

## Response ID ANON-H3HT-ZSWJ-5

Submitted to Consultation on Biodiversity Net Gain Regulations and Implementation  
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### Confidentiality and your response

1 Would you like your response to be confidential?

No

If you answered 'Yes' to this question, please state clearly what information you would like to be kept as confidential and explain your reasons for confidentiality:

2 What is your name?

Name:  
Chantal Brooks

3 What is your email address?

Email:  
clerk@brenchleyandmatfield.co.uk

4 What is your organisation?

Organisation:  
Brenchley and Matfield Parish Council

5 Which option best describes the sector you work in or otherwise represent?

Other (please specify)

If you answered 'Other', please specify:

Parish Council

### Introduction

### Background

### Why are we consulting?

### The context for biodiversity net gain

### Overview of the proposed biodiversity net gain processes

### Part 1: Defining the scope of the BNG requirement for Town and Country Planning Act 1990

#### Part 1.1: Exemptions

##### 1.1.1: Developments impacting habitat below a minimum size 'de minimis' threshold for biodiversity net gain

6 Do you agree with our proposal to exempt development which falls below a de minimis threshold from the biodiversity net gain requirement?

No (please explain why not)

Please provide any explanation for your answer here:

If we are committed to delivering biodiversity net gain, there should be no exemption on a de minimis thresholds.  
Area-based habitats should also be considered in their own merit within the area they sit in as they might have local or regional importance

Yes, and the minimum threshold should be 5 meters

Please provide any explanation for your answer here:

##### 1.1.2: Householder applications

7 Do you agree with our proposal to exempt householder applications from the biodiversity net gain requirement?

No (please explain why not)

Please provide any explanation for your answer here:

householder applicants should not be exempt from the biodiversity net gain requirement as there are many types of habitats that can be found on properties and should be protected or replaced if destroyed. For household applications, it would be worth surveying wildlife population before ascertaining the type of habitats that fall within the biodiversity net gain requirement as certain species might nest in buildings, including protected species (namely bats).

### 1.1.3: Change of use applications

8 Do you agree with our proposal to exempt change of use applications from the biodiversity net gain requirement?

No (please explain why not)

Please provide any explanation for your answer here:

change of use applications should not be exempt from the biodiversity net gain requirement. Without this requirement, change of use applications could be seen as a shortcut to unsustainable development.

### 1.1.4: Creation of biodiversity gain sites

9 Do you think developments which are undertaken exclusively for mandatory biodiversity gains should be exempt from the mandatory net gain requirement?

Yes, only for biodiversity net gain (please explain why)

Please provide any explanation for your answer here:

### 1.1.5: Self-builds and custom housebuilding

10 Do you think self-builds and custom housebuilding developments should be exempt from the mandatory net gain requirement?

No (please explain why not)

Please provide any explanation for your answer here:

We do not believe that implementing the biodiversity net gain requirement on these types of projects would be a deterrent to the process of applying for a self-build as suggested nor that the net gain costs should be passed into land prices. Having a strict biodiversity net gain control at application time will ensure that the self-build and custom housebuilding structures respect the environment it will sit in rather than focusing exclusively on the architecture of the building.

### 1.1.6: Brownfield sites

11 Do you agree with our proposal not to exempt brownfield sites, based on the rationale set out above?

Yes

Please provide any explanation for your answer here:

### 1.1.7: Temporary permissions

12 Do you agree with our proposal not to exempt temporary applications from the biodiversity net gain requirement?

Yes

Please provide any explanation for your answer here:

Doing so would create a potential loophole.

### 1.1.8: Developments for which permitted development rights are not applicable due to their location in conservation areas, areas of outstanding natural beauty or national parks

13 Do you agree with our proposal not to exempt developments which would be permitted development but are not on account of their location in conservation areas, such as in areas of outstanding natural beauty or national parks?

Yes

Please provide any explanation for your answer here:

### 1.1.9: General question on exemptions

14 Are there any further development types which have not been considered above or in the previous net gain consultation, but which should be exempt from the biodiversity net gain requirement or be subject to a modified requirement?

No

Please provide any explanation for your answer here:

### Part 1.2: Development within statutory designated sites for nature

15 Do you agree with our proposal not to exempt development within statutory designated sites for nature conservation from the biodiversity net gain requirement?

