Details provided of mechanisms to ensure any planning authority monitoring and reporting requirements are satisfied, including remedial measures and their triggers.	PD section B of the BGP and by condition in section F3 of the BGP	Appendix 4

Ecological report

- 3.20 The purpose of the ecological report is to demonstrate compliance with national planning policy, local planning policy and legislation regarding planning and biodiversity. It should not be an ecological inventory followed by a series of recommendations.
- 3.21 So that a measurable net gain to biodiversity can be demonstrated, it must clearly and definitively show, in accordance with BS 42020;
- what is there
 - how it will be affected by the development
 - how the development is compatible with policy and
 - how any negative impacts will be avoided, mitigated or compensated.
- 3.22 All reports must be accompanied by an ecological records search from the [Hertfordshire Environmental Records Centre \(HERC\)](#)²⁴. Only definitively stated mitigation, compensation and enhancement measures to achieve net gain are acceptable – in accordance with BS 42020.
- 3.23 Ecological assessments should be carried out by qualified, suitable experienced environmental consultants using recognised methodology and at an appropriate time of year. All surveys must be compliant with BS 42020: 2013 Biodiversity Code of Practice for Planning and Development.

²⁴ HERC Data Enquiries: [DATA ENQUIRIES | Herts ERC \(hercinfo.org.uk\)](#)

Habitats and Species

- 3.24 Identification of all habitat types, together with important species, present at the site should be undertaken. Surveys should be designed and carried out to enable UK habitats classification to be applied in the metric. The use of other habitat classification systems that require translation via correspondence tables, other than for historic data sets, should not be used without consultation with the LPA.
- 3.25 A short description of the habitat type sufficient to justify its UK Habitat Classification, based on submitted evidence, will be required. High quality quadrat photographs to justify habitat identification assessments will be required.
- 3.26 Where quadrat data, such as species richness and % cover of defined components, is required to distinguish the habitat types for use in the metric, this data must be provided. Details of any statutory or non-statutory nature conservation designations should be provided.
- 3.27 Descriptions of the habitat must be consistent with the UK Habitat Classification definitions for that habitat and justified with evidence. The location and size of each habitat parcel (pre and post development) must be clearly marked on maps. Geographic Information System (GIS) layers are preferable if available.

Area

- 3.28 The location and size (in hectares) of each habitat parcel (pre and post development) must be clearly marked on maps / plans. If possible, this should be provided as a GIS layer to enable verification.

Metric Spreadsheet

- 3.29 The full original metric spreadsheet will be required, not a summary. This must be derived from the most up to date version of the Government approved metric at the time of application.

Habitat Condition

- 3.30 Every habitat will need to be assessed for its condition as required by the metric. This should account for significantly differing areas within one habitat type, if applicable. Condition sheets for each habitat described should be provided. Only those condition sheets proposed by Natural England for use in the metric will be acceptable.
- 3.31 Each condition assessment should be accompanied by a brief description or reasoning to support the assessment made and include information in the assessor's comments column of the metric, or a reference to the appropriate section in the ecological report. High quality quadrat photographs to justify condition assessments will be required.
- 3.32 The current condition should be assessed and justified using the condition assessment criteria as outlined in the Natural England Biodiversity Metric Habitat Condition Assessment Sheets and Technical Supplement JP039.

