

Bat Conservation Trust



Bat Conservation Trust response to the Defra consultation on (Biodiversity) Net Gain

In considering our response, Bat Conservation Trust is mindful that:

- There is a clear and urgent need to increase housing stock and infrastructure but this needs to be done in a way that does not have an adverse impact on the environment – it is about the right quality of housing in the right place.
- Whilst the mitigation hierarchy is a form of guidance to developers when considering a development proposal, developers should be clearly reminded that developments can and may be refused for reasons of biodiversity interest. There must be no weakening of the protections of designated sites or loss of irreplaceable habitats.
- Biodiversity Net Gain done correctly will add value to developments and must not be seen as a tax on them.

However,

- The UK Government has an obligation under the Convention of Biological Diversity to halt the loss of biodiversity by 2020. This has implications for how delivery of biodiversity net gain should be implemented.
- Biodiversity is continuing to decline¹.
- Application of biodiversity net gain should only be undertaken at the on-site or local level. This would be in keeping with ensuring that there is a community benefit to local people so that people have access to natural green space, they do not lose their biodiversity and potentially would see the benefits delivered by biodiversity net gain.
- The Defra metric does not cover species and therefore we consider that it is not fit for this purpose. Biodiversity net gain should not be implemented until this has been rectified. When this is considered it is essential that the application of biodiversity net gain should only be undertaken within what is the functional range of species impacted.
- Collection of tariffs for biodiversity net gain outside the local area is a form of off-setting but there is little evidence that this works, and in many cases, it has been shown to fail².
- Successful delivery of mandatory biodiversity net gain will depend on sufficient resources for local authorities, a detailed baseline against which to measure progress, a clear understanding of where and how this will be delivered, and transparency throughout the whole process.
- Biodiversity net gain can be used to help deliver Nature Recovery Networks, however it must not be used as a *raison d'être* to fund Nature Recovery Networks.

¹ <https://www.rspb.org.uk/globalassets/downloads/documents/conservation-projects/state-of-nature/state-of-nature-uk-report-2016.pdf>

² <https://friendsoftheearth.uk/nature/biodiversity-offsetting-and-net-gain-license-trash-nature>

<p>1. Should biodiversity net gain be mandated for all housing, commercial and other development within the scope of the Town and County Planning Act?</p>	<p>No. This should not apply to small house extensions. It should only apply where there is an adverse biodiversity impact. This must include all national infrastructure projects.</p> <p>Developments that fall under Permitted Development may need clarification as to whether these should be within the scope of this approach. This should be part of a wider clarification of the requirements of the Permitted Development process when considering other requirements such as consideration of the presence of European Protected Species.</p>
<p>2. What other actions could government take to support the delivery of biodiversity net gain?</p>	<p>UK Government should give serious consideration to amending s.40 NERC Act to require all public bodies to maintain and enhance biodiversity and to promote the resilience of ecosystems. UK Government could also require public bodies to prepare a plan on how it proposes to maintain and enhance biodiversity, and to produce and publish an annual report on what it has done to achieve this. These strengthened approaches are included in the Environment (Wales) Act 2016.</p>
<p>3. Should there be any specific exemptions to any mandatory biodiversity net gain requirement (planning policies on net gain would still apply) for the following types of development? And why?</p> <p>a. House extensions</p> <p>b. Small sites</p> <p>c. All brownfield sites</p> <p>d. Some brownfield sites (e.g. those listed on brownfield, or other, land registers)</p>	<p>Yes</p> <p>Yes – habitat damage has already done within the curtilage and not necessarily by the owner\occupier. It could therefore be viewed as unfair in this respect and potentially a biodiversity tax. Furthermore there are likely to be issues around enforcement.</p> <p>No – many small scale developments damage habitats and landscape especially at a local level.</p> <p>No – many brownfield sites have significant biodiversity interest often only associated with those habitats.</p>