Yes

Please provide any explanation for your answer here:

### Part 1.3: Irreplaceable habitat

16 Do you agree with the stated proposals for development (or component parts of a development on irreplaceable habitats), specifically:

No (please explain why not)

Please provide any explanation for your answer here:

If the destruction of irreplaceable habitat is inevitable to proceed to the planning application, the biodiversity net gain requirement should be up from the limit 10% threshold to account for the loss. Stricter mitigation measures should be put in place to ensure that some benefits come out of the loss. Preferably, no building work would take place at the detriment of irreplaceable habitat.

Yes

Please provide any explanation for your answer here:

Yes

Please provide any explanation for your answer here:

Yes

Please provide any explanation for your answer here:

Irreplaceable habitats should take into account the area they are located in. A patch of heathland in the middle of Yorkshire might not appear irreplaceable, but it might well be in a forest in Kent.

Yes

Please provide any explanation for your answer here:

## Part 2: Applying the biodiversity gain objective to different types of development

### Part 2.1: Phased development and development subject to subsequent applications

17 Do you agree with our proposed approach that applications for outline planning permission or permissions which have the effect of permitting development in phases should be subject to a condition which requires approval of a biodiversity gain plan prior to commencement of each phase?

Yes

Please provide any explanation for your answer here:

18 Do you agree with the proposals for how phased development, variation applications and minerals permissions would be treated?

No (please suggest alternative approaches)

Please provide any explanation for your answer here:

if modern conditions are applied to old planning applications, such as ROMPs, biodiversity net gain assessments should be completed to ensure sustainability is introduced in the process.

## Part 2.2: Small sites

19 Do you agree that a small sites metric might help to reduce any time and cost burdens introduced by the biodiversity gain condition?

Yes

Please provide any explanation for your answer here:

20 Do you think a slightly extended transition period for small sites beyond the general 2-year period would be appropriate and helpful?

No (please explain why not)

Please provide any explanation for your answer here:

unless significant time is required to draft a different version of the small sites metric, the policies should be implemented at the earliest.

21 Are there any additional process simplifications (beyond a small sites metric and a slightly extended transition period) that you feel would be helpful in reducing the burden for developers of small sites?

Do not know

Please provide any explanation for your answer here:

## Part 2.3: Nationally significant infrastructure projects

### 2.3.1: Proposal 1 - Scope, percentage, and targeted exemptions

22 Are any targeted exemptions (other than that for irreplaceable habitat), reduced biodiversity net gain objectives, or other modified requirements necessary for the application of the biodiversity net gain requirement to NSIPs?

Yes, other modified requirement (please define your proposed modified requirement)

Please provide any explanation for your answer here:

While some NSIPs may not be suitable to deliver the required 10% net gain, this shouldn't be applied as a blanket measure for all NSIPs. Exemptions should be applied for on a case-by-case basis.

### 2.3.2: Proposal 2 - Setting the requirement and transition arrangements through 'biodiversity gain statements'

23 Do you agree that the above approach is appropriate for setting out the biodiversity net gain requirement for NSIPs?

No (please explain why not)

Please provide any explanation for your answer here:

as per question 22, projects that cannot deliver a net gain should be identified early on and apply for an exemption. The approach of applying a core statement on biodiversity net gain for all NSIPs does not seem suitable as it could seemingly exempt all NSIPs in having to partake.

24 Do you consider that the November 2025 is an appropriate date from which NSIPs accepted for examination will be subject to the biodiversity net gain requirement?

Do not know

Please provide any explanation for your answer here:

25 Do you agree that a project's acceptance for examination is a suitable threshold upon which to set transition arrangements?

Do not know

Please provide any explanation for your answer here:

### 2.3.3: Proposal 3 - NSIP off-site gains and a 'portfolio approach'

26 Would you be supportive of an approach which facilitates delivery of biodiversity net gain using existing landholdings by requiring a lighter-touch registration process, whilst maintaining transparency?

No (please explain why not)

Please provide any explanation for your answer here:

not without further conditions setting out that separate existing landholdings can only be leveraged as net gain against 1 application.

#### 2.3.4: Proposal 4 - Process and demonstrating biodiversity net gains

27 Do you consider that this broad 'biodiversity gain plan' approach would work in relation to NSIPs?

Yes

Please provide any explanation for your answer here:

28 Should there be a distinction made for NSIPs between on-site habitats (which are subject to the biodiversity net gain percentage) and those habitats within the development boundary which are included solely for environmental mitigation (which could be treated as off-site enhancement areas without their own gain objective)?

