



Sent by EMAIL ONLY to [planning.policy@gedling.gov.uk](mailto:planning.policy@gedling.gov.uk)

6/2/2023

Dear Sir/ Madam

**Response by the Home Builders Federation to the Gedling Biodiversity Net Gain Interim Policy Position statement (BNG IPPS) Jan 2023**

1. Please find below the Home Builders Federation (HBF) response to the to the Gedling Biodiversity Net Gain Interim Policy Position Statement (BNG IPPS) Jan 2023. HBF is the principal representative body of the housebuilding industry in England and Wales and our representations reflect the views of discussions with our membership of national and multinational corporations through to regional developers and small local housebuilders. Our members account for over 80% of all new housing built in England and Wales in any one year.

Overview comments

2. The development industry is entirely supportive of creating and improving natural habitats and ensuring that development has a more positive impact than what was there before. It is established practice that local planning policies both protect habitats and, by way of public open space and sustainable urban drainage systems for example, create new ones. However, the challenges associated with the implementation of mandatory BNG should not be underestimated because making that positive impact 'measurable' means defining in law the baseline condition of a site, how a biodiversity uplift can be achieved, and how that uplift can be secured for 30 years. This is now being established nationally. The current challenge facing developers, landowners, communities and Councils is how to ensure mandatory BNG works in practice.
3. HBF note that BNG PPG has been published in draft form to allow for "familiarisation" and as such some details may change between now and the implementation date of Feb 12<sup>th</sup> 2024. Similarly, HBF understand the DEFRA Guidance is still being refined before the implementation date, and indeed may be further refined once mandatory BNG is working in practice, to reflect any early lessons learnt. In light of this HBF has already contacted the Council to flag this issue as once the final guidance is published the IPPS will be in need of instant review. HBF are disappointed that the Council have not agreed to do anything to address this at this stage.
4. HBF would encourage the Council to seek support from the Planning Advisory Service (PAS) in relation to BNG delivery. PAS have been playing a key role in supporting Local Planning Authorities with BNG preparedness. They have a lot of

advice and guidance on their website, and numerous free videos on their Youtube channel. They have also been offering BNG training for LPA staff and one to one support if this is needed. HBF is concerned that the Council is not fully utilising the national advice and guidance and in trying to be helpful by providing detailed local advice which repeats and is some time in conflict you will inadvertently be undermining the effective and timely delivery of BNG in Gedling.

5. We would ask for the Council to fully consider our comments below, and to revisit the IPPS to check that it is in full compliance with the new guidance when it is finally published. There will be therefore a lot of new information for the Council to work through and consider the implications of, in order to make the necessary changes to the Biodiversity Net Gain IPPS so that it complies with the latest policy and guidance as it finalised. HBF would welcome further consultation on this issue.
6. However, as of the close of this consultation on Feb 6<sup>th</sup> there are clearly some areas of the IPPS that are incorrect and/or need revising and updating, particularly because the (draft) PPG is clear that there is no need for Local Plan policies to repeat national guidance, which the IPPS does. Please note that our comments are made in an effort to be helpful, and we would be happy to have further discussions with the Council and/or facilitate discussions with the development industry about BNG if that would be useful.
7. Overall therefore although HBF therefore welcomes the Council's intention to provide advice and guidance to help developers and communities understand what is required to deliver BNG in Gedling, in doing so the Council must make sure that it is not adding to, expanding, or incorrectly paraphrasing the national legislation and guidance in any way. To do so would be inaccurate, unhelpful and confusing.

#### Detailed IPPS comments

8. The draft PPG Para 005 clearly says:

“Plan-makers should highlight the statutory framework for biodiversity net gain, but they do not need to include policies which duplicate the detailed provisions of this statutory framework. It will also generally be inappropriate for plans or supplementary planning documents to include policies or guidance which are inconsistent with this framework, for instance by applying biodiversity net gain to exempt categories of development or encouraging the use of a different biodiversity metric or biodiversity gain hierarchy.

Plan-makers can complement the statutory framework for biodiversity net gain by, for instance, including policies which support appropriate local offsite biodiversity sites, including whether specific allocated sites for development should include biodiversity enhancements to support other developments meet their net gain objectives in line with Local Nature Recovery Strategies. “

9. The DEFRA BNG Guidance for Local Planning Authorities <https://www.gov.uk/guidance/biodiversity-net-gain-what-local-planning-authorities-should-do> clearly states that:

#### **Setting local policies to support BNG**

Local planning authorities (LPAs) can set policies to support BNG. They can identify local areas suitable for habitat creation and enhancement to help:

- landowners who want to sell off-site biodiversity units
- developers who need to comply with the BNG requirements

LPAs can make sure developers know about:

- the requirement for 10% BNG
- local policy requirements for BNG, such as local nature recovery strategies

If the local nature recovery strategy has not yet been published, LPAs should say what plans are currently in place.

Local nature recovery strategies identify the places and habitats that are most beneficial for nature and get 15% more biodiversity units than the same habitat created elsewhere.

