

Briefing note

Procedure Note for Development Management – Biodiversity Net Gain Legislation & Policy.

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Introduction

Biodiversity Net Gain is an approach to development that leaves the natural environment in a better state, putting nature into recovery across the county. It is in addition to the existing policy and legislation that protects other ecological features such as species and priority habitats, or those within designated sites.

Achieving Biodiversity Net Gain (BNG) has been a local policy requirement for some time, as set out in Policy NE3 of Plan:MK and our Biodiversity Supplementary Planning Document (June 2021). Milton Keynes City Council have been following methodology set out by Government, which has evolved significantly over recent years.

The Environment Act 2021 introduced a new mandatory requirement for Biodiversity Net Gain in the planning system, to ensure that most new developments increase baseline biodiversity value by a minimum of 10%. This requirement came effect on 12th February 2024 for major development and 2nd April for other applicable types of development (see a list of exemptions and transitional arrangements below). The legislation only applies to applications submitted after the commencement date for that type of development.

The legislation takes precedence over our existing local policy requirements on BNG as local policy seeks an unspecified gain.

Developments that are exempt from demonstrating measurable BNG should still consider impacts on and take opportunities to enhance the natural environment as per local policy, the NPPF and under our duty to enhance the natural environment as set out in the NERC Act (2006). For example, by considering if protected species could be present and installing features such as integrated bat and bird boxes.

Aim of This Document

This document is intended to provide only a summary of the new BNG requirements and to provide further guidance on how internal LPA processes are anticipated to work at Milton Keynes City Council.

Whilst we have been implementing BNG through our local plans for some years, this new mandatory regime which commenced for major applications on 12th February 2024 and minor applications on 2nd April 2024 provides a new Statutory Framework for how we consider BNG in the planning process.

We recommend that you signpost applicants to our pre-application advice to enable early discussion on the BNG requirements for an application.

This document also sets out **additional guidance from Milton Keynes City Council Ecology Team on topics which can have local interpretation or variation to set out the Council's position.** These should be considered alongside the national guidance. This document does not repeat information available within national guidance, other than to provide an overview where particularly relevant to our own procedures.

Summary of the Environment Act 2021

Alongside the Environment Act 2021, the following Statutory Instruments have been introduced which form the mandatory BNG framework:

1. The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024
2. The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024
3. The Biodiversity Gain Requirements (Exemptions) Regulations 2024
4. The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024
5. The Biodiversity Gain (Town and Country Planning) (Modification and Amendments) (England) Regulations 2024
6. The Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024
7. The Biodiversity Gain Site Register Regulations 2024

Relevant amendments were also brought in via the Levelling-up and Regeneration Act 2023 and The Biodiversity Gain (Town and Country Planning) (Amendments and Transitional Provisions) (England) Regulations 2026.

Guidance on the legislation is provided by Government on the Gov.uk webpages and includes Planning Practice Guidance on:

- About biodiversity gain
- Biodiversity net gain: Submitting a planning application

- Determination of the planning application
- Submission of the Biodiversity Gain Plan
- Determination of the Biodiversity Gain Plan
- Appeals on a Biodiversity Gain Plan
- Phased development

Defra guidance is also available on:

- Introduction to BNG
- Combining payments (stacking and bundling)
- What counts towards BNG (additionality)
- Exemptions from BNG
- New Updated Statutory Biodiversity metric
- On-site and Off-site BNG
- Statutory biodiversity credits
- Securing gain sites (legal agreements)
- Biodiversity gain plan
- Habitat Management and Monitoring Plans

These guides can be found online here, and are being updated regularly:

<https://www.gov.uk/government/collections/biodiversity-net-gain>

Exemptions

The Government have confirmed that mandatory biodiversity net gain will, **in time, apply to all development that falls under the Town and Country Planning Act 1990** with the following exemptions:

- **Householder applications**
- **Permitted development** (including prior approval for class Q)
- **Biodiversity gain sites** (where habitats are being enhanced for wildlife)
- **Development no larger than 0.2 hectares (applies from 6 August 2026)**. Development is exempt where it is carried out on a site with an area no larger than 0.2 hectares and it does not impact an onsite priority habitat. This exemption applies only where the application for planning permission was made on or after 6 August 2026.
- **development impacting habitat area below a 'de minimis' threshold of 25 metres squared (5m by 5m), or 5m for linear habitats such as hedgerows and which doesn't include priority habitat**. Further guidance and examples on this are within the PPG.
- **Temporary development that is permitted for a period of 5 years or less (from 6 August 2026)**. Development is exempt where the whole of the development consists solely of temporary development and it does not impact an onsite priority habitat. This exemption applies only where the application for planning permission was made on or after 6 August 2026.
- **Urgent Crown development and development permitted by a development order**

- Development related to the **high speed railway** transport network (i.e. HS2)

Minor applications (those not falling into the category of major development) had a delay to the mandatory requirement until 2nd April 2024 so BNG local policy requirements apply to applications made before then.

The Self-build and custom build exemption was removed from the regulations by The Biodiversity Gain (Town and Country Planning) (Amendments and Transitional Provisions) (England) Regulations 2026 but continues to apply to applications made before 6th August 2026.

Self-build and custom build development (applies until 6 August 2026). Development which:

- consists of no more than 9 dwellings, and
- is carried out on a site which has an area no larger than 0.5 hectares, and
- consists exclusively of dwellings which are self-build or custom housebuilding as defined in section 1(A1) of the Self-build and Custom Housebuilding Act 2015.

See: <https://www.gov.uk/guidance/biodiversity-net-gain-exempt-developments>

National Infrastructure Projects

From 2nd November 2026, biodiversity net gain will become mandatory for National Infrastructure Projects. As this will be implemented through separate regulations, and thus, separate government guidance yet to be finalised at the time of writing, a separate guidance note will be provided for National Infrastructure Projects in due course.

Transitional Arrangements

This general commencement for applications does not apply to:

- retrospective planning permissions made under section 73A; and
- section 73 permissions where the original permission which the section 73 relates to was either granted before [12th February 2024] or the application for the original permission was made before [12th February 2024]

The Government have indicated that there will be amendment to the Framework in the future to enable BNG to apply to applications made under section 73A.

Biodiversity net gain has not commenced yet for planning permissions which have been granted through other routes to permission. These include:

- local development orders
- neighbourhood development orders
- successful enforcement appeals
- deemed planning permission

Local policies on BNG should continue to be a material consideration during a transition period and for types of planning permission not yet subject to the statutory framework.

The legislation only applies to applications made (submitted) after the commencement date for that application type. Applications submitted prior to that date will be required to comply with the local BNG policy only. Some key differences are:

- Local policy requires ‘a gain’ in biodiversity value, legislation requires a 10% gain,
- We can take a financial contribution to compensate for on-site losses under local policy, we cannot take a financial contribution to meet the legislative requirements,
- The legislative requirements include minimum information requirements to be submitted at validation, local validation requirements do not.

For ongoing applications submitted before the commencement date for the BNG legislation, local policy on BNG applies and you can refer to the Biodiversity SPD.

The PPG is clear that we should not apply local policy BNG requirements to schemes that would be exempt under the statutory framework.