<http://publications.naturalengland.org.uk/file/6101399382523904>

<http://publications.naturalengland.org.uk/file/4739529476145152>

Habitat Losses and gains

- 3.33 The information provided must identify how each of the existing habitats (and habitat patches) will be affected by the proposal i.e. whether they will be lost, retained, or enhanced in some way. Any on-site mitigation or enhancements (gains) proposed must be accompanied by further information regarding the target habitat type and condition to be achieved **through appropriate management**, the time period within which this target will be achieved, and a supporting outline (or full) management plan. The Planning Authority will not consider any gains (credits) to balance losses calculated without this information.
- 3.34 Where bespoke habitat compensation for priority habitat is required from the metric, replacement of the habitat must be on a like for like basis and result in an increase in habitat units of at least 20% to balance losses calculated without this information.
- 3.35 Any offset proposals will be dealt with in the same way. If the ecological expert assessing the planning application considers that there may be indirect impacts to significant ecology on sites adjacent to the development, then further information may be required. .
- 3.36 Results from the assessments above should be summarised in a table, with an accompanying map with each habitat parcel clearly marked (pre and post development) and referenced to the excel spreadsheet generated by the biodiversity metric.
- 3.37 Early pre-application discussions with the LPA ecological advisors are recommended to clarify the information required above. All surveys will be expected to be accompanied by an ecological records search from the Herts Environmental Records Centre⁹ All environmental information submitted will be aggregated into the Herts Ecological Record to enable the monitoring of the biodiversity and ecological wellbeing of the county.
- 3.38 Ecological assessments should be carried out by qualified, suitable experienced environmental consultants using the recognised methodology and at an appropriate time of year. All surveys must be compliant with BS42020: 2013. Biodiversity Code of Practice for Planning and Development. Any deviation from these standards must be justified and agreed with the LPA before it can be accepted.
- 3.39 All avoidance, mitigation, habitat compensation or enhancement measures must be definitively stated. Reports must only refer to what will be delivered. 'Recommendations' or proposals which 'could', or 'may' be undertaken or which may not be definite (i.e., "wherever possible") are not acceptable. The delivery of the BNG must be assured prior to planning consent being granted.
- 3.40 It is recognised that designs may change between outline and full consents, or in phased developments. Where this occurs, it is important that the BNG proposals for the outline application are updated alongside the design changes so that the Council is still able to assess whether the

delivery of the required Biodiversity Net Gain is assured. In phased development, individual metrics must be submitted for each phase and for the development as a whole. It must be made clear how much BNG each phase will deliver as a proportion of the whole requirement. All time delays between habitat impact and compensation must be fully accounted for in the metrics submitted for each phase.

- 3.41 Proposals requiring BNG (on site, offsite, or a combination of the two) will need to produce a Biodiversity Net Gain Plan. This should follow the draft format as outlined in Defra's *Consultation on BNG Regulations and Implementation, January 2022 Annex B Biodiversity Gain Plan template (working draft)*.

The Mitigation Hierarchy

- 3.42 Planning applicants must demonstrate the following mitigation hierarchy has been followed:
- Site selection, or design of the proposed development, has avoided ecologically sensitive, protected or ecologically high value habitats (unless there are exceptional circumstances) impacts to biodiversity have been avoided, then,
 - minimised, by design and/or mitigation before,
 - any Biodiversity Net Gain is considered.
- 3.43 An iterative approach is encouraged, whereby before considering the purchase of off-site units, applicants should:
- Re-visit the design – can any more habitat be retained?
 - Identify whether more be done to increase biodiversity on-site?
 - Identify whether habitat be created offsite?
 - And finally, consider whether offset credits can be purchased?

Table 2. Application of the mitigation hierarchy and BNG in Hertsmere²⁵

Stage	In practice
1 Avoidance	The first stage is to avoid harm to biodiversity, for example by locating to an alternative site. It is the most important stage and can ease the consents process, whereas missing this stage may lead to criticism, objections or even refusal of planning permission.
2 Minimisation / mitigation	If avoiding all adverse effects is not possible, action is taken to minimise these effects, such as those in the Chartered Institute of Ecology and Environmental Management (CIEEM) guidelines (2018) which include timing works to avoid sensitive periods.
3 Compensation	Addressing residual adverse effects is the final stage, only considered after all possibilities for avoiding and minimising / mitigating the effects have been implemented. Compensation does not prevent the effects,

²⁵ Hierarchy based on <https://cieem.net/wp-content/uploads/2019/02/C776a-Biodiversity-net-gain.-Good-practice-principles-for-development.-A-practical-guide-web.pdf>