10. The DEFRA guidance then goes on to provide advice to LPAs on the issues of how they can facilitate the transaction of BNG units, approve planning applications and Biodiversity Gain Plans, review Biodiversity Gain Plans, checking metric calculations, checking habitat surveys and checking developers seeking excess on-site gains, securing gains with a legal agreement, monitoring BNG, and working with developers who wish to buy statutory BNG credits.
11. The DEFRA guidance also includes sections of advice for developers and landowners which would be helpful for the IPPS to reference.
12. HBF do not believe it is necessary or helpful for the Gedling IPPS to set out anything already within the DEFRA BNG guidance or the PPG. The Council should instead refer and signpost to this national guidance- with reference to the relevant sections and paragraph numbers as appropriate. This means that the BNG IPPS should be considerably shortened and refocused to deal only with those matters that add local guidance and interpretation to the national information, in accordance with the guidance to LPAs in the BNG PPG and the DEFRA Guidance.
13. Gedling BNG IPPS therefore only needs to set out:
  - the national requirement for BNG of 10% with reference to the Environment Act and that the statutory biodiversity metric that must be used
  - explain the Council is required to implement the mandatory BNG requirement of 10% from the implementation date of 12th Feb 2024 for major sites, and for small sites from April 2024
  - signpost users to the PPG BNG and DEFRA guidance
  - set of any Gedling (or Nottinghamshire) specific issues in relation to Mandatory BNG implementation.
14. It is important to make it clear in any Gedling BNG Guidance that the BNG national policy is a national policy and the system has been set up to ensure that an automatic condition is added to all new permission that require 10% BNG. The Council's job at this point is to apply this condition to the relevant planning

applications and secure its delivery. As such it is implementing national policy not introducing a new local policy.

15. It is also important to note that for large and complex sites where the development is phased, the guidance is clear that the 10% must be delivered at the end of the development, and this may not result in 10% BNG on each phase. Additional advice on phased development is still awaited.

#### The Need for Local BNG Advice and Guidance

16. The appropriate way for a new Local Policy on BNG to be introduced is, as the Council acknowledges, is through the local-plan making process. The Local Plan process, not the IPPS should therefore set out what the Council intends to do in relation to the amount of BNG it will be seeking, and this will then be subject to the appropriate scrutiny consultation through the plan-making process. At this stage of BNG implementation clarity on the BNG figure that will need to be used in the Metric is important. As Gedling does not have a higher BNG figures in an adopted Local Plan policy, the policy to be applied is 10% BNG. Any reference to any other figure at this stage is both confusing and inappropriate.
17. HBF do however recognise that at this stage in the implementation of mandatory BNG there are some local issues which the Council could usefully provide advice to developers on in relation to how BNG will work within a particular local planning authority area. As such HBF would support further advice and guidance being provided for the Gedling (or Nottinghamshire) specific issues in relation to Mandatory BNG implementation. HBF suggest this should include:
  - Pre-application advice
  - Validation issues
  - Advice on when s106 is needed and when one is not, and how s106 is addressed in Gedling
  - Information on how the council will determine 'significance'
  - Advice on on-site BNG
  - Advice on off-site BNG, including reference to LNRS
  - Advice on when statutory credits can be used
18. However, there is no need for the guidance to repeat national guidance, for example saying that BNG that it does not apply to ancient woodlands, or self-build sites of 9 dwellings or less on 0.5 Ha or less. These and other issues are already fully addressed in the national guidance and advice. Where issues, such as the rules and exemptions for BNG are already set out in national guidance there is no need to repeat them in an IPPS.
19. HBF notes that there seems to be significant potential for confusion around environmental hierarchies, as demonstrated in this IPPS. Particular care is needed to avoid any confusion between the well-established mitigation hierarchy and the new BNG hierarchy. As the IPPS notes the introduction of mandatory BNG does not affect any of the existing designations and protections for habitats and species.
20. There is need for the IPPS to be much clearer about the difference between the mitigation hierarchy (which seeks to avoid harm in the first place, then mitigate and

only then compensate it in relation to protected habitats) and the BNG hierarchy (which prioritises on-site BNG delivery, then off-site units and finally allows for statutory credits). There seems to be significant potential for confusion between the two difference hierarchies. We would suggest the use of the term “BNG spatial hierarchy” may help with this issue.

