



BIODIVERSITY NET GAIN (BNG) AND PRIVATE GARDENS

The following is are notes from attending various talks on BNG, speaking with designers who have been going through the process, Oliver Lewis (Joe's Blooms) and online documents.

Please use this to help your understanding; **however**, this is not gospel, each local planning authority (LPA) may have other requirements in place or interpretations of BNG.

As BNG is very new and its full implications is still being understood, the metric and therefore this document will be subject to change. We will try and update it when new information becomes available, but it is **your** responsibility to check the latest official guidance.

WHAT IS BNG?

England: "It is an approach to development and/or land management that aims to leave the natural environment in a measurably better state than it was beforehand"¹. It is mandatory for all planning applications in England from 2nd April 2024.

Wales: The Environment (Wales) Act 2016 and planning policy Wales - Edition 12 (PPW12)^{2,3} requires LPA to seek to enhance biodiversity through the planning process, through Net Benefit for Biodiversity (NBB). This is a qualitative, site specific but does not use a metric-based approach like BNG.

Scotland: BNG is not yet mandatory in Scotland⁴, however, Nature Scot is working on creating a form of BNG that will be introduced in the future.

Northern Ireland: currently there are no formal legislation or policy regarding BNG in the Northern Ireland.⁵

KEY COMPONENTS OF MANDATORY BNG AS SET OUT IN THE ENVIRONMENT ACT 2021 ¹:

- Amends the Town & Country Planning Act
- Min. 10% gain required calculated using the Biodiversity Metric⁶ and approval of a biodiversity gain plan⁷
- Significant on-site habit and all off-site habitat secured for at least 30 years via conditions, planning obligations or conservation covenants.
- Delivered on-site, off-site or via a new statutory biodiversity credits scheme; and

- All net gain delivery sites outside the red line boundary need to be registered with Natural England (*see below for more information about the red line boundary*)

It does not change existing legal protections for important habitats and wildlife species. It maintains the mitigation hierarchy of avoid impacts first, then mitigate and only compensate as a last resort.

DEFINITION OF A SMALL SITES THAT WILL TRIGGER THE NEED FOR BNG:

- When planning is required and
 - The red line boundary is <10,000 m² (<1 Ha) and has 9 units or less planned for the site
 - The red line boundary is <5000m² (<0.5 ha) but has unknown number of residential units
 - Nothing involved in mining or waste
 - Commercial <1000m² (<0.1Ha) of new floor space

EXEMPTIONS FROM BNG:

- Self build where the build must meet the definition set out in the 2015 Act and the total development area is <0.5 ha and 9 or less units. Local planning authorities may require additional checks, so check with your LPA
- Extensions to existing properties changes to buildings (such as garages, outbuildings) within the garden curtilage*

Note: This is all subject to the council's view – one designer based recently had to do a full BNG for a natural pool, purely on the whim of the council.

- Extensions to existing properties or anything in the curtilage of a listed building etc. or within a conservation area and requiring planning are also likely to be exempt

* See Joes Blooms™ Tool ⁸ website for a free exemption checker tool

BNG SMALL SITES METRIC

A small site metric was developed for use on small sites that meet the above definitions to reduce the need for extensive investigations and involvement of an ecologist etc. and these could be completed by a competent person, using the Small sites metric tool⁹ or the user friendly Joes Blooms™ Tool ⁸ for example.

BUT NOTE - PRIVATE GARDENS

- A piece of land that has a house built on it, the remaining land will become garden and under BNG considered 'vegetated garden or unvegetated garden, as appropriate' status no matter what additional habitat elements you add to it - eg, trees, hedges etc. ponds etc. because the BNG gains cannot be legally secured through a 30-year monitoring plan.

Therefore, offsite credits need to be bought and this automatically requires the full BNG metric to be completed by an ecologist to determine the offsite biodiversity credits

required. (However, see 'Red Line Boundary' below)

- To avoid undervaluing the baseline value of existing private gardens, important features including trees of medium size** or above, hedgerows and ponds should all be recorded as individual habitat parcels.

**medium tree is min. 30 cm diameter at 1.3 m above ground level, which means a girth of 94 cm.

- Where existing private gardens have important habitat features in them that are retained, those features cannot be recorded as enhanced, but they can be recorded as retained.
- Change of use of land to a private garden: even when this happens with no loss of on-site habitat, BNG is likely to apply due to on-site habitats post-development having to be recorded as vegetated/non-vegetated garden.

PLANNING BOUNDARIES

WHAT IS THE RED LINE & BLUE LINE BOUNDARY?

"The **red line boundary** is the primary boundary that you need to identify on a location plan. It is the minimum requirement for a location plan and highlights the area of the property that is included in an application for planning permission." ¹⁰ (PLANNING PORTAL) Note that the red line boundary for an application can comprise more than one block of land as long as they are within the same ownership (blue line boundary) ¹¹

The **blue line boundary** is a secondary boundary that you can identify on a location plan. It highlights any additional owned land or property that is relevant to the application. You do not have to draw a blue line boundary, although it is helpful for Local Authorities if you show other owned land.

RED LINE BOUNDARY & BNG

The BNG assessment must cover the whole of the red line boundary of the planning application, including any required access.

POSSIBLE WORK AROUNDS

The following is from Northumberland County Council in their Notes for Developers and Ecologists¹¹:

"IMPORTANT –Red Line Boundaries can comprise more than one polygon
Where some or all of the habitat to be created or enhanced lies outside of the red line boundary of the development, this area has to be secured using a legal agreement and has to be registered with Natural England before the biodiversity gain condition can be discharged, involving both time and expense for the developer and work for the LPA.

Where the habitat to be created or enhanced lies wholly within the red line boundary, the LPA has discretion to secure it by planning condition or legal agreement, and it does not need to be registered with Natural England. *In these cases, we will secure more significant areas by legal agreement and less significant areas by planning condition, avoiding the time and expense of a legal agreement and the time and expense of registration with Natural England.*

Consequently, where very small areas of habitat need to be created to achieve net gain it is advantageous to the developer for them to be within the planning application (red line) boundary wherever possible. Please note that the red line boundary for an application can comprise more than one block of land as long as they are within the same ownership (blue line) boundary. Therefore, the development site can have a red line boundary drawn around it, and a separate BNG area within the blue line boundary can also have a red line boundary drawn around it as part of the same planning application. For example if a new farm building is being constructed and BNG requirements are to be satisfied through the planting of mixed scrub in a field corner elsewhere on the farm, this can still count as onsite BNG if a red line boundary plan is submitted with the planning application comprising a red line around the development site and a separate red line around the area to be planted with scrub. This can really save time and expense on small sites."

On this basis, speak with your LPA to see if you can:

- A. Draw a red line boundary around the house/development and private garden and a secondary red line boundary where the BNG uplift will occur, which will be distinct from the private garden but is within the blue line boundary (ie, so land owned by the same person) *and* be part of the same planning application. So the BNG uplift will be considered as 'onsite'.
- B. Need to find out from your LPA whether land to have BNG uplift can be considered under a planning condition or needs to be legally binding.
- C. If legally binding, a 30 year management plan in place, which would require the full BNG metric to be carried out. This could have implications for mortgage & future use and ownership of the land and a conversation would need to be had with the client.
- D. If boundary considerations need to be taken into account (A) to enable onsite BNG, landscape designers need to come in at the beginning of the process BEFORE any planning application is made to circumvent unnecessary costs and redoing of work (redrawing red-line boundaries etc.)

REFERENCES:

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