Stage	In practice
	<p>rather it involves measures to make up for residual effects that cannot be prevented.</p> <p>Offsetting is a form of compensation that trades losses of biodiversity in one location with measurable gains in another – biodiversity offsets have a formal requirement for measurable outcomes. Offsetting losses of biodiversity with gains elsewhere can be within or outside of the development boundary.</p>
4 Offsite (1)	<p>Demonstrate a local first approach to offsite BNG delivery by seeking opportunities to secure offsite biodiversity from the local habitat market within Hertsmere, as close to the proposed development as possible. If no suitable offsite biodiversity net gain projects can be found within Hertsmere, then provide details of a BNG project that will be secured elsewhere within South West Hertfordshire (Watford, Three Rivers, Dacorum and St Albans) or Welwyn Hatfield, or an adjacent north London borough (LBs Barnet, Harrow or Enfield)</p>
5 Offsite (2)	<p>If no suitable offsite projects can be found within the above locations, provide details of a BNG project that will deliver the required biodiversity units, following the locational hierarchy below:</p> <ul style="list-style-type: none"> • elsewhere within Hertfordshire; • within other neighbouring areas (Buckinghamshire/ Bedfordshire/ Essex/ Cambridgeshire / Greater London); • within the south-east of England; • elsewhere in England.
6 Statutory credits	<p>Once Statutory Credits become available from Central Government, there will be an additional final option to state the intention to purchase statutory credits</p>

Measuring BNG

3.44 To achieve a net gain, a development must have a higher biodiversity value after development has taken place compared with a baseline, pre-development, value. All development proposals that meet the threshold set out above should deliver a **minimum of 10% net gain**.

Biodiversity metric

3.45 The biodiversity metric calculates the habitat value of a site expressed as 'biodiversity units'. Biodiversity units are calculated using characteristics such as the size of the habitat, its condition, distinctiveness and location. It can be used for terrestrial habitats and linear features such as hedgerows, rivers and streams. Detailed guidance has been issued by DEFRA in relation to the trading rules for habitat creation and enhancement.

- 3.46 The metric is first used to assess existing habitats to provide a baseline score for the site of the proposed development. The metric should then be applied to design options to inform development layouts, Landscape and Environmental Management Plans, and infrastructure routes / locations. This will enable the maximisation of ecological gains on-site as required by this policy whilst also following the mitigation hierarchy.
- 3.47 Before the planning application can be approved, the applicant must demonstrate that appropriate ecological measures will be delivered and maintained either on the development site or on an appropriate recipient / compensatory site to increase the baseline score by the required percentage. A management plan will also be required to show that the gain will be maintained over the required duration (which the Environment Act sets at a minimum of 30 years).

Habitat degradation

- 3.48 If there is evidence that the baseline value of the site has declined since January 2020, the precautionary principle will be followed and the estimated value of the site at that point in time will be taken as the baseline, in accordance with the Environment Act 2021. In the event of any dispute, the applicant may be required to provide evidence as the site condition at that time. The Council will consider this in the light of other evidence available to it.

Strategic Significance

- 3.49 The Metric applies a Strategic Significance consideration to account for the local area's ecological delivery plans and ambitions. The Local Nature Recovery Strategy (LNRS), currently in preparation, will indicate priority areas for ecological improvement in Hertfordshire. Where offsite compensation has been agreed, delivering this on a recipient site within these priority areas triggers a 15% uplift to the biodiversity units delivered at no cost to the developer. A 10% uplift is available where intermediate areas are used. However, the proximity principle still applies. Please refer to the Biodiversity Metric guidance for more details.
- 3.50 Until the LNRS is published, if an offset recipient site is within an area identified in the Herts Ecological Networks Map²⁶ as a site with a high priority for habitat restoration or creation (categories 2 and 3a) then this may be treated within the metric as if it is within a priority area of the LNRS. In this way the same uplift is obtained. Table 3 sets out how this uplift will be applied