Table 1. Key Differences between the Statutory Framework and local policy BNG

	Policy BNG (in SPD)	Statutory BNG Framework
Level of biodiversity gain	Required a net gain (any +%)	Requires 10% gain
Exemptions	None specified in policy but triggers for submitting a metric calculation were over 5 dwellings or non-residential over 1000sqm	Clearly set out within the legislation
Validation Requirements	No specific requirements	Statement and Minimum Information required to make a valid application
Decision Making	Greater emphasis on demonstrating how BNG will be achieved prior to decision making	Uses a pre-commencement condition to require a Biodiversity Gain Plan. At decision making we need to be satisfied the Plan will be capable of being discharged but don't need the details.
Other Conditions and legal agreements	Used to secure the provision of BNG as well as the long-term management of habitat	Used to secure the long-term management of habitat

Post Decision	Scheme specific	Must discharge the Biodiversity Gain Plan prior to commencement
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Please see the [PPG](#) for where it would or wouldn't be appropriate to apply local BNG policy now that the Statutory Framework is in place. It is unlikely to be appropriate to apply BNG policy to a scheme that is exempt under the Framework.

Applications for permissions in principle are not within the scope of the framework as they are not a development consent under the T&CPA 1990. The BNG Framework will apply to the technical details consent if not otherwise exempt.

Validation Requirements

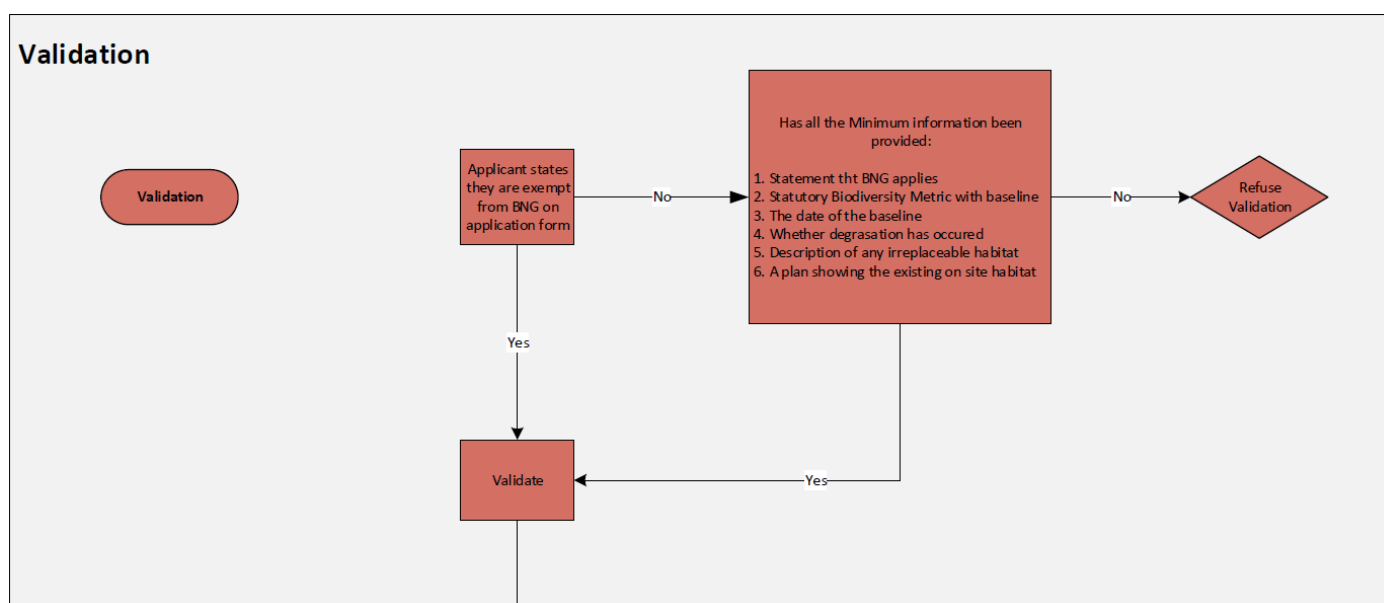


Figure 1. Extract from the BNG Decision Flowchart (full version in appendix)

The regulations require certain information to be submitted in relation to Biodiversity Net Gain. The legislation stipulates that **the LPA should not validate a submitted application which doesn't have either an Exemption Statement or the Minimum Information Requirements**. The validation requirements are the same for all application types.

Planning Application Forms (online versions) have been updated. The Validation Team should check that the most recent version of the application form has been used which includes specific questions on biodiversity net gain.

The new forms will enable the applicant to submit the minimum information requirements specified by the BNG legislation. Template application forms with BNG information can be found here: [Planning application and fire statement forms: templates - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/planning-application-and-fire-statement-forms-templates)

A Statement

The applicant must submit a statement if they believe their application is exempt (see above reasons) from BNG. **There is a tick box within the application forms with a drop-down list to select which exemption applies and a further box to add text to explain the reason for exemption.** If this has been provided correctly, then no further information is required.

Where the explanation doesn't match the exemption criteria, we can refuse to validate the application. For example, if they have selected the reason for exemption as meeting the de minimis exemption but the development would impact more than 25sqm of habitat. Or if they have selected the self-build exemption when the application is for market housing.

Householder application forms will be pre-populated with an exemption statement that the applicant must tick to confirm.

For small scale self-build or custom housing (submitted prior to 6th August 2026), we will need to be certain that the scheme meets this definition. The planning officer will be best placed to decide how this is best secured.

For applications below the 0.2ha threshold (submitted after 6th August 2026), we will need to be certain no priority habitats (which includes priority hedgerows) are to be affected by the proposals. The planning officer will be best placed to assess this but is encouraged to seek guidance from the Ecology Team if in doubt.

Exemption Checklist for Validation – is the stated exemption acceptable?

Reason: De-minimis

Basic check: check that the exemption reason on the application form relates to the area of habitat that is impacted by the scheme being less than 25sqm or less than 5m long for hedgerows or watercourse. More thorough check:

- 1) find the Baseline Habitat Plan and check if there are areas of the site which have a biodiversity value (i.e. anything that isn't a sealed surface or an artificial, unvegetated surface). If yes:
- 2) find the proposed plans and check if any development will impact the habitats, either directly or via the construction area, if yes;
- 3) It is unlikely the exemption would apply, we should request the minimum BNG information be provided before validating an application.

Note: this exemption does not apply if any priority habitat is affected, even if it is under the de-minimis threshold limits. If in doubt, contact the Ecology Team for advice.

Reason: Self-build (for applications submitted before 6th August 2026)

Basic check: check that the applicant has checked the self-build box on the application form under the type of development question. The planning officer may ask for additional information to prove the development meets the custom / self-build criteria.

Reason: Below 0.2ha threshold (for applications submitted after 6th August 2026)

Basic check: check that the exemption reason on the application form states site is less than 0.2ha in size. More thorough check:

- 1) check site size within the redline boundary is below 0.2ha in size. If yes:
- 2) check if any priority habitats (including priority hedgerows) are to be impacted by the proposals. Some Priority Habitats (with the exception of hedgerows) are mapped on [MAGIC](#) and on council Statmap Earthlight GIS mapping. If yes:
- 3) It is unlikely the exemption would apply, we should request the minimum BNG information be provided before validating an application.

A Priority Hedgerow is defined as a boundary line of trees or shrubs over 20 meters long, less than 5 meters wide, with gaps under 20 meters, and consisting predominantly (80% or more) of native woody species (see Schedule 3 of Hedgerow Regulations 1997).