<p>4. Are there any other sites that should be granted exemptions, and why? For example, commercial and industrial sites.</p>	<p>No – commercial and industrial sites should be designed to incorporate biodiversity and other environmental factors into their design. For example, these sorts of developments should be required to encompass solar panels, rain water collection systems, SUDS systems etc.</p>
<p>5. As an alternative to an exemption, should any sites instead be subject to a simplified biodiversity assessment process?</p>	<p>It is not clear what the question is asking. If a site is to be exempt from Biodiversity Net Gain then what purpose would a simplified biodiversity assessment have? If a site is to be subject of Biodiversity Net Gain, then any assessment must be adequate for its stated purpose.</p>
<p>6. Do you agree that the Defra metric should allow for adjustments to reflect important local features such as local sites? Should the Defra metric consider local designations in a different way?</p>	<p>The Defra metric is currently incomplete as it does not take into account species. Bats, for example, require hedgerows to help navigate around the landscape. For some species, hedgerows are an irreplaceable habitat and their removal can have significant adverse impact on those species ability to get to foraging areas. The Defra metric assessment must be based on both habitat functionality and the functionality for the species that the landscapes and habitats support, irrespective of the features of the site.</p> <p>The use of the Metric in Biodiversity Net Gain also needs to bear in mind that the suite of SSSIs are only a representative sample of those habitats within a given Area of Search. This means that many sites of importance are not designated but may still be of high conservation value. Some of these may be designated as Local Nature Reserves and others are recognised as Sites of Importance for Nature Conservation (SINCs) that do not carry any legal status. We would therefore expect that such sites are given added weighting within the Metric.</p>
<p>7. Should local authorities be required to adopt a robust district level licensing approach for great crested newts, where relevant, by 2020?</p>	<p>We would question whether local planning authorities would be in a position to adopt this approach within the time scale.</p> <p>It will be more important to get the right processes in place to ensure successful delivery rather than rush a scheme that may not be well implemented and suffer from a lack of consistency or sufficiently high standards required for the outcomes and processes that underpin them.</p>
<p>8. For what species is it plausible to use district level or strategic approaches to</p>	<p>This will only be possible for species that are not complex in their ecology and operate at a fine</p>

<p>improve conservation outcomes and streamline planning processes? Please provide evidence.</p>	<p>local scale and not at a wider landscape scale. <i>“Different species have different habitat requirements and will perceive and respond to a landscape at different spatial scales... what may be the matrix or barrier for some species could be habitat for others. So, both the components and connectivity of an ecological network may be experienced very differently by different species.”</i> (Landscape Institute, 2016, p6)³</p> <p>The Red Tape Initiative report 2018 shares our view in stating that the approach taken with great crested newts will not work in applying it to bats. They reason that <i>‘There are seventeen different species of bat in England and they have different needs depending on where they roost and the habitats on which they rely. All bat species have undergone very large declines in the last century. But today, some are widespread while others have a very restricted range; and some are stable or showing the first signs of recovery whilst others remain at very low numbers. In general, when compared to newts, bats are long-lived, slow to reproduce and faithful to roosts that they use, in some cases for generation after generation. This makes them much less flexible than newts. A number of bat species are reliant on built structures for their roosts which give them a closer relationship with our built environment.’</i>⁴</p> <p>Despite the difficulties in developing a strategic approach for bats because of their complex life histories, much work is already being done to ensure bat species are conserved, as well making it easier for developers to understand and plan around the system.</p>
<p>9. Are there wider elements of environmental net gain that could be better incentivised? If so, please specify which, and any benefits that such incentives could provide.</p>	<p>Environmental net gain may, in some cases, provide a better and stronger lever for a net gain policy especially for issues such as water management and flood defence through tree planting. This may also help to mitigate the effects of climate change.</p> <p>Other options are the design and layout of new builds so that they have the potential or requirement to install solar panels.</p>

³ Landscape Institute (2016) Connectivity and Ecological Networks. Technical Information Note 01/2016, April 2016. https://www.landscapeinstitute.org/wp-content/uploads/2016/03/Connectivity-And-Ecological-Networks-TIN-1_16-20160425.pdf

⁴ <https://redtapeinitiative.org.uk/the-red-tape-initiative-launches-its-37-recommendations/>

