

Responsible business

Newsletter – Natural Capital edition 2024

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Contents

02 Foreword

03 Natural capital: Innovation and opportunity in an evolving landscape

05 Biodiversity net gain: nature and developers

07 Biodiversity net gain: challenges and opportunities

Foreword

Natural capital has come into sharper focus with the legal requirement that all new developments enhance the existing biodiversity by 10%.

It is a move that attempts not only to protect and boost the natural environment but also to put value on it.

Previously part of planning policy, biodiversity net gain isn't a new concept for developers, but the law removes flexibility.

There are undoubtedly challenges in delivering the 10% enhancement. It is an additional cost and requires management and the space to do it. This has to be weighed against high construction costs, which are already challenging development viability.

However, there are also opportunities. For example, creating biodiverse habitats as part of a housing development can make it more attractive to buyers. For landowners, habitat banks provide an opportunity to generate additional income from underused land.

In this edition of the Responsible Business Newsletter, we look at the implications of the new legal requirements, navigating delivery, explode some myths and explore some of the opportunities.

Our natural capital team sit down for a Q&A to discuss what gets overlooked, what to look out for next and some of the exciting advances in protecting and enhancing the natural environment.

We also talk to Jon Garner, ecologist and director of BioGains, about some of the misconceptions around biodiversity net gain and ways to approach it.

Do get in touch with anyone in the team if you have any questions, but in the meantime, we hope you enjoy this edition of our newsletter.



Natural capital: Innovation and opportunity in an evolving landscape



The environmental focus is shifting from preserving to enhancing. Some of Trowers & Hamlins' natural capital team sat down to discuss what has changed, what to look out for and why it's a dynamic and exciting area.

How has the response to natural capital changed in the last five years?

Amanda Stubbs, Partner: Natural capital, or environment resources, have not traditionally been protected in law per se.

The rights of landowners who have control over natural capital on their estate are protected in law because it's their property.

But increasingly society is moving towards placing a capital value on these environmental elements, whether water resources or biodiversity.

And that's what we've seen over the last five years, the shift to put into law mechanisms to safeguard those elements effectively, through amendments to planning and environmental law and policy.

Rory Stracey, Partner: Biodiversity net gain has gone from being a fringe issue of interest mainly to ecologists and environmental groups, to something that's become much more mainstream.

That is because of government intervention, starting with amendments to the national planning policy framework to introduce policies about biodiversity net gain.

Then, more recently, government legislation has made the provision of biodiversity net gain mandatory by law through the planning system.

Nicola Janus-Harris, Partner: On the agricultural side, there's been a big shift to incentivisation for enhancing the environment on farms.

The basic payment scheme has been phased out, and the environmental land management scheme has been introduced. One of the main elements of this is the sustainable farming incentive.

For example, farmers are paid per hectare for having wild birds feed on their land or preserving hedgerows to encourage nesting birds or biodiversity more generally.

What are the key changes in legislation and regulations around natural capital to look out for?

Jack Frier, Partner: From a housebuilder's perspective, the next challenge to manage is the move towards water management and conservation.

This is being driven by extreme weather, whether it is the very dry summers or very wet winters we've had.

The focus might be managing upstream water collection and conservation, both to prevent flooding, and reduce leakage at one end of the spectrum and water conservation within new build homes at the other with things like rainwater harvesting and water efficient appliances.

Jasmine Andrews, Associate: Biodiversity net gain regulations were introduced in February, which stipulate that all planning applications, with very few exceptions, have to provide 10% biodiversity net gain. This is mandatory – local planning authorities do not have discretion to waive the requirement.

We're now starting to see mandatory biodiversity net gain play out in practice; how it works and how the market will operate for the sale of credits, is something that is evolving rapidly.

What do developers and landowners tend to overlook with natural capital requirements?

N J-H: To measure the environmental improvements you've made, there must be baseline of data.

In the agricultural setting, businesses are falling behind in recording and collecting the data that will form that baseline.