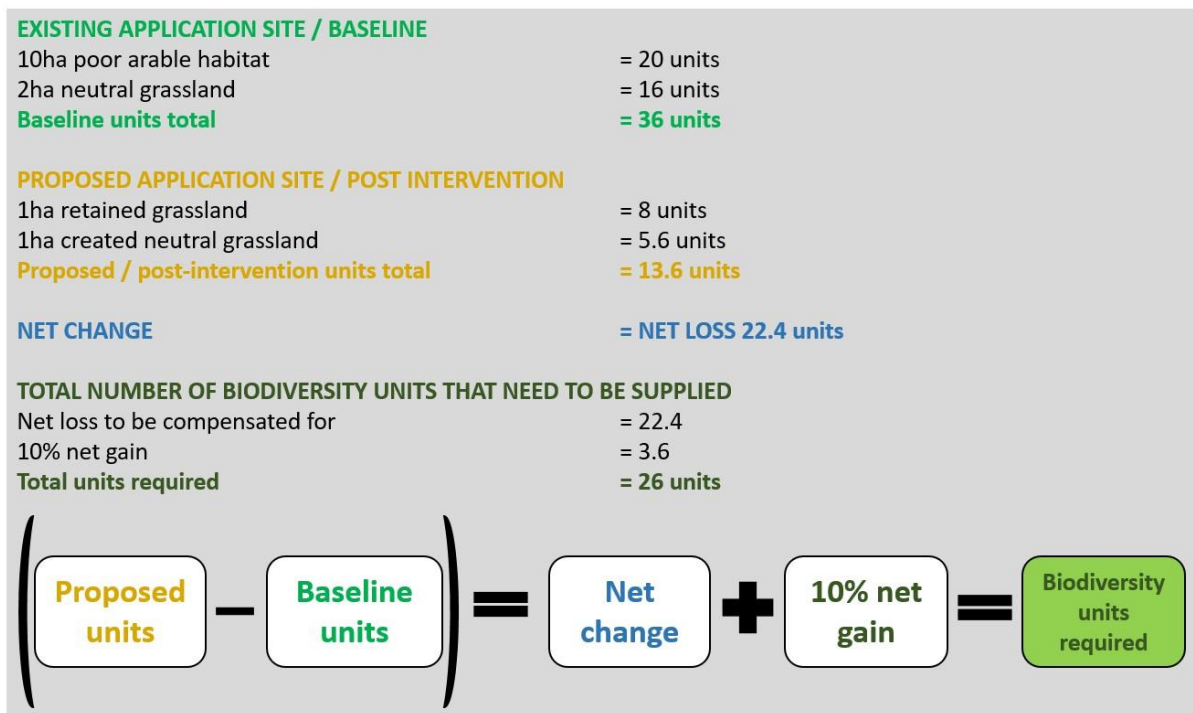
²⁶ Available from Herts Environmental Record Centre: <https://www.hercinfo.org.uk/data-enquiries>

Table 3: Extract from the Biodiversity Metric 4.0 User Guide – Table 5-3 (extended to include reference to HEN mapping)

Strategic significance category	Score applied in Metric	Description (Biodiversity Metric 4.0 User Guide)	Reference to HEN mapping (in advance of the LNRS)
High	1.15	Where the location has been identified within a local plan, strategy or policy as being ecologically important for the specific habitat type or where that habitat has been identified as being locally ecologically important.	HEN mapping value areas 1, 2, 3a. A required action to maintain and enhance or restore habitat, or the location is identified as a high priority to create habitat
Medium	1.10	Where there is no relevant plan, strategy or policy in place, professional judgement may be used to justify the use of the medium strategic significance category. This judgement should consider the importance of that habitat in providing a linkage between other strategic locations.	HEN mapping value area 3b. The location is identified as having medium priority for habitat creation.
Low	1.0	If the habitat is not included in local plans, strategy or policy, and there is no evidence to suggest that the habitat is of medium strategic significance. HEN mapping value area 3c. The location is identified as having a lower than medium priority for habitat creation.	HEN mapping value area 3c. The location is identified as having a lower than medium priority for habitat creation