Reason: Temporary Application (for applications submitted after 6th August 2026)

Basic Check: check that the exemption reason on the application form states the application comprises solely of temporary development (for five years or less). More thorough check:

- 1) check whole development consists of temporary development (for five years or less). If yes:
- 2) check if any priority habitats (including priority hedgerows) are to be impacted by the proposals (e.g. removal of over 5m of hedgerow for access). Some Priority Habitats (with the exception of hedgerows) are mapped on [MAGIC](#) and on council Statmap Earthlight GIS mapping. See above for definition of Priority Hedgerow. If yes:
- 3) It is unlikely the exemption would apply, we should request the minimum BNG information be provided before validating an application.

Reason: Biodiversity Gain Sites

Basic Check: That they mention, or that you check that the site has been registered on the national Biodiversity Gain Site Register: <https://www.gov.uk/guidance/search-the-biodiversity-gain-sites-register>.

Minimum Information Requirements

Table 2. Minimum information requirements and where to find them.

Information Requirement	Where to find it	Checks at Validation
The date used to calculate the pre-development biodiversity value of the on-site habitat.	Application form – date box	check that any degradation has been accounted for
The pre-development biodiversity value (this will be a number of units e.g. 10 habitat units)	Application form – text box Could also be within the submitted document: • Biodiversity metric calculation tool	NA
Statement as to whether there has been any loss (or	Application form – tick boxes	[Optional] Check GIS to see the site history

degradation) of any on-site habitat		check that any degradation has been accounted for
Explanation of above degradation (where relevant)	Application form – text box Could also be within the submitted document: • Biodiversity statement	NA
The publication date of the biodiversity metric used This must be the Statutory Metric	Application form – text box Could also be within the submitted document: • Biodiversity metric calculation tool	Check that the Statutory Metric has been used: the start page will be clearly titled and/or it will be listed on the application form.
Completed biodiversity metric (for the pre-development biodiversity value) including the publication date and version of metric used (metrics can be downloaded from the gov.uk website)	Supporting .xlsx document titled: • Biodiversity metric calculation tool	Check that an .xlsx file has been submitted and that the starting page is titled 'Statutory Metric'
Description of any on-site irreplaceable habitats 'on land to which the application relates'	Application form and/or Supporting document, either: • Onsite irreplaceable habitat details Or within: • Biodiversity statement • Baseline onsite habitat survey report (Pre-development) • Other Ecology report	NA
Scaled plan with North identified showing on-site habitat on the date of application including irreplaceable habitat	Supporting document, either: • Baseline onsite habitat map/plan (Pre-development) Or within: • Biodiversity statement	Check supporting documents have been submitted.

	• Other Ecological report	
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The expectation is that Validation Teams will check if an applicant has completed the Biodiversity Net Gain section of the application form, and any relevant supporting documents are present. If not, that a relevant reason (see above section) for exemption has been provided within the application form.

A Note on Biodiversity Metrics

There are two versions of the statutory biodiversity metric. The full version and a 'Small Sites Metric (SSM)'. Any development can use the full version of the biodiversity metric. The SSM has requirements for when it is allowed to be used which includes only minor development which doesn't impact protected habitats or species (please see full details on the Gov.UK website). The purpose of the SSM is to offer a simplified option with reduced competency requirements, however if a net gain can't be achieved on site then often the full metric needs to be completed to work out how many off site units are required.

More information and links to the statutory metric can be found here: [Calculate biodiversity value with the statutory biodiversity metric - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/calculate-biodiversity-value-with-the-statutory-biodiversity-metric)

Decision Making (Application Stage)

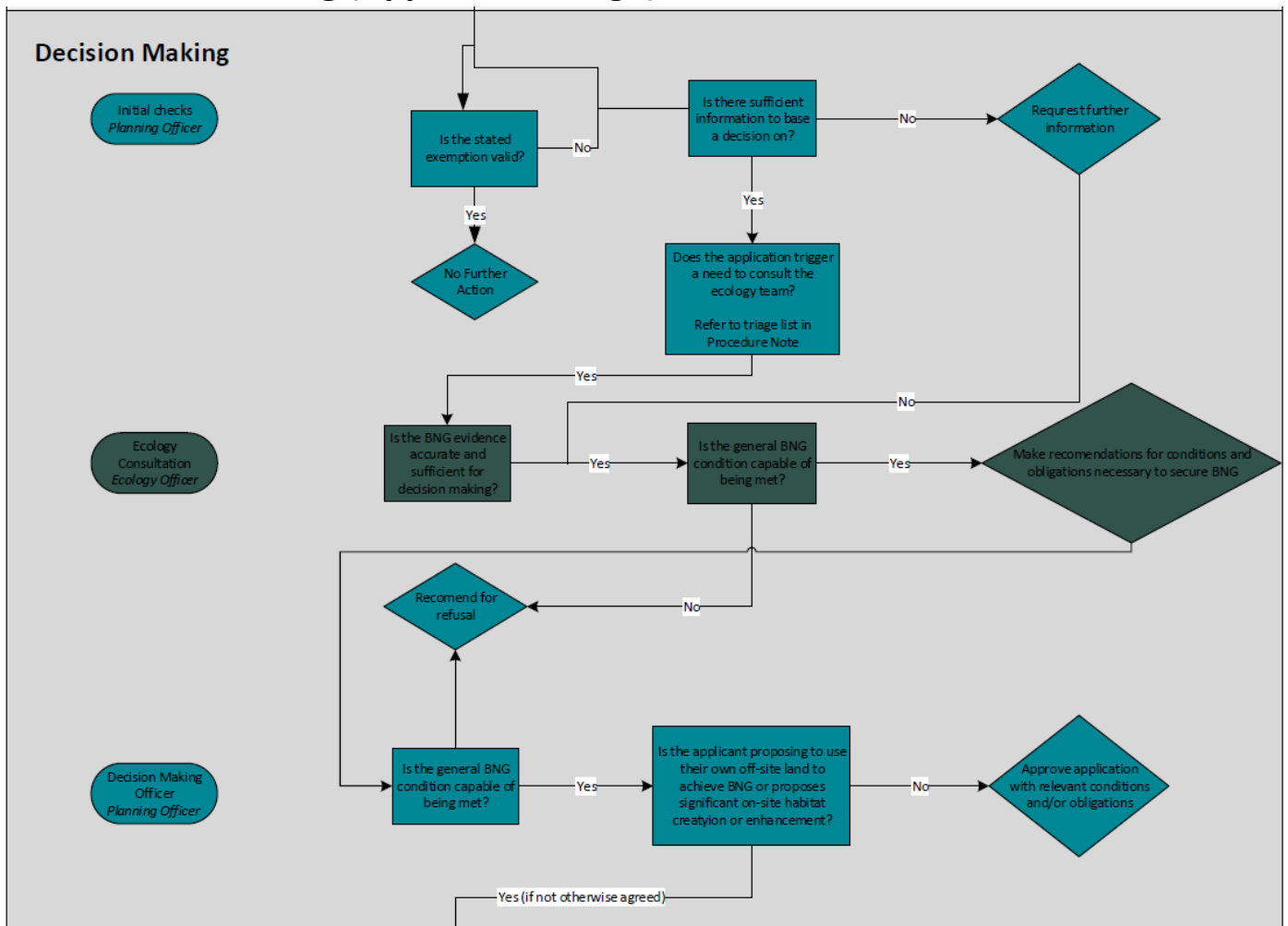


Figure 2. Extract from the BNG Decision Flowchart (full version in appendix)

When to Consult the Ecology Team

NOTE: The advice below regarding our triaging approach to when to consult the ecology team will be kept under review to ensure it is working effectively and that the Ecology Team have adequate capacity to fulfil consultations.