AS: There are relatively easy and cost-effective ways to build a baseline of data – typically the baseline will be the date of the application, but it can be backdated to 30 January 2020 where the planning authority can see that a habitat has degraded since that time.

One of our environmental consultant contacts has joined forces with a university and a global positioning system company, to create an aerial view of the country's habitats using satellites to map their condition down to about 5 metre polygons.

This technology means you can see the quality and condition of each habitat in terms of its biodiversity and enhancement, tracked back to 2020 if necessary.

JF: Delivering biodiversity net gain can easily be seen as merely a cost to a housing project. However, that nature enhancement can be a boon to your development, a means of differentiating it or part of a placemaking strategy and something for the community.

What do you enjoy about working in the area of natural capital?

AS: It's an evolving landscape. The planning and development system has always walked a tightrope between delivering schemes while doing the responsible thing for the environment.

The new law will help protect the environment, but there is also an opportunity to do things differently and make enhancement part of your income.

There are a number of interesting strands being stitched together under the banner of 'natural capital'.

N J-H: Natural capital and agriculture go hand in hand because a lot of the solutions and opportunities are on farmland or open land.

It is exciting to see those opportunities coming through, the impact on land values and the potential for a new income stream while being part of the bigger sustainability and climate change picture.

What is the most exciting advance in the area of natural capital?

AS: The law is driving change and innovation and it's always exciting to be in a newly developing area.

We're seeing a lot of collaboration across different types of consultants, including ecologists and agricultural consultants.

Everybody's pooling what they know about their bit of the industry and trying to bring it together to work out some new mechanisms for applying sticks and carrots effectively.

N J-H: We are now seeing smaller landowners collaborating to deliver much larger landscape recovery projects.

A number of pilot projects have led to full-scale launches. These collaborations are exciting because they could significantly impact the race to net zero and climate change conversations.

JA: It will be interesting to see how stacking credits from different markets plays out legally.

For example, if you want to maximise land value, you could tie in biodiversity unit agreements and nutrient neutrality agreements for the same area. It opens the opportunity for collaboration.





Biodiversity net gain: Delivering for nature and developers

Biodiversity net gain on new developments has been emerging in planning policy for a while, but in February this year, a requirement to secure a 10% increase in biodiversity value against the pre-development value became law for new planning applications. It has the potential to change the landscape literally and figuratively.

It's an important shift for protecting and enhancing the environment and removes an element of flexibility which planning policy allowed.

There is, of course, still a trade-off between protecting natural capital and ensuring development viability. There is a cost to complying with biodiversity net gain requirements, that will either be passed on to consumers, or result in other items of infrastructure receiving less funding. However, there are opportunities to work with the law and think creatively about new development while delivering attractive and sustainable schemes.

Focus on brownfield sites?

A 10% biodiversity net gain requirement applies to most forms of new development but how onerous that is in practice will depend on the land's existing biodiversity score.

Sites which already have a good biodiversity score will be harder to improve than poor-quality land with a low score.

“10% of a low number is smaller than 10% of a big number,” says Rory Stracey, Partner, Trowers & Hamlins.

“If you have a site with zero biodiversity by value, for example, if it has an entirely sealed surface, then you wouldn't have to deliver any biodiversity net gain.”

This potentially makes brownfield sites a little more attractive to developers and housebuilders but also creates an opportunity to deliver additional value.

Biodiversity net gain is potentially a good news story for housebuilders and can become a positive talking point.

“If you're promoting a new housing scheme, and perhaps there's some concern about building over or harming the natural environment in some way, you can show how biodiversity will be improved on what was already there,” says Stracey.

Having visible features like bat and bird boxes can add to the appeal of a development as residents can easily see how their homes are supporting nature. Increasingly people buying new houses or taking new commercial space look for developments that can demonstrate strong environmental credentials.

Practical features can also have a dual purpose.