No (please explain why not)

Please provide any explanation for your answer here:

any sites considered within the assessment should have its own score whether off-site or on-site to contribute towards meeting the net gain.

29 Is there any NSIP-specific information that the Examining Authority, or the relevant Secretary of State, would need to see in a biodiversity gain plan to determine the adequacy of an applicant's plans to deliver net gain (beyond that sought in the draft biodiversity gain plan template at Annex B)?

Do not know

Please provide any explanation for your answer here:

#### 2.3.5: Proposal 5 - Maintenance period for Nationally Significant Infrastructure Project developments

30 Do you think that 30 years is an appropriate minimum duration for securing off-site biodiversity gains allocated to NSIPs?

Yes, but it should be reviewed after practice and biodiversity gain markets are evaluated

#### 2.3.6: Proposal 6 - Compulsory acquisition

31 Are further powers or other measures needed to enable, or manage the impacts of, compulsory acquisition for net gain?

Yes, to manage impacts of compulsory acquisition (please explain what is needed)

Please provide any explanation for your answer here:

We would expect the time period of net gain to be maintained for off-site acquisitions (30 years) and the conditions of acquisition and maintenance should be clearly stated at the time of acquisition, as well as measures for monitoring put in place.

#### 2.3.7: Proposal 7 - Marine infrastructure

32 Is any guidance or other support required to ensure that schemes which straddle onshore and offshore regimes are able to deliver biodiversity net gain effectively?

Do not know

Please provide any explanation for your answer here:

### Part 3: How the mandatory BNG requirement will work for Town and Country Planning Act 1990 development

#### Part 3.1: Biodiversity gain plan

33 Do you agree with the proposed:

Other (please tell us more)

Please provide any explanation for your answer here:

Section E of the template should be more precise to help get the information out of the applicants. This information is crucial in determining the baseline for the results of the net gain assessment, and measures for validating this information should be put into place.

No (please explain why not)

Please provide any explanation for your answer here:

If a biodiversity gain plan is required it should be submitted at the time of the application, not after the application being granted or prior to commencement of the works.

34 We will continue to work with external stakeholders and industry on the form and content of the template. Do you agree with the proposed information to be included in a biodiversity gain plan as shown in the draft template?

No (If not, is there anything in particular that ought to be removed, added, or changed to make the biodiversity gain plan fit for purpose?)

Please provide any explanation for your answer here:

Biodiversity is defined as the "variety of plant and animal life in the world or in a particular habitat, a high level of which is usually considered to be important and desirable". By only looking at habitats as a measure for biodiversity, applications are not encouraged to consider fauna which might be living in non-natural habitats, and mitigation for the species which might be displaced in that manner as part of the building process. Many protected species reside in non-natural habitats and we do not feel that the current biodiversity net gain template takes these into account. While the section B encourages the submission of a "supported species lists and habitat survey and reports and maps", the two are never reconciled, which leave the door open to not offer mitigation measures for some fauna present on site. Section C (also compulsory) also does not leave an option to fill in any info about other habitats than the 2 standard identified (area habitats and linear habitats).

No value is given to where the application is coming from, which we also feel is critical. Irreplaceable habitats should have a location dimension attached to them, as per below:

Feature National Importance County Importance Local Importance

Ancient Woodland / Wet Woodland Low High High

Heathland Low High High

Mosaic of grassland and scrub Low Low High

Assemblage of Reptiles Low High High

Assemblage of Birds Low Medium High

### Part 3.2: Off-site biodiversity gains

35 Do you agree that further guidance is needed to support decision-making about what constitutes appropriate off-site biodiversity gains for a given development?

Yes (please state what in particular would help most)

Please provide any explanation for your answer here:

definition of what constitutes appropriate off-site biodiversity gains is needed, along with the number of off-site locations that can be leveraged against an application (preferably limited to 1-1), how they offset potential negative impact on the applied for building site and maintenance conditions and responsibilities for the off-site locations.

36 How should the UK Government encourage or enable developers and landowners to secure biodiversity gain sites for longer than the minimum 30-year period?

How should the UK Government encourage or enable developers and landowners to secure biodiversity gain sites for longer than the minimum 30-year period?:

Offset the costs of sites where enhancements that have not been completed before the development takes place.