Continue to consult the Ecology Team as normal in relation to protected species, protected sites, or habitats and other Ecology issues. Where the Ecology Team has been consulted, they should cover BNG alongside other ecological features.

Full Biodiversity Metric

Where a development application is required to submit a full biodiversity metric (most major applications but see below criteria) then the Ecology Team should be consulted to review whether Biodiversity Net Gain can be achieved. The full biodiversity metric requires a competent person, such as an ecologist to complete and review.

Small Sites Metric

Some types of development (minor applications with no priority habitat or protected species on-site) can use the 'small sites metric' (SSM) which is a simplified version of the metric and doesn't require as much technical input. **Where applicants have submitted a small sites metric, it is possible for the Case Officer to review and approve it.**

The Ecology Team should be consulted in the following instances:

- For reviewing all full biodiversity metrics;
Where there is a small sites metric:
- The site has other ecological constraints (e.g. protected species, irreplaceable habitats, priority habitats or sites)
- The biodiversity metric is not evidencing 10% gain (after the compensation has been proposed),
- The biodiversity metric is showing flagged errors (red cells and amber) that cannot be justified (for example, errors will show if the post-development section has not been completed, but this may not be known at this stage.)),
- The planning officer has concerns which require technical assistance.

Planning Officers are reminded that the Ecology Surgery is run by the Ecology team every other Wednesday at 2pm. Planning officers are welcome to talk through any concerns or questions they have relating to BNG or any other ecology issues. The Ecology team is also happy to provide training on BNG or the small sites metric.

Consulting the Aerodrome Operator

If habitat is being proposed within a bird strike consultation area we need to consult the relevant aerodrome operator.

Reviewing the Biodiversity Net Gain Information

We recommend that the following are considered at decision-making. For some applications the Planning Officer may consider these, and for others the Ecology Officer will input to the decision-making.

- Is the biodiversity baseline accurate and has the correct relevant date been used for the baseline? (i.e. there is no recent degradation of the site – [PAS have more information on degradation here](#))
- Are any stated exemptions accurate?
- Has the minimum information been provided satisfactorily?
- Has the Mitigation and Biodiversity Gain hierarchies been applied? Is there an appropriate balance between on-site and off-site habitat?
- Is habitat proposed on-site? If it is 'significant' how will we legally secure its management for 30 years? It is good practice to see a draft Habitat Management and Monitoring Plan at

this stage to help with these decisions ([Habitat Management and Monitoring Plan Template - JP055 \(naturalengland.org.uk\)](#)).

- Is any proposed habitat appropriate taking into account other policies to support biodiversity?
- What planning conditions or S106 obligations may be required?
- What subsequent approvals may be necessary (e.g. for outline apps)?

[Paragraph: 019 Reference ID: 74-019-20240214](#) of the PPG has further guidance on decision making.

What goes on the Written Decision Notice?

As the general BNG condition is applied by separate legislation it does not get listed along with other conditions on the decision notice. **Explanatory wording must be written on the decision notice. When granting planning permission, Article 24 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 requires the decision notice to include information setting out:**

- that every planning permission granted for the development of land in England shall be deemed to have been granted subject to the general biodiversity gain condition
- the exemptions to the condition, and transitional provisions in relation to that condition
- the planning authority for the purposes of the Biodiversity Gain Plan; requirements relating to irreplaceable habitats; the exemptions to the condition, and transitional provisions in relation to that condition; and
- where development is to proceed in phases, that development cannot commence before an Overall Biodiversity Gain Plan and a Phased Biodiversity Gain Plan have been submitted to and approved by the local planning authority.

Model wording has been provided by Government (available here:

<https://www.gov.uk/guidance/biodiversity-net-gain>). It is being uploaded into Uniform as an Informative.

Other Conditions which may be Required

Significant on-site habitat

On-site habitat that are considered to contribute towards 'significant' biodiversity gain (termed significant on-site enhancements or significant onsite gains) must be legally secured with management agreed for at least 30 years. This could be via planning condition, obligation or conservation covenant with a third-party responsible body. It is for us as an LPA to decide the most appropriate mechanism at planning permission stage.

We must take a contribution where we consider there is the need for us to monitor the ongoing creation and/or enhancement of the habitat(s). We can only take a biodiversity monitoring contribution via s.106. We have a biodiversity monitoring calculator to work out this fee which is based on the size of the habitat site and the difficulty of the habitat(s) to create, which can be found within the biodiversity metric. Please ask the Ecology Team if you would like a copy of this.

The Government BNG Guidance states:

What counts as a significant enhancement will vary depending on the scale of development and existing habitat, but these would normally be:

- *habitats of medium or higher distinctiveness in the biodiversity metric*
- *habitats of low distinctiveness which create a large number of biodiversity units relative to the biodiversity value of the site before development*
- *habitat creation or enhancement where distinctiveness is increased relative to the distinctiveness of the habitat before development*
- *areas of habitat creation or enhancement which are significant in area relative to the size of the development*
- *enhancements to habitat condition, for example from poor or moderate to good*

Examples of significant enhancements include creating a wildlife pond or a nature park.

<https://www.gov.uk/guidance/biodiversity-net-gain>

We suggest the following criteria for significant onsite enhancements is applied in Milton Keynes:

- Creation, enhancement, or retention, of habitats assigned medium distinctiveness or higher in the Statutory Biodiversity Metric; or
- Creation or enhancement of low distinctiveness habitats (excluding units delivered from by vegetated gardens) where;
 - the combined number of units delivered is equal to or greater than 0.5 units; and/or
 - the combined number of units is equivalent to 10% or more of the baseline biodiversity unit value of the site.

Significant Onsite Enhancements – Planning Condition or S106?

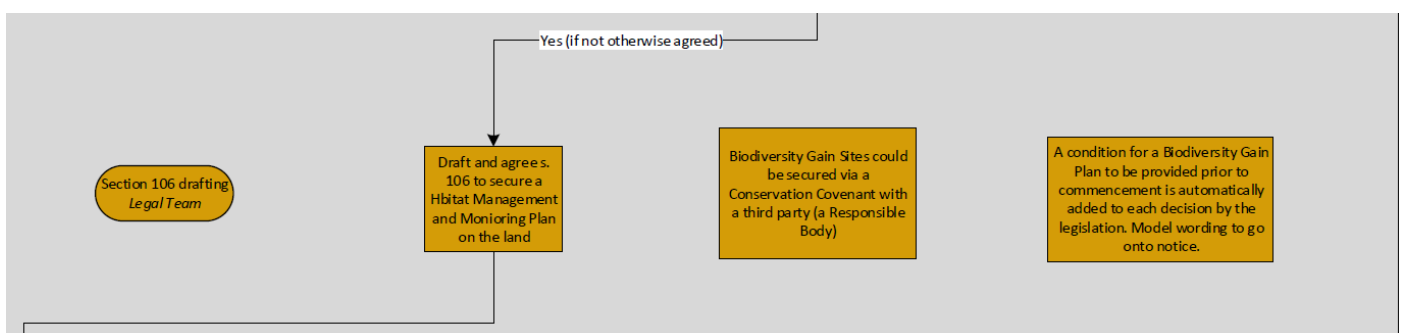


Figure 3. Extract from the BNG Decision Flowchart (full version in appendix)

[This section will be kept under review as we gain experience in the matter.]