“I've seen attenuation ponds used for flood risk management double as a wetland area which can then support particularly diverse flora and fauna,” says Amanda Stubbs, Partner, Trowers & Hamlins.

Biodiversity net gain credits

Where it is possible to enhance biodiversity above the stipulated 10%, taking this approach can be beneficial in two ways.

There is a hierarchy for biodiversity net gain provision, with enhancements onsite being the preferred option, followed by off-site and then statutory credits being the least valued, but potentially the most expensive to deliver, because a sum of money must be paid to Natural England in lieu of providing a 10% net gain on site.

Local authorities have some power to enforce that hierarchy, but going beyond the statutory minimum of 10% can be used as material consideration in favour of the development.

“A developer could decide to put forward an enhanced biodiversity offer above the 10% mandatory requirement as a material planning consideration weighing in favour of the planning application, or they could decide to bank the additional biodiversity net gain by storing it as a credit to potentially offset against other nearby developments,” says Stracey.

This credit could be for a developer’s own use or sold on to other developers.

The creation of a biodiversity net gain market or ‘habitat bank’, as a result of the legislation, is in its infancy. However, it could add value for landowners while still taking a responsible approach to protecting and creating natural capital.

“Local authorities are looking at how they’re going to respond to habitat banks to ensure that the credits are robustly secured from a legal perspective – enforceability is a potential concern” says Stracey.

Potential source of income

Biodiversity net gain is also a potential source of income for local authorities and estate owners where there may be capacity to make enhancements. A review of existing assets is a worthwhile strategy.

For developers and housebuilders with sites where delivering 10% biodiversity net gain is very difficult, buying credits (either statutory credits or from habitat banks) may be the only option, but there is a downside to this.

“Statutory credits will be a more expensive option, and it’s money just being paid out to central government without any of the direct local benefits of onsite natural enhancement, whereas habitat bank credits will be cheaper and bring tangible local habitat benefits” says Stubbs.

Land use is also increasingly competitive, particularly in urban areas, with the temptation to view existing green spaces such as parks as an opportunity for rewilding and other biodiversity enhancements.

But where do the users of that park go, those exercising, playing ball games or walking a dog?

“A jogger can’t run in a wetlands area,” says Stubbs. “Planning authorities will have to balance these competing uses for green space.”

It’s a similar trade-off with onsite biodiversity enhancements at new housing developments. Wildflower meadows and habitats for ground-nesting birds don’t necessarily sit comfortably alongside children playing games and dogs running around.

Maintenance and management of these natural habitats have to be planned so they thrive, which is an additional cost.

Here is where having off-site provision of biodiversity net gain may be an advantage as the land is managed by someone else, usually a professional outfit such as a habitat bank provider or ecologist set up specifically to manage the off-site habitat.

As available land gets used, it will take a more creative approach to deliver the 10% net gain. Green walls and roofs are becoming more common in some cities.

“I’ve seen a single-story development with goats grazing on the roof. It may be a gimmick, but it’s green land that is being utilised,” says Stubbs.

“One of the great things about new legislation is the creative thinking that it engenders. Preservation of natural capital for future generations – whether flora and fauna, water resources or clean air – is now under the spotlight, but I’m confident that the property industry will rise to the challenge that this presents.”





Biodiversity net gain: Lifting the lid on the challenges and opportunities



Jon Garner

Ecologist and Director at BioGains

“The buddleias, brambles and bits of willow which have cracked through the concrete create a pretty interesting habitat for invertebrates, birds and bats.”

It's not what you'd necessarily expect to hear about a brownfield site. But, as Jon Garner, ecologist and Director at BioGains, points out, appearances can be deceptive when it comes to biodiversity.

“Where there is open soil, grass dominates, but on a formerly built-out site, it can allow rare weeds and flowers to establish,” he explains.

This can present a challenge for developers trying to deliver the 10% biodiversity net gain, which became law in February.