21. The IPPS makes reference to the biodiversity when talking about the mitigation hierarchy. This is both confusing and unhelpful. Mandatory BNG introduces a new BNG hierarchy which seeks to prioritise on-site BNG delivery but allows for off-site BNG and statutory credits. This is completely different from the mitigation hierarchy for protected species and habitats. This confusion has resulted in errors and incorrect information being included within the IPPS Principles section.
22. Similarly, there is no need for the Council to ask for a BNG ‘contingency’ or to look to consider ‘additionality’. These matters are already addressed within the Metric and asking for something different and/or additional is both confusing, and contrary to national guidance and policy. As previously mentioned HBF request the Council fully review the whole document to ensure any errors and misunderstandings are removed from the IPPS. The metric also already ‘rewards’ off-site BNG delivered close to the site and ‘penalises’ BNG delivered further away. Many of the other ‘requirements’ that the Council is seeking to introduce are also already covered in the Metric. HBF therefore believe the majority of text before the section how will BNG be secured is unnecessary and should be deleted.
23. HBF are concerned that in order for BNG to be effective as possible all Local Planning Authorities should apply the national advice and guidance. Local advice for be as short and simply as possible to help reduce the burdens being placed on all those delivering BNG. Advice that helps developers understand the local factors and considerations necessary to help to secure the delivery of BNG could be very helpful, but it needs to be tailored, focused and accurate.
24. HBF would welcome advice and information on the pre-application service and how BNG matters will be considered through this process. We agree with the advice and guidance that the sooner BNG issues are considered the better.
25. Noting that the mandatory BNG system is a post-consent permission and technically Biodiversity Gain Plans can only be submitted after planning permission has been granted, it would be helpful to understand how the Council intends to make this work in practice. We would welcome advice in relation to validation. However, this must set out what BNG information *must* be submitted for an application, for an application to be valid and it could also set out what further advice on what information *could* be submitted would be helpful.
26. A key concern to our members is how the BNG hierarchy will be made to work in practice. The Environment Act, and the BNG PPG and DEFRA Guidance all make it clear that BNG requirements can be met on-site, off-site or as a last resort through statutory credits. Whilst on-site provision should be explored first there may be many reasons, including for example ecological reasons, design and practicality, why on-site BNG is not deliverable and/or not the preferred approach of the applicant and/or the Council and/or the community and/or statutory consultees.

27. Factors that may need to be considered in reaching a view that off-site BNG may be acceptable, could include for example, whether the site is suitable for the type of BNG to be provided, what the priorities of the Local Nature Recovery Strategy are and/or the opportunity to coordinate contributions from a range of sites to provide for large landscape scale BNG schemes. The metric already compensates for off-site BNG provided when this is provided further away from the site, including outside of the LPA area.
28. It would be helpful for the Council to provide advice and guidance to developers on what information is required to show they have fully explored on-site BNG and what evidence is needed to support a decision to move down the BNG hierarchy to off-site units, and then to move further still down the hierarchy to the purchase of statutory BNG credits as a last resort. Policy cannot seek to limit BNG provision to within the Borough.
29. The IPPS should also be clearer about the management and monitoring requirements. As compliance with the 30-year management and maintenance is a requirement before off-site BNG units can be registered, there is no need for the management and monitoring of off-site BNG to be secured through the planning applications process. Similarly, Natural England are responsible for delivery of the statutory credit system.
30. Additional advice could usefully be provided in the IPPS about Local Nature Recovery Strategies. As the LNRS emerges it will become an important part of the Local Plan evidence base and the interaction between the two documents will be important especially in relation to defining significance locally. However, as LNRSs are still emerging it will be important for the IPPS to set out how both these matters will be addressed in the interim.
31. BNG is an emerging policy area and the market for off-site provision, and therefore the cost of units, is still emerging. It is important that BNG does not prevent, delay or reduce housing delivery. As such it will be important for costs to be kept under review as BNG implementation progresses and a greater understanding of actual costs become available. Council's need to be realistic about what can be delivered. Constructive discussions and flexibility may be needed, especially initially to ensure mandatory BNG does not inadvertently become a barrier to much needed housing delivery.

#### The Need for BNG Local Plan Policy

32. HBF would also welcome further discussions with the Council about any potential BNG Local Plan policies. For BNG to be delivered successfully in the longer term it will be important for the Council to consider BNG in relation to its plan-making functions. In Nottinghamshire this will be important at both the Strategic and the Local Plan level.
33. HBF believe BNG should be a significant factor in emerging Local Plans and may require additional research, evidence work, policy and guidance for it to be made to work in practice. Plan-making is the appropriate stage for many BNG issues to be considered and we therefore suggest that Gedling Borough Council needs to ensure

that it is doing all it can to support the delivery of the national mandatory BNG policy through providing clear advice guidance and, wherever possible, certainty for developers and landowners and communities on what is expected.

34. HBF would also encourage the Council to ensure the next Local Plan fully considers the new BNG requirements in relation to site allocations. This is likely to require undertaking an assessment of the baseline to support the allocation to enable an understanding the BNG requirements for a site to be allocated and the impact this may have on viability and other policy requirements and considerations. It will be important to understand the BNG costs of mandatory BNG as this is non-negotiable and as such may impact on the viability of the site and its ability to deliver against other policy requirements such as affordable housing or other s106 asks.

### **Future Engagement**

35. I trust that the Council will find these comments useful as it begins its mandatory BNG delivery journey. I would be happy to discuss these issues in greater detail or assist in facilitating discussions with the wider house building industry, if that would be helpful.
36. HBF would like to be kept informed on the IPPS and BNG delivery in general, as well as any forthcoming consultations on the Strategic Plan for Nottinghamshire and the Local Plan for Gedling and any associated documents. Please use the contact details provided below for future correspondence.

Yours faithfully



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