The following would almost certainly require a s.106:

- When the applicant wishes to use extra biodiversity units generated on-site for other project(s)
- To take a Biodiversity Monitoring Contribution for us to monitor the site via the review of monitoring reports set to us and/or site visits. A fee calculator is available from the Ecology Team.

Monitoring Management of Significant Onsite Enhancements

A degree of professional judgement will be required for each individual case. The Ecology Team should be consulted where the proposal is for any of the following as these are likely to be considered significant and require monitoring:

- all major planning applications
- minor applications proposing to create or enhance high or very high distinctiveness habitats of any condition.
- minor applications proposing to create or enhance medium distinctiveness habitats to good condition.
- minor applications proposing to create or enhance over 0.1ha of medium distinctiveness habitats to a poor or moderate condition.

The following are likely to be considered significant but can be secured via condition (monitoring would not be required):

- Habitats proposed as part of green infrastructure at the site with a main objective that isn't biodiversity (such as SUDS, road verges and street trees) but where there is a biodiversity value.
- Habitats of low distinctiveness which create a large number of biodiversity units relative to the biodiversity value of the site before development.

For applications where a s.106 is required for other planning obligations, it may be beneficial to add Biodiversity Net Gain to it.

Suggested Condition Wording (in addition to the statutory condition)

To secure on-site, significant, habitat enhancements by requiring a Habitat Management and Monitoring Plan.

The development shall not commence until a [Habitat Management and Monitoring Plan (the HMMP)], prepared in accordance with the approved [refer to the Biodiversity Gain Plan or landscape plans showing where the habitats will be] and including:

(a) a non-technical summary;

(b) the roles and responsibilities of the people or organisation(s) delivering the [HMMP];

(c) the planned habitat creation and enhancement works to create or improve habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan;

(d) the management measures to maintain habitat in accordance with the approved [Biodiversity Gain Plan/Landscape Plan] for a period of 30 years from the completion of development

has been submitted to, and approved in writing by, the local planning authority

The created and/or enhanced habitat specified in the approved [HMMP] shall be managed and maintained in accordance with the approved [HMMP].

Reason: To ensure the development delivers a biodiversity net gain on site in accordance with Schedule 7A of the Town and Country Planning Act 1990 [and policy []]

Decision Making (Reserved Matters and Condition Discharge)

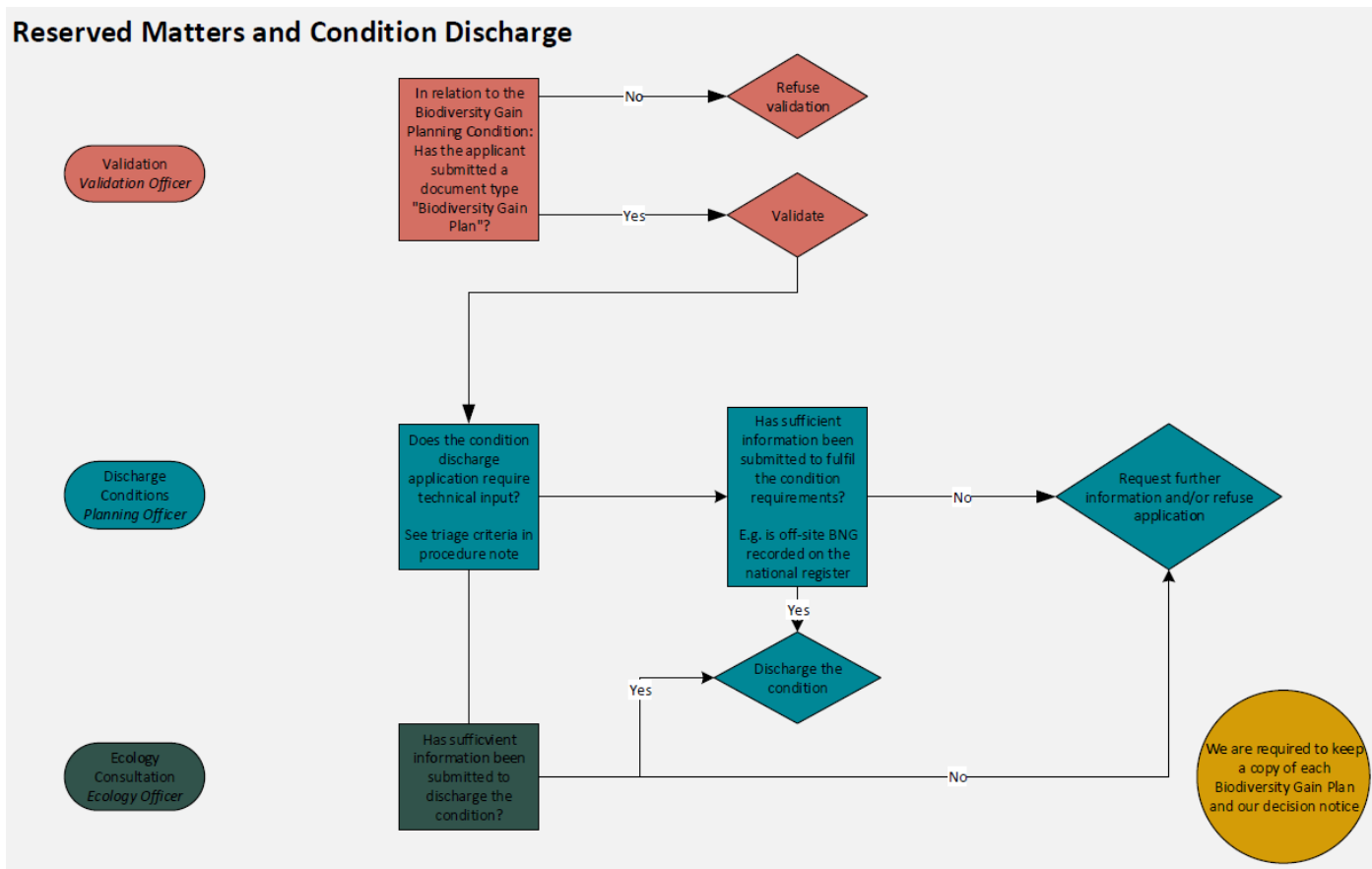


Figure 4. Extract from the BNG Decision Flowchart (full version in appendix)

Validation

A developer must submit the Biodiversity Gain Plan in writing. The supporting document type 'Biodiversity Gain Plan' should accompany the application. Other supporting documents may also be submitted as relevant to the development (e.g. HMMP).

Discharging the Biodiversity Gain Plan Condition

The legislation requires every development (if not exempt) to apply to discharge the general biodiversity condition prior to commencement of development. The Biodiversity Gain Plan Condition cannot be discharge prior to the permission being issued (the earliest point is the day after granting permission).

The Government has produced a template Biodiversity Gain Plan. It is not a legal requirement for applicants to use the template, but we should strongly encourage it's use as it makes reviewing the plans easier. The legislation sets out what must be included within a Biodiversity Gain Plan; this can be found within [biodiversity net gain planning practice guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/biodiversity-net-gain-planning-practice-guidance).