To deliver the uplift, sites need to be assessed and given a baseline biodiversity ‘score’ against which the 10% enhancement can be measured.

It's easy to assume that the greener the site, the higher the baseline score will be, making it harder to achieve a 10% improvement. However, there are different types of greenery and grassland with different biodiversity ratings, just as brownfield sites can vary.

Biodiversity and brownfield sites

The sort of brownfield site described above, which perhaps hasn't been touched for ten years, has established what is called an open mosaic habitat.

This can be valuable from a biodiversity point of view, particularly in an area without an abundance of similar habitats. It can have a biodiversity rating similar to that of an orchard.

Some brownfield sites may rate very low or even zero, but there is no way to know without an assessment.

The size of the site can add to the challenge particularly as the preferred option from local authorities is for biodiversity net gain to be delivered on site.

There are benefits to onsite enhancement. For example, it can make residential developments more attractive to buyers and neighbouring communities.

But, it's a balancing act as residential sites will have competing pressures on land usage. Providing green space for residents to enjoy, perhaps for children to play or to walk dogs, doesn't necessarily go hand in hand with a wildlife habitat.

“A local authority ecologist will look at the plans to consider whether what is proposed is realistic,” says Garner.

Individual trees score reasonably well within the biodiversity net gain metric; on bigger sites, a small community orchard would also rate well. If there is a lot of space, some scrub or woodland planting is an option.

SUDS can be of high value because of the benefit of combining water drainage with biodiversity habitats.

“The problem is that biodiversity net gain is measured by hectare, and some of these habitats only cover a relatively small area,” he adds.

Getting an assessment and baseline established as early as possible, which is a relatively cheap process, is key for developers buying land so the enhancement options can be planned and costed.

Ongoing habitat management

Measures to improve biodiversity also require a 30-year management plan, so that needs to be considered when deciding what habitat to create, particularly onsite.

For example, wildflower grasslands need to be cut at specific times.

“You cut once the flowers have seeded, and most importantly, you remove arisings to help lower the nutrient level in the ground and stop the dominant grasses taking over,” explains Garner.

However, there may be an expectation from residents that the grass will be cut in the summer, which would result in the loss of biodiversity benefits.

Provision also needs to be made for someone to take on the maintenance responsibility, and to be accountable if there are problems. This could be through a management company funded via a service charge, but if the developer exits the scheme, who is responsible?

This can be an advantage of off-site biodiversity net gain provision and using a habitat bank. The habitat bank signs a section 106 agreement, which means accepting liability.

Natural England has also set up conservation covenants as an alternative to Section 106 agreements.

These aren't tried and tested and fall under a different area of law, which can be off-putting – developers and land owners, and lawyers tend to prefer what is tried and tested, and S106 agreements are well understood. Habitat banks have to be accredited and are understandably subject to high levels of scrutiny, but the sites aren't constrained by public access.

Mismatched biodiversity metrics

A fault in the metric is that woodlands aren't rated as high as they should be because of the time they take to become established.

Garner says a way to navigate this is to introduce scrubland: “Scrub habitat is similar to a woodland in an ecological sense. It's a stage before a woodland so targeting scrub, you get there quicker.”

The problem is that 'scrubland' doesn't sound very attractive, particularly if you are building homes.

For landowners turning a piece of land into a habitat bank can be a tempting proposition for generating income. Navigating the regulations and requirements takes skill and expertise, so while it can offer a high reward, it is also high risk.

Leasing land to a habitat bank is a lower-risk alternative. It means an income for 30 years, and the liability sits with the habitat bank, but the returns will be lower.

News headlines suggest habitat banks are direct competition for food-producing land, but Garner says there is plenty of land for both.

“There's an awful lot of land that isn't really cost-effective for delivering food production, and that is nearly always going to be suitable for biodiversity net gain,” he says.

While biodiversity net gain has been a part of planning policy for some time, the new law has sharpened the focus and will undoubtedly change the development landscape.



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