	<p>However, if environmental net gain is implemented it does need to ensure biodiversity net gain is a separate matter so that it is not an either/or situation where biodiversity is traded for other net gain.</p>
<p>10. Is the Defra biodiversity metric an appropriate practical tool for measuring changes to biodiversity as a result of development?</p>	<p>No. The Defra metric fails to take account of species and therefore it is only part of the story. Whilst we note that the metric has been improved, it appears to over simplify habitats and does not appear to consider ecological functionality or the intrinsic value of wildlife. Species and their functional use of the landscape must be taken into account as was trialled in the pilot studies.</p>
<p>11. What improvements, if any, could we most usefully make to the Defra metric?</p>	<p>The metric must take into account ecological functionality of the habitat being lost and potential gain which requires the consideration of species. Species and their functional needs must be taken into account.</p>
<p>12. Would a mandatory 10% increase in biodiversity units be the right level of gain to be required?</p>	<p>In order for biodiversity to be properly and fully valued, these need to be set at a sufficient level so as to render biodiversity meaningful and to reflect the ecological and functional value of the habitat that is being affected.</p> <p>It also needs to link to agreed local, regional and national priorities particularly around Nature Recovery Networks.</p> <p>In some cases this might mean significantly more than 10%.</p>
<p>13. In clearly defined circumstances, should developers be allowed to pay through the tariff mechanism without fully exhausting on-site and local compensation opportunities?</p>	<p>No – this must not be permitted to happen. The consequence of this approach will be to render biodiversity to a commercial commodity that can simply be bartered and traded off. This approach has the potential for the system to be abused and to facilitate an easy way out. Indeed this approach would lead to biodiversity losses.</p>
<p>14. Would this be an appropriate approach to directing the location of new habitat?</p>	<p>The location of new habitat should, in the first instance, be defined by biodiversity priorities of the Nature Recovery Networks taking into account the functional needs of species. Until these have been identified and agreed it may not be possible to direct where new habitats might be created although in some areas landscape-scale mapping</p>

	<p>has been carried out that would support this in support of the Lawton report.⁵</p> <p>Tariffs must not be used for actions or activities that are statutory obligations.</p>
<p>15. How could biodiversity assessments be made more robust without adding to burdens for developers or planning authorities?</p>	<p>This will inevitably result in a burden to those having to undertake biodiversity assessments and to those interpreting the results. In some cases a precautionary approach could be adopted for species. For example, BCT has produced survey guidelines about where, when and how bat surveys should be undertaken. These guidelines rely on the skills and experience of ecologists to vary (with justification) the approach they take as is appropriate to the circumstances on a case by case basis.</p> <p>What is essential is that biodiversity assessments can only be properly done by on-site visits, by suitably qualified ecologists, and with access to a full range of verified biodiversity records and up-to-date habitat data. Whilst advances in technology may assist habitat recognition at broad scale, these may not be sufficient to describe habitat condition and ecological functionality.</p> <p>The receipt of biodiversity survey reports by local authority planners need to be understood and acted on appropriately. The lack of ecological expertise in the majority of local authorities needs to be addressed.</p> <p>This will require a high level of investment.</p> <p>Information should be made publically available, within the limits of species sensitivities, to ensure that there is public confidence and accountability.</p> <p>UK Government should take this opportunity to encourage a system of regulation and certification of ecologists to ensure that the profession is properly recognised and acknowledged.</p>
<p>16. Should a baseline map of broad habitats be developed?</p>	<p>Yes a meaningful baseline map does need to be developed. This will not only allow habitat extent changes to be measured and recorded against, but it will also to identify where new habitats need to be created.</p>

⁵ 'Making Space for Nature: A review of England's Wildlife Sites and Ecological Network' 2010