When to consult the Ecology Team on a Biodiversity Gain Plan (BGP)

Note: this section will be kept under review to ensure that the Ecology Team can meet consultation deadlines

Some Biodiversity Gain Plans can be reviewed by Planning Officers and won't need technical expertise. When any of the following apply, the Ecology Team should be consulted:

- All BGPs for major applications and phased development
- For minor applications, when:
 - The on-site habitat has been legally secured (i.e. significant habitat) via condition or obligation or conservation covenant,
 - The scheme requires the use of off-site biodiversity units.

To be able to discharge the general biodiversity net gain condition, the applicant must:

- have met the biodiversity gain objective (a 10% gain in biodiversity value) AND
- have all on-site and offsite habitat identified, legally secured and registered (as necessary) and any statutory credits purchased before applying to discharge this condition.

See appendix 3 for more information on reviewing and discharging a Biodiversity Gain Plan.

Securing off-site biodiversity (Biodiversity Gain Sites)

Biodiversity units from Biodiversity Gain Sites must meet a number of criteria to be able to be used in a Biodiversity Gain Plan. They must:

1. be legally secured via a s.106 agreement or Conservation Covenant,
2. be registered on the national Biodiversity Gain Site Register,
3. the biodiversity units should be allocated to the development on the national register

We can [Search the biodiversity gain sites register - GOV.UK \(www.gov.uk\)](https://www.gov.uk/search/biodiversity-gain-sites-register) to check that Biodiversity Gain Sites are registered before discharging the Gain Plan.

Where an applicant uses a Habitat Bank (third party Biodiversity Gain Site) then the above will have been done by the landowner or broker and the applicant will be issued with a certificate of sale. They should still submit a completed biodiversity metric showing the purchased offsite units and we can still check the national register to ensure that the units have been allocated to the development.

Instructing an s106 for BNG

The Legal Team have templates for the above scenarios and should be instructed in the normal way where the Biodiversity Gain Site is directly linked to a planning application. See appendix 4 on the roles and responsibilities in relation to a s.106 for BNG.

Once signed, the Ecology Team should be notified of the s.106 to add to their database for monitoring and reporting.

Landowners Wishing to put forward a Biodiversity Gain Site

Where the potential biodiversity gain site is not under the control of the applicant, the landowner will need to enter into an s106 agreement or conservation covenant in order to register the site on the national register. If the intention is to enter into an s106 agreement with the council, then a draft heads of terms will need to be provided with the relevant planning application in order for the s106 to be drafted (as above).

If a landowner wishes to create a habitat bank and wants to enter into an s106 with the council in order to register it on the national register, then the landowner should contact the ecology team who will consider the site on a case-by-case basis and liaise with the Legal Team as appropriate.

Further advice to landowners on how to access nature markets including BNG can be found here: <https://www.greenfinanceinstitute.com/gfihive/farming-toolkit/>

Statutory Credits

As a last resort a developer can purchase statutory biodiversity credits from the Government. They can only be purchased when BNG cannot be achieved on-site and where there are no suitable biodiversity units available on the market.

Before a developer purchases statutory credits, they should check with the LPA that we are satisfied that there are no suitable units available on the open market. For this, we would need written evidence from at least three registered habitat banks confirming no suitable units are available.

It is not easy and often impossible for the developer to get a refund of statutory credits if they are purchased in error. This should be done as part of the application to discharge the BGP.

Further guidance can be found here: <https://www.gov.uk/guidance/statutory-biodiversity-credits#How-to-prove-statutory-credits-are-needed>

The developer will receive a proof of purchase that they will need to submit with their biodiversity gain plan.

Enforcement

This section is awaiting further guidance.

Where to Direct an Enforcement Request?

Where the issue relates to a breach of planning condition it should be referred to the Enforcement Team. They may request the help of an Ecology Officer.

[Report it: planning enforcement | Milton Keynes City Council](#)

Where the breach relates to a non-financial issue of the s.106 it should be referred to the Enforcement Team with the s.106 team cc'ed.

Where the issue relates to a financial breach of a s.106 it should be referred to the s.106 team. They may request the help of an Ecology Officer or the Legal Team.

It may be necessary to register the breach on the land charges register, but normally only after they have been given opportunity to rectify the issue.

Where to find BNG training, resources, help and support.

Planning Advisory Service (PAS) resources

BNG Frequently Asked Questions (two separate pages):

<https://www.local.gov.uk/pas/environment/biodiversity-net-gain-local-authorities/biodiversity-net-gain-faqs-frequently-asked>

<https://www.local.gov.uk/pas/environment/biodiversity-net-gain-bng-local-planning-authorities/bng-applications-topics>

PAS also host a BNG Forum hosted on 'Basecamp' which you can sign up to. There are training videos, templates and lots of technical discussions. The link to join is here: [Form to join BNG basecamp](#)

[PAS have also shared some videos on a number of BNG topics here:](#)

<https://www.youtube.com/@paswebmaster>

Biodiversity Metric Training

PAS webinar on the biodiversity metric:

PAS have a webinar on the Biodiversity Metric:

<https://www.youtube.com/watch?v=2B9kogEZeEY>

Habitat Management and Monitoring Plan for BNG

The templates are available here: [Habitat Management and Monitoring Plan Template - JP055 \(naturalengland.org.uk\)](#)

Natural England Enquiry Email

[\(for general enquiries only they will not respond in relation to a specific application\):](#)

BiodiversityNetGainEnquiries@naturalengland.org.uk

In-house Ecology surgery every other Wednesday at 2pm

The Ecology Officers run an Ecology surgery every other Wednesday at 2pm for any questions or queries relating to ecology or BNG. Any case can be discussed regardless of whether there has been a formal consultation or not.

Contact details

Officer	Position	Contact Details
Phil Snell	Strategic Landscape and Countryside Manager	phillip.snell@milton-keynes.gov.uk
Diane Evans	Ecology Officer	Diane.Evans@Milton-keynes.gov.uk
Kate Parsons	Ecology Officer	kathryn.parsons@milton-keynes.gov.uk
Jonny Ball	Countryside Officer	jonathan.ball@milton-keynes.gov.uk
Penelope Airs	Countryside Officer (GCN Licence)	penelope.airs@milton-keynes.gov.uk