Worked example of the metric

Figure 1. Example of using the biodiversity metric



- 3.51 A positive net change in the biodiversity value illustrates a biodiversity net gain. If a 10% biodiversity net gain is achieved and the trading rules met on-site, then there is no need to consider off-site measures.
- 3.52 A negative net change in the biodiversity value illustrates a net biodiversity loss. Where there is a loss and no further scope exists for on-site mitigation or compensation, then off-site measures should be considered. Any off-site locations will need to be similarly assessed in terms of their biodiversity value at both the pre- and post-intervention stages to assess how much they can contribute towards net gain as compensation.
- 3.53 This offsite compensation can be achieved via the following mechanisms:
- The applicant sources their own biodiversity offset utilising land already in their ownership (provided the proposals meet all such offset requirements including those set out in this SPD);
 - The applicant sources units from local habitat markets
 - The applicant purchases their required units (as verified biodiversity credits) from the government, which will be invested in habitat creation. The Environment Act makes provision for the purchasing of credits, but this is not yet an available option at the time of publishing this SPD.

Sites with a zero or negligible baseline biodiversity value

- 3.54 For sites where the baseline biodiversity value is zero or negligible, for example brownfield redevelopment, the Council expects to see biodiversity unit gains calculated as a numerical unit

value as opposed to a percentage. The Council encourages applications on sites with a baseline value of zero to aim for on-site post development schemes that deliver biodiversity at the ratio of 0.2 units per hectare.

Phased development

- 3.55 The advance design and planning of ecological works should always be considered early in a project as some schemes may require the collation of ecological data over an extended period of time in order to provide the required baseline and devise and agree the most suitable mitigation. Receptor sites may sometimes need to be in place and fully established before works on an approved planning application can commence; a pre-commencement condition may be included within any planning permission where a receptor site is required.
- 3.56 The metric must be applied at both outline and full planning permission stage. It is recognised that designs may change between outline and Reserved Matters applications, or between phases in phased developments. Where this occurs, it is important that the BNG proposals for the outline application are updated alongside the design changes so that the LPA is still able to assess whether the delivery of the required BNG across the whole scheme is assured.
- 3.57 In phased developments, the delivery timetable of the BNG must be understood and agreed at the full planning application phase and fully factored into the metric calculation. Any offsite compensation will be required to be delivered as early as possible in the timetable. The metric also requires additional compensatory habitat where delivery is delayed.
- 3.58 Any deviation from these standards must be justified and agreed with the Council.

Biodiversity Gain Plans

- 3.59 An application requiring BNG (on site, offsite, or a combination of the two) will need to be accompanied by a Biodiversity Net Gain Plan. This should be submitted at the earliest stage possible and follow the draft format as outlined in Defra's *Consultation on BNG Regulations and Implementation, January 2022 Annex B Biodiversity Gain Plan template (working draft)*. Development cannot commence until the Council has approved the BNG Plan.
- 3.60 Not only should development proposals in Hertsmere maintain and protect biodiversity, they will be expected to result in a measurable net gain in biodiversity of at least 10%. If significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or, as a last resort, compensated for, then planning permission may be refused. The BNG plan should include:
- Measures taken which avoid, mitigate or compensate for negative effects on biodiversity and the intended outcomes of those;
 - Details of the approach to onsite mitigation to minimise adverse effects from the development;
 - Which steps have been taken in relation to biodiversity and the overall scheme design;
 - Details of the pre-development biodiversity and the post-development value and how any shortfall in the net gain is to be compensated for; and

- the proposed future management and maintenance arrangements.

3.61 The DEFRA metric is discussed above. For habitat condition assessments in association with development, it is the developer's responsibility to provide the Biodiversity Metric calculations to include in the Biodiversity Gain Plan. The Biodiversity Gain Plan will require a statement of competency for a named person who has carried out the assessment and metric calculation. This will usually be the person who has conducted the habitat survey and assessments.