	<p>However there is no definition as to what is meant by the term ‘broad habitats’. This needs to be clarified.</p> <p>The classification and mapping of habitats must be undertaken at the appropriate level if the UK Government is to have any hope of understanding the impacts of measures to halt the loss of biodiversity. The examples of woodland or grassland given in the consultation document are far too broad and we would suggest that habitat assessment needs to be at a level above Phase I as a minimum and probably nearer Phase II survey.</p> <p>Baseline mapping will need to be ready for implementation and that introduces the question of from what point in time should the baseline information be prepared. In some cases this may be relatively simple to do where habitat mapping and classification has already been undertaken, and there is a reasonable level of surety that habitat changes have not subsequently taken place.</p> <p>Maps will also need to be updated on a rolling programme.</p> <p>BCT would agree that this carries a risk of intentional damage to habitat ahead of sale or planning application. Scorched earth policies may prevail to avoid future biodiversity-related issues. The difficulty will be in policing and prosecuting which may render this approach unworkable. The ‘it wasn’t me guv’ might be hard to disprove. This also raises issues of owner/occupier rights to manage land as they see fit.</p>
<p>17. Should this be applied, as a minimum baseline, to:</p> <p>a. net gain calculations for all development?</p> <p>b. net gain calculations in cases of suspected intentional habitat degradation?</p>	<p>(a) Yes, but habitat assessments must be at the appropriate level (q16) to ensure the availability of the fine scale information that will be required</p> <p>(b) Yes as above.</p>
<p>18. What other measures might reduce the risk of incentivising intentional habitat degradation?</p>	<p>Reducing or preventing intentional habitat degradation will only happen when (a) developers recognise the importance of retaining habitat not only as part of social and environmental responsibility but also as good practice and (b) when the incentives to retain habitat outweigh the penalties. Incentives that have a gain to developer</p>

	could be attractive but this would need to be explored in depth.
<p>19. How can the risks of penalising landowners making legitimate land use change decisions before deciding to sell their land for development be mitigated?</p>	<p>BCT is of the view that it will be almost impossible to prove, in a court of law, collusion between land owner and developer to intentionally damage habitat before sale.</p> <p>It will then be hard to prosecute a new owner for an act carried out by the previous owner.</p> <p>However we note that The Environmental Damage (Prevention and Remediation) (England) Regulations 2015 may present a useful model for recourse of action bearing in mind that the reference to habitats within these Regulations is limited to habitats of species mentioned in Article 4(2) of, or Annex I to, Council Directive 2009/147/EC on the conservation of wild birds(b) or listed in Annex II to Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora(c); (b) the natural habitats listed in Annex I to Council Directive 92/43/EEC; and (c) the breeding sites or resting places of the species listed in Annex IV to Council Directive 92/43/EEC. LA's and/or SNCO's they can be given the power to deal with such matters through civil sanctioning.</p>
<p>20. The provision of compensatory habitats will need to be guided by habitat opportunity maps. At what scale should these maps be developed?</p> <p>a. Locally (e.g. local authority or National Character Area)</p> <p>b. Nationally (i.e. England) as a national framework to be refined, updated and amended locally</p>	<p>Compensatory habitats should be guided by priorities for species' ecological and functional needs. This might be at a local, regional or national scale. National Character Areas may not take into account ecological functionality.</p> <p>Biodiversity net gain can be used to help deliver Nature Recovery Networks or other existing similar initiatives where they occur, however it must not be used as a raison d'être to fund Nature Recovery Networks and that this compromise other biodiversity priorities.</p>
<p>21. What other measures should be considered to identify biodiversity and natural capital priorities?</p>	<p>Compensation habitats also need to be aligned with species priorities e.g. grey long-eared bat and Bechstein's bat are key species that demand very specific habitat management requirements.</p>
<p>22. Would mandating net gain through the planning system be enough to stimulate the growth of a market for biodiversity units?</p>	<p>BCT does not wish to see biodiversity being reduced to a market commodity that can be traded.</p> <p>Notwithstanding that the full value of biodiversity has not been properly determined, it is desirable that there is a fundamental and quantum shift in</p>

	<p>attitude towards biodiversity and its positive effects that it has on communities.</p> <p>Whilst a voluntary approach to biodiversity net gain may not have had the desired effect, introducing a mandatory biodiversity net gain could have unintended adverse impacts and perhaps an approach such as legal obligations on local planning authorities (Q.2 above) could be important in securing the success of Biodiversity Net Gain.</p>
<p>23. What further measures would help to ensure that the market provides:</p> <p>a. Sufficient biodiversity units for development?</p> <p>b. Cost-effective biodiversity units?</p>	<p>BCT does not wish to see biodiversity being reduced to a market commodity that can be traded particularly as the proposals only consider habitats in the equation.</p> <p>The UK has an obligation to halt the loss of biodiversity. However, the proposals in this consultation indicate problems with the reality of delivering this. As described, a biodiversity net gain approach will mean that if land offered as biodiversity units is secured in perpetuity, then there may come a point when there are no further biodiversity units available. If, on the other hand, the land security for biodiversity units is not secured in perpetuity then after an ecologically brief period of time, units will re-enter the market and could be developed themselves. This would be a rolling programme of loss and no biodiversity gain in the longer term.</p>
<p>24. Should there be a minimum duration for the maintenance of created or enhanced habitats?</p>	<p>The UK has an obligation to halt the loss of biodiversity.</p> <p>This duration period must reflect the biodiversity priorities and should be in perpetuity. Otherwise there will be a rolling programme of losses of previously secured sites with a long term severe risk of ongoing net loss.</p>
<p>25. If so, what should the minimum duration be?</p> <p>a. Less than 25 years</p> <p>b. 25 to 30 years</p> <p>c. Longer than 25-30 years</p> <p>d. Permanent</p>	<p>This duration period must reflect biodiversity priorities. See previous.</p>