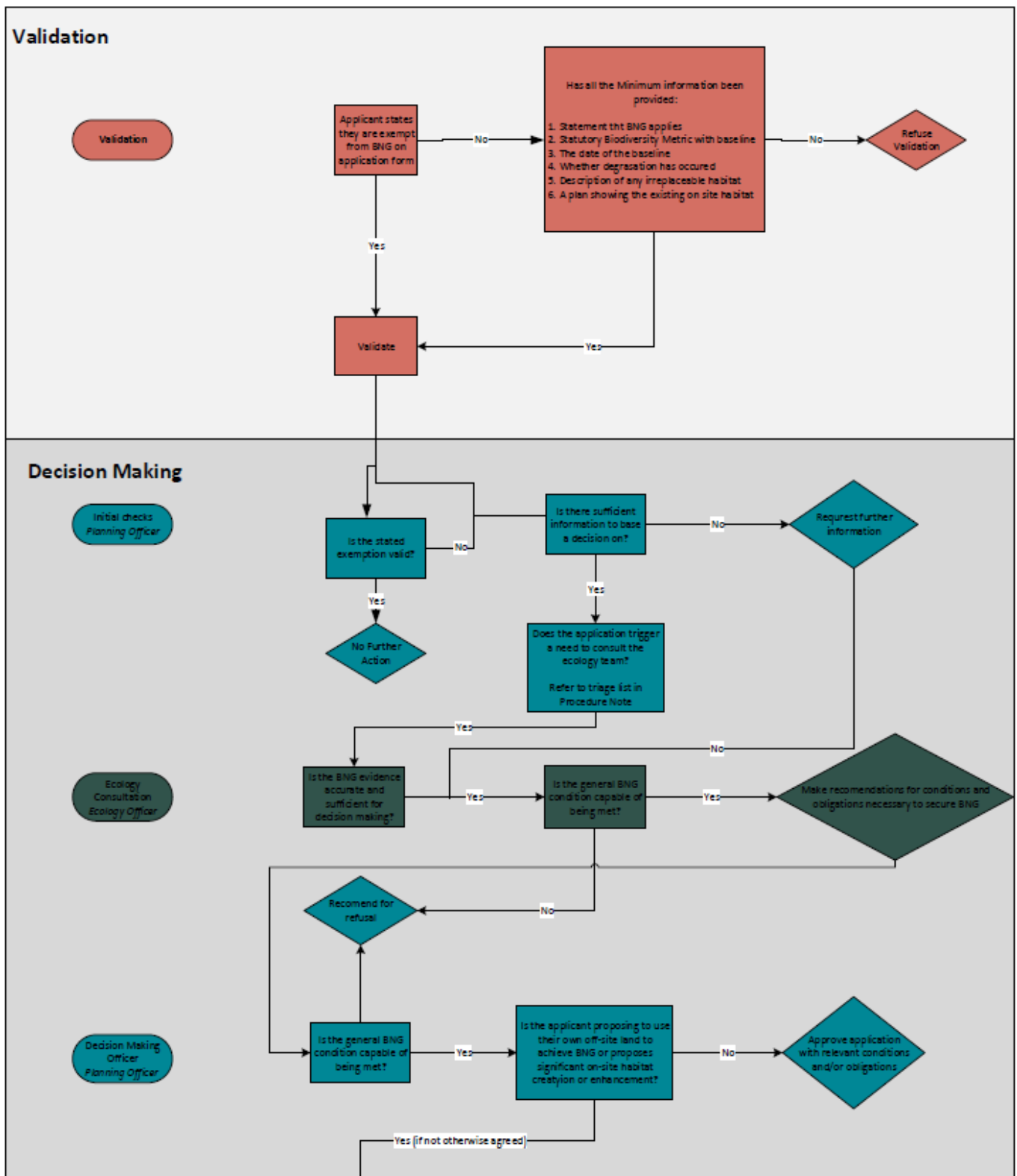
Glossary

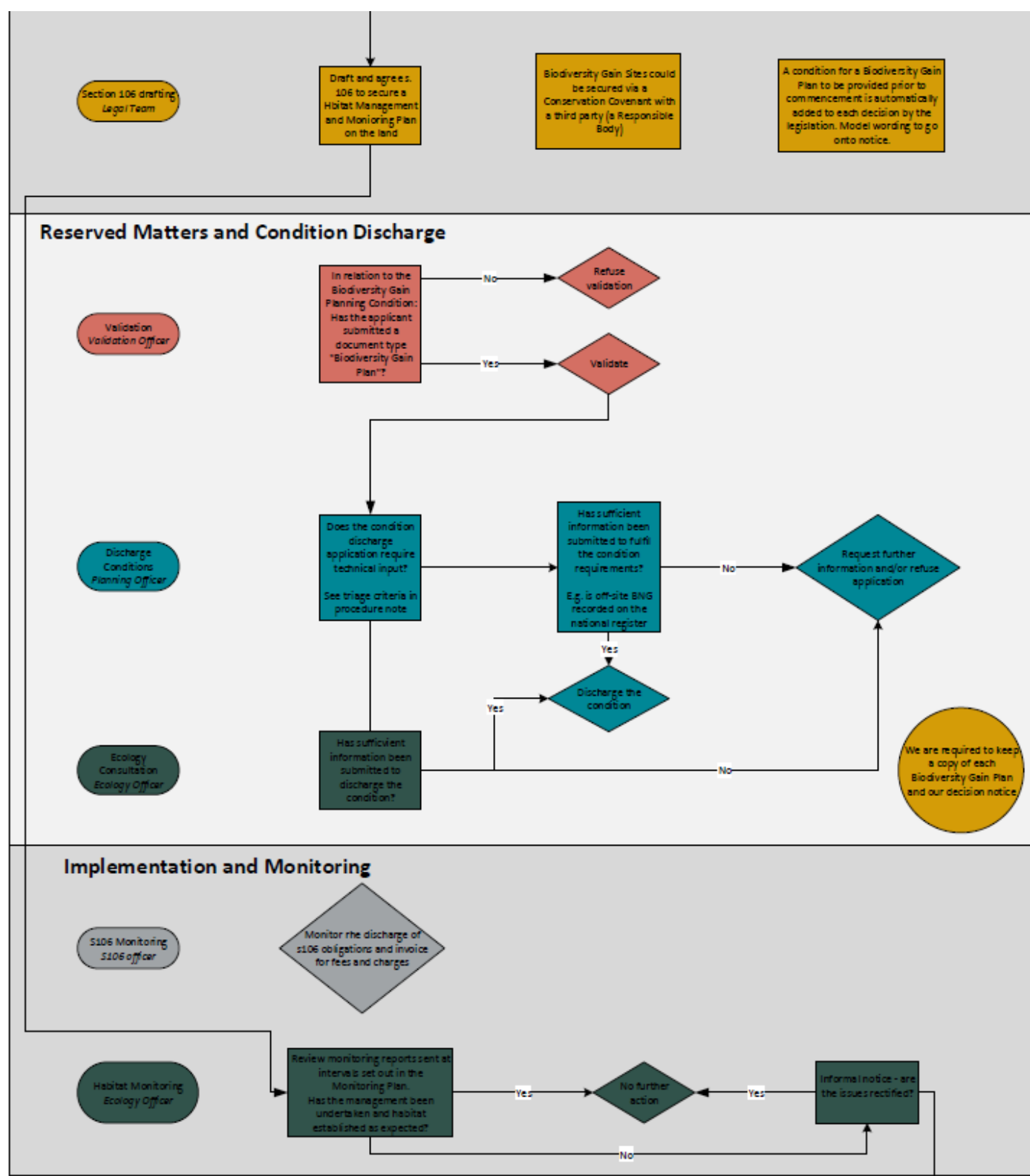
Biodiversity Gain Objective	To deliver at least a 10% increase in relation to pre-development biodiversity value
Biodiversity Gain Hierarchy	The Biodiversity Gain Hierarchy (which planning authorities must take account of when determining the Biodiversity Gain Plan) emphasises that onsite biodiversity gains should be considered first followed by registered offsite biodiversity gains and – as a last resort – biodiversity credits.
Biodiversity Gain Plan (BGP) (referred to as a ‘standard Biodiversity Gain Plan’ later in the PPG)	<i>Sets out how the biodiversity gain objective of at least a 10% gain will be met.</i>
Biodiversity Gain Site	Off-site land delivering biodiversity units
Biodiversity Gain Site Register	Established under section 100 of the Env Act 2021 for registered off-site gains . This will be operated by Natural England Search the biodiversity gain sites register - GOV.UK (www.gov.uk)
Biodiversity Metric	A calculation tool in Excel which calculates the biodiversity value of a site and the resulting change following any development scheme. There are two versions; a full biodiversity metric which requires a competent person to complete it and a simplified ‘Small Sites Metric’ which can only be used in some instances.

