

WOMEN IN PLANNING

LUNCH BITES

The Implications of Biodiversity Net Gain & Nutrient Neutrality on Planning Applications

JOIN US AT OUR NEW YEAR LAUNCH
25TH JANUARY 2022 AT 1PM



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Meet our panel members

Connect with our panel members on LinkedIn by scanning the relevant QR code below.



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Mandy Gill
Chair
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Jill Briggs

Principal Associate

SH ∞ SMITHS

“Without biodiversity there is no
future for humanity”

Professor David Macdonald
Oxford University

Can we reduce the damage caused by development?



What can we do?

- Hedgehog highways;
- Bat boxes;
- Bee bricks;
- SUDs;
- Soft landscaping;
- Hedgerows



Which would you prefer?



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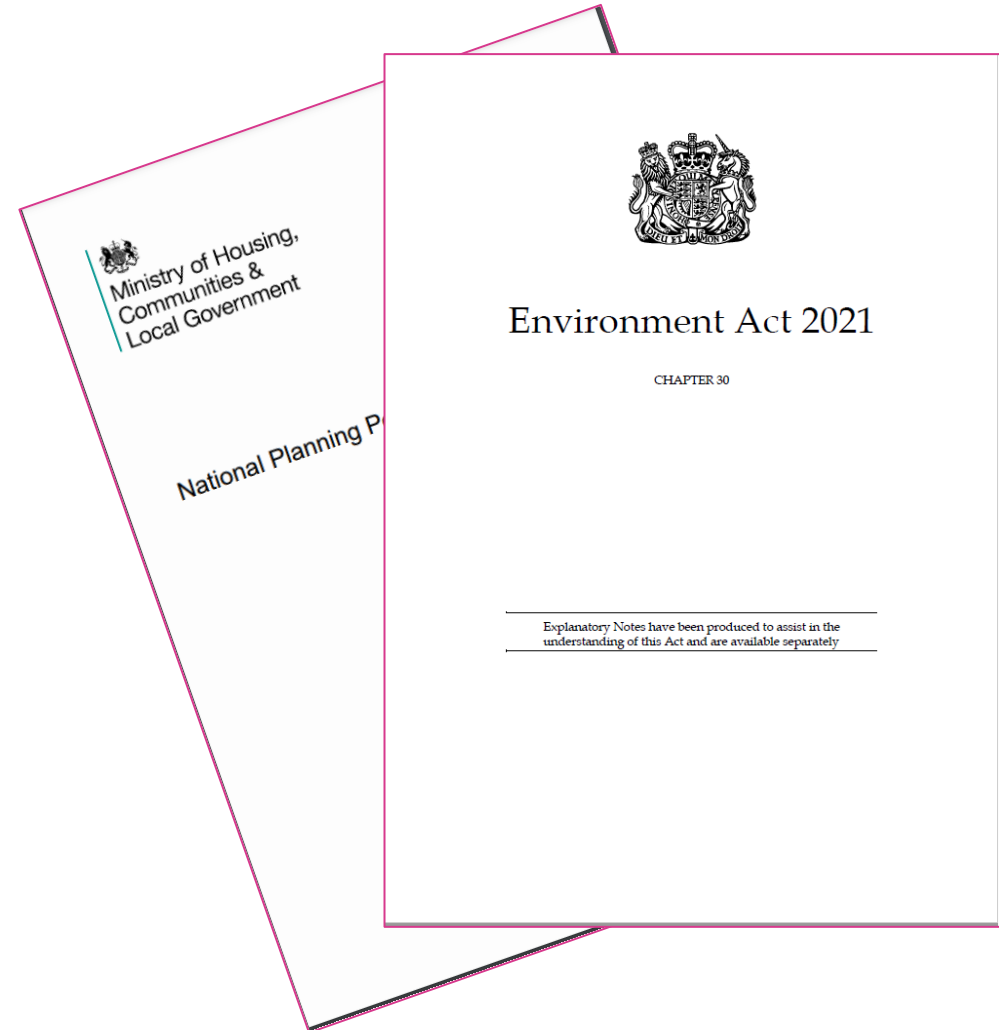
Rachael Coulsting

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Biodiversity Net Gain

- NPPF / PPG
- Environment Act 2021
- Key implications for developers / Local Authorities / landowners
- DEFRA consultation



Context



BNG – The NPPF

- Natural Environment and Rural Communities Act 2006, s40
- Current NPPF (July 2021)
- Part 15 – Conserving and Enhancing the Natural Environment
- Paragraph 174 – planning policies and decisions should provide for net gains
- Paragraph 179 – local plans should pursue opportunities for measurable net gains
- Paragraph 180 – opportunities to improve biodiversity should be integrated
- PPG – Net Gain is:

“...an approach to planning that leaves the natural environment in a measurably better state than it was beforehand...”

- PPG – Biodiversity Net Gain:

“...delivers measurable improvements for biodiversity by creating and enhancing habitats in association with development. Biodiversity net gain can be achieved on-site, off-site or through a combination of on-site and off-site measures...”