<p>26. Would conservation covenants be useful for securing long term benefits from biodiversity net gain or reducing process and legal costs?</p>	<p>Yes – this will ensure adequate funding to pay for management and monitoring.</p>
<p>27. What safeguards might be needed in the implementation of conservation covenants?</p>	<p>Conservation covenants may need to be formally registered with Land Registry. There will also need to be full transparency and accountability so information will need to be made publically available.</p> <p>Conservation covenants will need to be accompanied by sufficient funds to deliver the intended aims. This money will need to be collected and held in manner that is publically, fully transparent and accountable. This may require public annual reports as to monies received, how, where and when it was spent, and how those decisions were made.</p>
<p>28. Does this proposed range for tariff costs fit with the principles set out in this section?</p>	<p>The proposed tariff costs must reflect the habitats (and species) concerned, the agreed timetable and costs for achieving NBG.</p> <p>The tariff costs may significantly undervalue other environmental factors such as flood control and the impact that flooding has on affected communities.</p>
<p>29. Would this proposed range for tariff costs provide opportunities for cost-effective habitat banks and compensation providers to compete?</p>	<p>The published evidence for the success of biodiversity off-setting would appear to show that this approach does not work⁶. We strongly do not agree that surplus biodiversity units can be used as credits or traded off with other developments.</p>
<p>30. Do you agree with the proposed principles for setting the tariff rate, as set out in this section? Please suggest any other factors that should be taken in to account.</p>	<p>No. BCT does not wish to see biodiversity being reduced to a market commodity that can be traded.</p> <p>If a tariff is to be set then the tariff rate must be a true reflection of the ecosystem (habitats and species) concerned, the agreed timetable and costs for achieving NBG.</p> <p>The rate may significantly undervalue other environmental factors such as flood control.</p>

⁶ <https://friendsoftheearth.uk/nature/biodiversity-offsetting-and-net-gain-license-trash-nature>

<p>31. How should the tariff revenue be collected?</p> <p>a. Locally (e.g. through a local authority)</p> <p>b. Nationally (e.g. through Natural England or another national body)</p> <p>c. Other, please specify</p>	<p>This proposal is essentially a land use planning matter and biodiversity net gain will need to be delivered through local planning authorities.</p> <p>As previously mentioned, this money will need to be collected and held in manner that is publically, fully transparent and accountable. This may require public annual reports as to monies received, how, where and when it was spent, and how those decisions were made.</p>
<p>32. How should the tariff revenue be spent?</p> <p>a. Locally (e.g. through a local authority)</p> <p>b. Nationally (e.g. through Natural England or another national body)</p> <p>c. Through a blended model, allowing spending at both levels</p> <p>d. Other, please specify</p>	<p>The tariffs should be spent so as to ensure that biodiversity remains positioned within the community, and not distant from the community, for the benefit of the community. It should be spent on biodiversity priorities, directed by functional species and biodiversity needs, recovery network priorities, and/or to retrospectively green the built environment</p> <p>It should not be used to deliver activities that are legal obligations for which other funding mechanisms are available. It could be used to lever other funding sources.</p>
<p>33. If tariff revenue is collected and spent nationally, should spending prioritise areas which have contributed the most through biodiversity net gain tariff payments?</p>	<p>BCT does not believe that tariffs should be collected and spent nationally. This undermines the principles of local biodiversity and communities. It runs the risk of creating biodiversity hot spots. It would certainly see net loss for species conservation.</p>