Decreasing the costs of biodiversity units if the buyer commits to securing net gain over the minimum required 30 years.

### Part 3.3: The market for biodiversity units

37 Do you agree with our proposals for who can supply biodiversity units and the circumstances in which they may do so?

Yes

Please provide any explanation for your answer here:

38 Do you agree that developers which are able to exceed the biodiversity gain objective for a given development should be allowed to use or sell the excess biodiversity units as off-site gains for another development, provided there is genuine additionality?

Yes

Please provide any explanation for your answer here:

as long as there is a transfer of any maintenance duties and responsibilities to the buyer for the remainder of the minimum required 30 years.

39 Do you agree with the proposed scope of the UK Government's role in facilitating the market, as set out above?

No (please explain why not)

Please provide any explanation for your answer here:

It is stated that: "It will also be for the buyer, seller, and any other parties to the agreement to agree payment terms, for example whether there would be one lump-sum payment, staged payments, or payment by results." We feel payment by results is the only way to incentivise all parties to deliver on the committed net gains without treating this process as a pure financial transaction. The UK government should be setting out clear directives in this regard.

### Part 3.4: Habitat banking

40 Are the proposals outlined here sufficient to enable and encourage habitat banking?

No (please specify what else could be done and why it is needed)

Please provide any explanation for your answer here:

the habitat bank areas should be secured by a legal agreement for the minimum 30-year period, the responsibility of which should be transferred in case of a sale.

41 Do you agree with our proposal that to be eligible to supply biodiversity units for mandatory biodiversity net gain, habitat must be created or enhanced on or after a specified date, proposed to be 30 January 2020?

Yes

Please provide any explanation for your answer here:

although being in consultation about this in April 2022 does seem to make this date unrealistic for a habitat bank to be able to record enhancement or creation of sites from over two years prior. As answered in question 33a, the recording of past enhancements or site states is crucial in determining the results of biodiversity net gain. What proof will be required to register an enhanced or newly created habitat and how will this be validated?

42 Should there be a time limit on how long biodiversity units can be banked before they are allocated to a development? What would you consider to be an appropriate time limit?

No

Please provide any explanation for your answer here:

as long as the habitats in the bank are protected against any forms of development while in the bank.

### Part 3.5: The biodiversity gain site register

#### 3.5.1: Proposal 1 - The criteria and process for registration

43 Do you agree that the eligibility criteria for adding sites to the biodiversity gain site register are sufficient?

Yes

Please provide any explanation for your answer here:

44 Do you agree that the register operator should determine an application within a maximum of 28 days unless otherwise agreed between both parties?

Yes

Please provide any explanation for your answer here:

#### 3.5.2: Proposal 2 - Information that will be required by and recorded in the register

45 Do you agree that this list of information requirements will be sufficient to demonstrate that a biodiversity gain site is legitimate and meets the eligibility criteria?

No (please explain which additional information should be included or which existing information should be excluded, and your reasons for this)

Please provide any explanation for your answer here:

"a statement that the applicant has checked whether the baseline habitat has deteriorated significantly since 30 January 2020, and how the baseline date has been appropriately adjusted to reflect (such as to disregard) any deterioration" is not sufficient. While the first point in paragraph a) requires supporting evidence of the enhancements, without proper controls and supporting evidence of a baseline state of the sites, a statement will not be sufficient to guarantee that the enhancements reported on are the results of a deliberate action towards biodiversity net gain. Supporting evidence of the original state of the site needs to be provided in order to ensure that the results delivered are indeed appropriate enhancements. It is also vital that this is

documented to prevent and discourage partial destruction on sites only to be restored as enhancements.

46 Do you agree that the UK Government should require a habitat management plan, or outline plan, for habitat enhancement to be included on the register?

Yes

Please provide any explanation for your answer here:

### 3.5.3: Proposal 3 - Application fees and penalties for false and misleading information

47 Do you agree that the UK Government should allow the register operator to:

Yes

Please provide any explanation for your answer here:

Yes

Please provide any explanation for your answer here:

### 3.5.4: Proposal 4 - Appeals against rejection of a biodiversity gain site application or non-determination of an application by the register operator

48 Do you agree with our proposal to allow applicants to appeal a decision by the register operator where the applicant believes that the registration criteria have not been appropriately applied?

