

The Environment Bill and 'Biodiversity Net Gain'

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After all the delays caused by a general election and a global pandemic, it seems that we can finally expect the Environment Bill to become law in the next few months. As the transitional arrangements following the UK's withdrawal from the EU have now ceased, the implementation of environmental legislation feels significant. Following the promises of a 'green Brexit', this is where the UK will set future standards on environmental protection.

One would be forgiven for not remembering the Bill's contents, and by way of a reminder, one of the aims of this Bill was to put a 'duty to enhance' biodiversity at the heart of policy in England and Wales. The Bill then introduces the concept of 'biodiversity net gain', and among other things, establishes the Office for Environmental Protection, which assumes the regulatory role previously filled by the European Commission.

The government has been examining the idea of biodiversity net gain for a few years, following a consultation in 2018. The idea is to achieve an overall increase in biodiversity at a development site, by an ongoing condition in a planning approval, guaranteed for a period of at least 30 years. This will require that the biodiversity of the developed site must exceed that of the undeveloped site by 10%, according to a metric developed by DEFRA. This is certainly more rigorous than existing policy, which requires Local Planning Authorities (LPAs) to minimise impacts on and provide net gains for biodiversity but does not actually enforce this in the long term.

The aim is for LPAs to produce biodiversity gain plans, designating the biodiversity of specific areas and outlining how this can be improved. This fits in with the predicted wider move towards a more zonal planning system in England and Wales.

Developers will be required to submit proposals of how the net gain will be achieved as part of their planning application. The LPA will then use 'Conservation Covenants' (also introduced by the Bill) to ensure the promised gain is realised. These covenants would move us to a more regimented system for legally binding private agreements between a conservation body and the landowner.

Additionally, the LPA will establish a hierarchy of developments and prioritise those developments which do not harm biodiversity. Where it is impossible to achieve the 10% net gain, a developer will have to purchase credits that the LPA can use to ensure the net gain is realised elsewhere.

Some LPAs have already set out that they intend to calculate the development impacts as part of their landscape plans, and indeed some, such as Swale Borough Council, have already implemented the charge through their local policy.

There will be some exceptions to the biodiversity net gain requirement, for example permitted development or minor householder applications, although this will be detailed in secondary legislation, which means that the regime is not expected to be implemented until 2023.

Although not yet law, the biodiversity net gain soon will be, and developers who are acquiring sites now will need to factor in these additional obligations when undertaking their site appraisals.

If you have queries relating to this or any other aspect of planning law, then please contact Partner, [John Bosworth](#), or Associate, [Robin Barnes](#).