3.62 A 'competent person' is defined as someone able to confidently identify the positive and negative indicator species for the range of habitats likely to occur in a given geographic location at the time of year the survey is undertaken. For a full metric application, the competent person should be an ecologist. However, in circumstances where the development fits with the criteria to use the Small Sites Metric, it is not necessary for the metric to be completed by an ecologist but by someone who is competent to use that metric.²⁷

Demonstrating a local first approach to BNG delivery

3.63 It is important to clearly demonstrate, firstly how the mitigation hierarchy in Table 2 has been followed and secondly how a local first approach to delivery of biodiversity units has been adopted as part of the design process. There is an expectation that off-site provision should be as close as possible to the development site; although there is not an expectation of public access to the off-site provision, communities most affected by development can reasonably expect such provision to be located as close as practicably possible to help to deliver the greatest benefits to the biodiversity and local communities most impacted by a development proposal.

3.64 Use of Natural England's Environmental Benefits from Nature Tool²⁸ can assist with understanding the wider benefits for people and nature from biodiversity net gain. It is designed to work alongside Biodiversity metric 3.0, and designed to support the Government's 25 Year Environment Plan commitment to *expand net gain approaches to include wider Natural Capital benefits such as flood protection, recreation and improved water and air quality.*

Independent technical review

3.65 The Council will seek an independent review of any evidence by an appropriate technical expert. This is particularly the case for larger or more complex developments. Applicants may be required to reimburse the Council for the cost of such technical reviews including, any initial biodiversity baseline review. Arrangements for this should be discussed at the pre-application stage and may be secured through a Planning Performance Agreement.

²⁸ [The Environmental Benefits from Nature Tool - Beta Test Version - JP038 \(naturalengland.org.uk\)](https://www.naturalengland.org.uk)

4. Delivery of BNG

Offsite delivery of BNG

- 4.1 In circumstances where 10% BNG cannot be secured on site, it is the developer's responsibility to find a suitable location for off-site BNG delivery in line with the mitigation hierarchy set out in this SPD. Land will need to be legally secured and managed for the duration of the BNG period.
- 4.2 Developers are encouraged to work with the Council and other relevant stakeholders such as the local wildlife trust²⁹ and Hertsmere's specialist ecological advisors to identify suitable sites according to the criteria above.

Registering an offset recipient site

- 4.3 It will be possible for landowners unconnected to specific developments to register a potential offset site or habitat bank with the intention of reaching a future agreement with a developer to provide offset BNG (whether or not the developer is identified at the point of registration). This will allow the planting and maturation of habitats, and concurrent calculation of biodiversity unit "credits" achieved. This will speed up sourcing and purchase of biodiversity offsets because the time to achieve the predicted condition multiplier within the metric will be reduced. Separate guidance will be published covering the sourcing and establishing of biodiversity offset sites, and of a potential local matching service, which is currently being developed by Hertfordshire Ecology.

Additionality and 'stacking' of environmental benefits

- 4.4 Proposals for BNG should be in addition to and separate from carbon offset projects notwithstanding the potential for crossover between the two. However, a commercial habitats market is developing, and so it should be possible for site developers to purchase biodiversity units within such a scheme within the local area. Biodiversity units purchased must be compatible with the type and quality of any habitat being lost on the development site.
- 4.5 Key considerations regarding the location for off-site BNG include proximity and ability to deliver the required net gain. It is expected that land used for off-site BNG delivery will be secured for the length of the net gain agreement (at least 30 years), either via Section 106 agreements, or a conservation covenant.

Third party providers

- 4.6 A developer may have land elsewhere or be able to secure it for BNG projects. The LPA or developers may work with landowners who elect to become providers of biodiversity offsetting schemes who have land available for habitat restoration or creation. In this way third party stakeholders may be used who have the ability to deliver a net gain scheme on behalf of an applicant. All proposals relating to third party provision would need to be discussed and agreed with the Council and will be assessed on a project by project basis.

²⁹ <https://www.hertswildlifetrust.org.uk/>

4.7 Where off-site provision is required, the Council will clearly identify the location of that provision in its published delegated or committee report, demonstrating how the decision maker has followed the mitigation hierarchy. Off-site provision may involve a different landowner and the Council will require that the off-site location and landowner is identified and wherever possible named as a party in the s106 agreement. Where exceptionally, this is not possible, the Council will require details of the off-site provision to be submitted separately to it prior to commencement of development. .