BNG – Environment Act 2021

- Royal Assent on 9 November 2021
- Key provisions in Part 6 and 7 require enabling regulations
- LPA duty to “conserve” becomes a duty to “conserve and enhance” biodiversity
- All development must deliver 10% BNG (some exceptions)
- Secured by new mandatory condition
- Minimum 30 year management
- National scheme for buying Biodiversity ‘Credit’

BNG – Conservation Covenants

- Agreement between landowner and a ‘responsible body’
- Responsible body = Secretary of State and any “designated body”
- Designated bodies could include:
 - local authorities and
 - conservation bodies e.g. National Trust
- Local Land Charge
- Binding on the landowner and successors in title
- Enforceable by the Responsible Body



BNG – Key implications

- Developers:
 - consider appropriate action now; plan the site; brownfield sites? Viability?
- Local authorities:
 - legal duty to secure 10% BNG (not yet in force)
 - Not a maximum %
- Landowners:
 - Diversification of land; Habitat banking

BNG – DEFRA Consultation

- Consultation ends on 5 April 2022
- Exemptions to BNG – Brownfield exemption scrapped
- Phased development and outline permissions
- Landowners and eligibility for other Government schemes



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Grace Mitchell

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Nutrient Neutrality

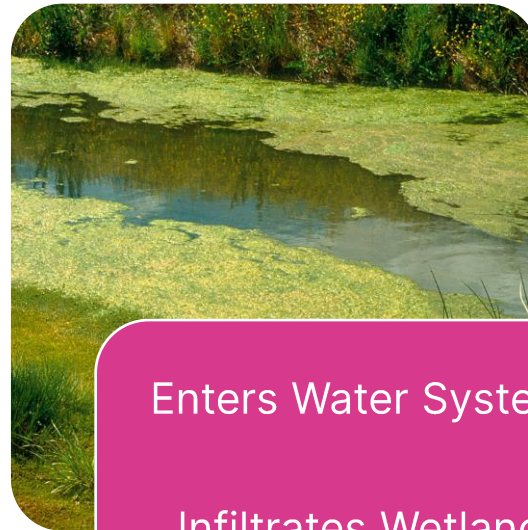
- What is it?
- Why is it relevant to planning?
- What are the solutions?



Nutrient Neutrality - Eutrophication



Agricultural Fertiliser
+
Existing Waste Water
+
New Homes
=
Nitrogen Runoff



Enters Water System

Infiltrates Wetland
Habitats

Algae Bloom



Algae Dies +
Decomposes

Wetland Starved of
Oxygen

Animals Die

Nutrient Neutrality – The Habitat Regulations

- Conservation of Habitats and Species Regulations 2017
- Regulation 63
- “Appropriate Assessment” for any “plan or project” likely to have a “significant effect” on a “European Site” or “European Offshore Marine Site”
- “European Site” = Special Protection Area (SPA) and Special Area of Conservation (SAC)
- Regulation 63(5):

“...the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).”

STATUTORY INSTRUMENTS

2017 No. 1012

WILDLIFE

COUNTRYSIDE

The Conservation of Habitats and Species Regulations 2017

Made - - - - 30th October 2017
Laid before Parliament 31st October 2017
Laid before the National Assembly for Wales 31st October 2017
Coming into force - - 30th November 2017

CONTENTS

PART 1
Introductory and General Provisions

1. Citation and commencement
2. Extent
3. Interpretation
4. Plans or projects relating to offshore marine area or offshore marine installations
5. Nature conservation bodies
6. Relevant authorities in relation to marine areas and European marine sites
7. Competent authorities
8. European sites and European marine sites
9. Duties relating to compliance with the Directives
10. Duties in relation to wild bird habitat
11. Review by appropriate nature conservation body

PART 2
Conservation of Natural Habitats and Habitats of Species
European sites

12. Selection of sites eligible for identification as of Community importance
13. Designation of special areas of conservation
14. Consultation as to inclusion of site omitted from the list
15. Classification of sites as special protection areas
16. Notification of a proposal to classify a special protection area
Register of European sites
17. Register of European sites
18. Notification of changes to the register

Nutrient Neutrality - Background

- Nitrates and Phosphates from agriculture and waste water
- Significant adverse effect on protected sites
- 2019 - Landmark “Dutch Nitrate Cases”
- All plans and projects must be individually assessed
- Natural England Guidance – development must be Nutrient Neutral
- Affecting residential development in
 - Hampshire, Wiltshire, West Sussex (the ‘Solent’)
 - Kent (Stodmarsh)
 - Dorset (Dorset Harbour)
 - Somerset (Somerset Levels)
 - Cornwall (River Camel)



Nutrient Neutrality – Guidance

- Natural England Guidance (2020)
- The amount of nitrogen entering the water system from the development must be offset by the removal of an equivalent amount of nitrogen from the water system
- How to calculate Nitrogen Budget
- How to achieve neutrality
- May be achievable on-site; or
- By taking other land out of production



Solutions

On site:

- Through creating greenspace
- Removing nitrates from waste water before it reaches the system
- By ensuring the development use of the land after development completes produces less nitrates than the prior to development use

Off site:

- Using third party land (predominantly agricultural land) to carry out the above



Off-Site Solutions

- Planning permission subject to condition or planning obligation requiring mitigation
- Use of the mitigation site regulated by s106 or s33 agreement
- Covenants enforceable by the LPA against the owner and successors in title
- Can be used to deliver specific enhancements
- Can be used to establish a 'mitigation bank'

Examples



Pig Farm – removal of pigs,
and allowing it to rewild and
plant trees



Dairy Farm – wetland scheme,
reeds to filter out nitrates,
less land required for higher amounts
of credits

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Thank you for joining us...

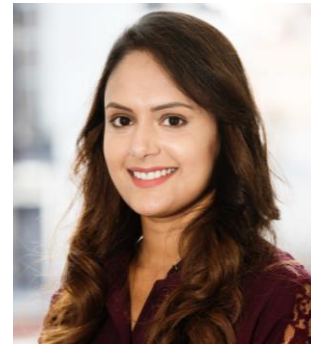
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