Yes

Please provide any explanation for your answer here:

## Part 3.6: Additionality

### 3.6.1: Proposal 1 - Additionality with respect to wider environmental planning policy and legislation

49 Do you agree with our proposals for additionality with respect to:

Yes

Please provide any explanation for your answer here:

Other (please tell us more)

Please provide any explanation for your answer here:

in case of presence of protected species, the net gain objective should be formally increased over the minimum 10% in order to ensure that mitigation measures do not form the totality of the gains.

Yes

Please provide any explanation for your answer here:

Other (please tell us more)

Please provide any explanation for your answer here:

actions in line with the River basin Management Plans can be counted towards achieving biodiversity net gain, however the total percentage for the site should be increased from 10%

Yes

Please provide any explanation for your answer here:

### 3.6.2: Proposal 2 - Enhancements in statutory protected sites for nature conservation

50 Do you think that A) the non-designated features or areas of statutory protected sites and/or B) local wildlife sites and local nature reserves, should be eligible for enhancement through biodiversity net gain?

Yes, both A and B should be eligible



Please provide any explanation for your answer here:

51 Do you agree that the enhancement of habitats, including designated features, within statutory protected sites should be allowed in the coastal, intertidal and marine environment as defined above?

Yes

Please provide any explanation for your answer here:

### 3.6.3: Proposal 3 - Stacking of payments for environmental services

52 Do you agree with our proposed approach to combining payments for biodiversity units with other payments for environmental services from the same parcel of land?

Yes

Please provide any explanation for your answer here:

## Part 3.7: Statutory biodiversity credits

### 3.7.1: Proposal 1 - Use of statutory biodiversity credits

#### 3.7.2: Proposal 2 - Credit price and sales

53 Are these proposals for statutory biodiversity credits sufficient to:

Not Answered

Please provide any explanation for your answer here:

clarity will be needed around the suitable guidance.

No (please explain why not)

Please provide any explanation for your answer here:

a phasing plan is necessary in order to ensure that statutory credits do not become the norm.

54 Do you think there are any alternatives to our preferred approach to credit sales, such as those outlined above, which could be more effective at supporting the market while also providing a last resort option for developers?

Do not know

Please provide any explanation for your answer here:

55 Do the principles for how we will set, and review credit price cover the relevant considerations?

Yes

Please provide any explanation for your answer here:

### 3.7.3: Proposal 3 - Credit investment

56 Do you agree with the proposed principles for credit investment?

Yes

Please provide any explanation for your answer here:

## Part 3.8: Reporting, evaluation, and monitoring

### 3.8.1: At a project level

57 Do the above project-level management, monitoring, enforcement, and reporting proposals seem sufficient, achievable, and not overly burdensome on practitioners, developers, or planning authorities?

Not Answered

Please provide any explanation for your answer here:

"As a minimum, monitoring reports should include a summary of habitat type, extent, and condition (with a comparison where applicable against the expected condition proposed in the biodiversity gain plan)", this should also include a comparison against baseline state to show clear progress.

58 Do you think earned recognition has potential to help focus enforcement and scrutiny of biodiversity net gain assessments, reporting and monitoring?

Yes (please explain why this would help)

Please provide any explanation for your answer here:

### 3.8.2: At a policy level

59 Do the above proposals for policy-level reporting, evaluation and enforcement seem sufficient and achievable?

Yes

Please provide any explanation for your answer here:

60 Considering the data requirements set out above and in greater detail in Annex C:

Yes (please describe the data and explain the reasons for your view)

Please provide any explanation for your answer here:

as a summary we feel the below would enhance the process overall:

1. Making sure fauna is taken into account and is reported on rather than focusing solely on the habitats, to ensure wildlife is protected as well as the environment.
2. Grading mechanism depending on area, which will ensure that rare or habitats are taken into account and given the consideration they deserve (assess by local/county importance)
3. Section E should be more detailed in order to establish a clear picture of the starting point per site and this information would need to be validated prior to submission.

No

Please provide any explanation for your answer here:

Annex A: Other policies and objectives which interact with biodiversity net gain

Annex B: Biodiversity gain plan template (working draft)

Annex C: Reporting requirements

Glossary

Consultee feedback on the online survey

61 Overall, how satisfied are you with our online consultation tool?

Very satisfied

Please give us any comments you have on the tool, including suggestions on how we could improve it. :