

Why net gain has to mean net gain

The Government is about to consult on making net gain mandatory. It is essential that we ensure net gain is used to provide the necessary investment into the natural environment to restore biodiversity and not to 'prettify' development.

I introduced the concept of biodiversity offsetting into the UK in 2009 because I was concerned at the way biodiversity was treated within the planning and development sector. The ecological consultancy profession has spent decades working for developers to secure permissions without, in my view, fully critiquing whether biodiversity is effectively protected. Endless mitigation schemes where small pockets of 'nature' are kept within the red line boundary of the development, have been used to justify 'no significant effect of the development'. I know, because I also had to design these schemes and then defend them at public inquiry! And that is why I set up The Environment Bank in order to do things differently. As biodiversity offsetting has morphed from 'no net loss' to 'net gain', I want to list a number of features that must be adopted if net gain is to result in the proper restoration of biodiversity rather than just landscaping within a development.

Proper and effective net gain will mean that much of the gain is delivered outside of the development boundary – on newly created and managed sites set up specifically to restore the UK's biodiversity.

Planning authorities currently have the ability to require developments to deliver net gain through the revised National Planning Policy Framework (NPPF). Yet only a small proportion of authorities are discharging their legal duties for biodiversity – the policy needs to be included in Local Plans or supported by supplementary planning documents. The Environment Bank is providing the wording for both of these credentials to those local authorities with whom we have a working relationship. All planning authorities should be demanding net gain from development.

In addition to the NPPF, net gain requirements also feature in the Government's 25 year Environment Plan. There has to be a robust mechanism for delivery across the country and it will be essential that planning authorities apply the rules consistently. We are hearing that some developers are requesting that net gain should be for natural capital in its entirety rather than just biodiversity. The reasoning is that they believe they can 'trade' natural capital gains through such features as SUDS, balancing ponds, hedge and tree planting (for carbon sequestration) at the expense of biodiversity, giving an overall net gain in natural capital but where, as ever, biodiversity loses out. This cannot be allowed to happen. Some developers are also including gardens within housing developments as features, that they argue, raise the biodiversity value of the land from the intensive farmland on which the houses are built. This is utter nonsense. You simply can't integrate wider-countryside biodiversity conservation within a housing estate.

And in fact, I believe this miscomprehension is brought about by a) perpetuation of inadequate and proper assessment of the value of true biodiversity gain within the development scheme, resulting in developers being given incorrect advice and b) a lack of capacity and consideration on the part of planning authorities to require good quality

net gain. If developers truly understood the value to their business and to biodiversity of off-site provision, they would not be arguing that within-site delivery actually works for biodiversity. It simply does not.

If done properly, net gain should make a major contribution to the 'Restoration Economy', being better for biodiversity at scale, creating many jobs in the rural environment, saving developers costs and removing their liabilities for biodiversity management, whilst not making false claims about biodiversity conservation within built development. It is all well and good for developments to incorporate good quality landscaping, planting and open space to benefit the local communities who will reside in or use the new developments, but it is, in my view, deceitful to infer that this landscaping is restoring biodiversity in the UK.

So, there are a number of things that are needed for net gain to deliver effective biodiversity conservation both within the development boundary and in the wider countryside :

1. As recommended by the Ecosystem Markets Taskforce in 2013, and now out for consultation, net gain must be mandatory in order to provide consistency, clarity, and a level playing field for developers, and to attract investors to generate a market in offset site provision. Without a mandated scheme the investment will not come forward and without that investment, biodiversity restoration will not happen and net gain will remain a flawed concept of no greater value than the current fudged treatment of biodiversity protection within the development sector;
2. Each development to be required to have its impact on biodiversity, measured in biodiversity units, assessed using the Defra biodiversity impact accounting metric;
3. To allow for some retention and mitigation within the development red line boundary using the mitigation hierarchy in a practical, not theoretical way, but only where this makes a proper contribution to biodiversity conservation (otherwise to recognize it is just landscaping and makes no contribution to net gain);
4. On-site net gain to be required to be audited by the planning authority, or an environmental governance body, at regular periods through the development and once completed/occupied so as to ensure that within-site net gain is delivered and maintained for at least 25 years. This should be underpinned by an insurance policy paid by the developer to rectify deterioration or failure to deliver according to the management plan for the habitats retained within the development site. There would need to be an understanding by the developer that this has a cost liability for 25 years or more, captured through a delivery contract with the planning authority. Failure to deliver and/or to rectify failure should be subject to a significant fine, the proceeds from which would be used to fund habitat banks (see later).
5. For all planning authorities to be **inspected** in terms of how they are delivering their biodiversity duty for within-site net gain and off-site net gain. This would be undertaken by the environmental governance body who would visit a random 10% of planning authorities each year to assess how developments are achieving net gain. Those planning authorities that are found to be failing would

be put into 'special measures' in order to generate improvements in their monitoring and enforcement of on-site net gain.

6. Given the constraints of delivering effective biodiversity restoration within the development site boundary, there would be merit in having an 80:20 ratio of biodiversity gain between off-site (offsets) and on-site provision. The 20% on-site provision would exclude landscaping, tree planting etc., which are features that are provided by the developer in order to make a development look more attractive to prospective purchasers or users rather than to protect biodiversity. That way, off-site provision would be beneficial to the development in enabling better net developable area and much reduced ongoing long-term management liability for biodiversity within-site, which currently developers very rarely achieve in any event.
7. Off-site provision should be achieved either through bespoke offset sites established with farmers and landowners as the delivery agents in relation to each developments demand for conservation credits, or through the purchase of conservation credits by developers from larger, spatially literate (to maximise ecological value) habitat banks. Habitat banks are a more cost-effective way for many smaller, as well as large, developments, to deliver net gain. The establishment of habitat banks therefore needs to be facilitated by local authorities working with effective brokers who can set up the banks in the right place with farmers and landowners, sell the conservation credits yielded from the banks, and pay the delivery agents according to meeting the objectives of biodiversity management plans.
8. An environmental governance body (for example this could be a role for the Environment Agency rather than a new body) should provide :
 - a) an inspection function on planning authorities to assess how they are delivering their biodiversity duty;
 - b) in the absence of planning authority led enforcement on developers, to provide an inspection function on developments to ensure on-site net gain is being delivered and to levy fines on those that are found to be failing;
 - c) an accreditation facility whereby brokers receive accreditation in order to operate based on the standards they incorporate into their business model;
 - d) accreditation of bespoke offset sites and, preferentially, habitat banks based on delivery standards.

With the above infrastructure, net gain from development would generate the quantum of funding necessary to have a transformational impact on how biodiversity is viewed within the planning system and how biodiversity is restored at scale in the wider countryside.

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