4.8 Proposals for off-site compensation measures will generally need to demonstrate:

- A methodology for identification of receptor sites (proximity hierarchy). Applicants are requested to consider whether off site provision for BNG will be resilient to future pressures from further development and how that resilience will be secured;
- It would not result in the loss of the best and most versatile agricultural land;
- Whether a contractual agreement is required with any third party landowner or delivery bodies responsible for certain elements of a project. Any such contractual arrangements will need to clarify land tenure – for example whether or not a developer will purchase or lease land for a BNG offset project;
- Accountability, in terms of who will deliver the required levels of BNG and how will that be undertaken successfully. Details of accountability for delivery, management, maintenance and monitoring of BNG projects must clearly be provided, to take into account the various life cycles of a project;
- The provision of arrangements to secure the delivery of any compensation measures, plus a programme including phasing for their delivery which should, far as possible, avoid or reduce time-lags between any losses and gains being achieved. BNG may often need to commence before any habitat clearance or commencement of development. Applicants should provide details of the timescales to deliver BNG at the earliest opportunity, and the Council will, where possible, seek to attach conditions and / or s106 provisions regarding the phasing of such works, which may include short, medium and longer term interventions.

4.9 Based on advice by DEFRA, it is important to note that the cost of such third party land or the costs of buying the services of a provider will not be factored into the BNG metrics – only the level of BNG secured itself is relevant in such circumstances.

5. Delivery

BNG management and monitoring plan

- 5.1 In approving a Biodiversity Net Gain Plan, either on site, offsite, or a combination of the two, the LPA will need to be satisfied that delivery and management will be assured, such that the following are appropriate:
- Management period, i.e. a minimum of 30 years.
 - Site survey information, biodiversity gain (credit) calculations and management plan have been approved by the Council's ecological advisers.
 - Sufficient funds have been allocated to deliver management long-term, anticipating costs such as legal, administration, monitoring, reporting, foreseeable risks, remediation as a result of failure to achieve stated habitat and condition, insurance and inflation.
 - A delivery mechanism is available – e.g., enforceable legal agreements such as Conservation Covenants or Section 106 agreements to ensure management is undertaken and required condition is achieved in accordance with the management plan;
 - Monitoring and reporting arrangements have been made, to ensure management is being delivered as per the legal agreements. As a minimum an annual report is expected for the first 5 years following the triggering of BNG provision, then frequency to be agreed between the LPA and the legally responsible partner
 - All offsets will be subject to regular monitoring checks by the LPA or their nominees to authenticate the required monitoring reports. This is likely to include random sampling and responses to observations from recognised bodies with ecological expertise. The legally responsible party will be contacted to arrange safe access.
 - That Biodiversity net gains will be secured for the required duration.

Monitoring and reporting

- 5.2 Considerable monitoring of schemes involving BNG will be required over a minimum period of 30 years. National planning practice guidance allows local planning authorities to charge a monitoring fee through S106 planning obligations to cover the cost of monitoring and reporting on delivery of S106 obligations, for the lifetime of that obligation.
- 5.3 The Council will therefore seek a proportionate monitoring and administration fee as part of the application, to be secured through a s106 agreement. The fee will be linked to the size of the application and the type and location of the BNG. The fee will be index linked to increases in CPI from the date the fee is agreed.
- 5.4 The Council will ensure that high level information on BNG is to be made available either via inclusion in its Authority Monitoring Report or a bespoke BNG monitoring report. In accordance with best practice guidance, that reporting will include information on compensation sites and reporting on their status or progress. That will also enable monitoring of the policies and priorities that have been adopted by Hertsmere, including this SPD, to measure their effectiveness.

Enforcement

5.5 A failure to deliver, or attempt to deliver, biodiversity net gain outcomes which have been secured with conditions subject to which planning permission has been granted, may result in enforcement action being taken by the Council. Where a restriction or requirement imposed under a planning obligation has been breached, this is enforceable by injunction. The Environment Act 2021 makes provision for the breach, enforcement and defences to the breach of obligation under a conservation covenant.