General Biodiversity Condition or Biodiversity Gain Condition	Is a pre-commencement planning condition imposed on all planning permissions to secure the biodiversity gain objective (unless exempt).
Minimum national information requirements for BNG Also known as National Information Requirement	The minimum information that must be submitted with a planning application for it to be considered valid, where the scheme required to demonstrate the biodiversity net gain objective.
Overall Biodiversity Gain Plan	Is a modified version of the standard Biodiversity Gain Plan specifically for phased developments. Sets a clear framework for how at least 10% BNG can be met across the entire site. A national template should be published in due course.
Phase Biodiversity Gain Plan	A gain plan for EACH phase that needs to be submitted to and approved BEFORE development of that phase can start. A national template should be published in due course.
Post-development Biodiversity Value	The biodiversity value anticipated to result from the development scheme.
Pre-development Biodiversity Value	The biodiversity value at the Relevant Date (see definition below), designed to prevent unauthorised habitat degradation as a result of planning application.
Relevant Date	The date at which <u>the pre-development BNG value is calculated.</u> Usually this will be the date planning permission is granted. However the LPA can agree an earlier date but it <u>must not be before 01 Jan 2020.</u> If unauthorised habitat degradation (see below) has occurred, the Relevant Date needs to be immediately before the habitat degradation. If there is insufficient evidence to determine a precautionary approach should be adopted – i.e. highest biodiversity value which is reasonably supported by available evidence
Unauthorised Habitat Degradation	Any unauthorised degradation of on-site habitat between 30 January 2020 and the submission date of the planning application. This has been defined as anything that ‘is not in accordance with a previous planning permission’.

	If activities to implement or in connection with a planning permission are carried out after 25 August 2023 that lower the biodiversity value of the onsite habitat, the pre-development biodiversity value of the onsite habitat is taken to be the biodiversity value immediately before the carrying out of the activities.
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Appendix 1: BNG Application Journey and Officer Responsibilities Flow Chart





Enforcement

Enforcement
Enforcement officer

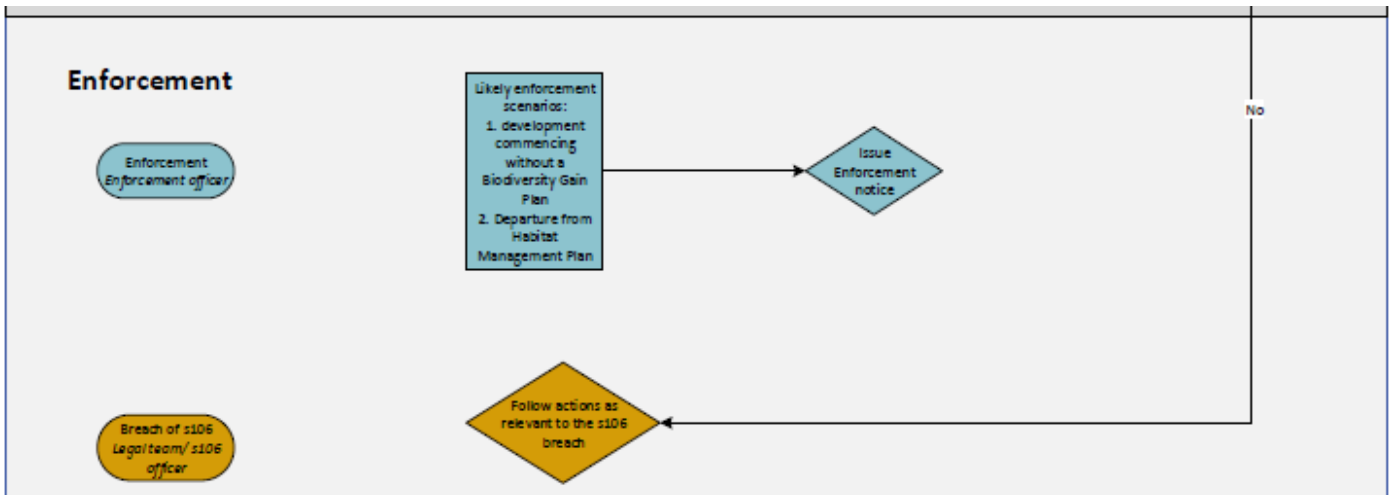
Likely enforcement
scenarios:
1. development
commencing
without a
Biodiversity Gain
Plan
2. Departure from
Habitat
Management Plan

Issue
Enforcement
notice

Breach of s106
Legal team/ s106
officer

Follow actions as
relevant to the s106
breach

No



Appendix 2: Guide to Discharging a Biodiversity Gain Plan

The Government has published templates for a Biodiversity Gain Plan, the use of which is encouraged but not mandatory. They can be found here:

<https://www.gov.uk/government/publications/biodiversity-gain-plan>

Paragraph 039 of the BNG PPG explains what is considered when determining the Biodiversity Gain Plan, it states:

Under paragraph 15 of Schedule 7A, the planning authority must only approve the Biodiversity Gain Plan if they are satisfied that:

- *the pre-development biodiversity value of the onsite habitat is as specified in the plan;*
- *the post-development biodiversity value of the onsite habitat is at least the value specified in the plan;*
- *in the case where the registered offsite biodiversity gain is specified in the plan, as allocated to the development:*
- *the registered offsite biodiversity gain is so allocated (and, if the allocation is conditional, that any conditions attaching to the allocation have been met or will be met by the time the development begins), and*
- *the registered offsite biodiversity gain has the biodiversity value specified in the plan in relation to the development;*
- *that any biodiversity credits specified in the plan as purchased for the development have been so purchased; and*
- *the biodiversity net gain objective is met.*

In addition, in determining whether to approve the plan, a planning authority must take into account how the Biodiversity Gain Hierarchy will be followed, and any reasons where it cannot be followed (except in relation to irreplaceable habitats where the Hierarchy does not apply).

If a planning authority makes a determination not to approve the Biodiversity Gain Plan, the decision notice must state clearly and precisely their full reasons for the determination, specifying all elements of the biodiversity gain plan which are relevant to the determination.

The applicant has the right to appeal the non-determination or refusal of the Biodiversity Gain Plan.

This requires review of the following, a summary of which should be within the BGP template:

For all schemes:

1. **A Biodiversity metric**, in excel form, is fully completed with **no errors flagged** showing the 10% gain has been met in each of the three biodiversity types (habitat, hedgerow and watercourse)
 - a. This should be accompanied by a baseline habitat survey report and
 - b. (where relevant) condition assessment sheets and
 - c. A plan of the baseline habitats

- d. A plan of the habitats to be created or enhanced, we may be a reference to another document (such as a Landscape Plan)

If they have submitted the Small Sites Metric then you should check that it is suitable to use: [Statutory biodiversity metric tools and guides - GOV.UK \(www.gov.uk\)](https://www.gov.uk/statutory-biodiversity-metric-tools-and-guides). It should only be used for minor applications which don't include priority habitat or protected species within the site.

2. Consideration of whether the proposed habitat enhancements are '**additional**' see the guidance on [Find out what you can count towards a development's BNG](#)
3. Consideration of how the BNG mitigation hierarchy has been followed. See PPG on BNG Paragraph: 008 Reference ID: 74-008-20240214. There should be evidence that adverse effects to the higher distinctiveness habitats have been avoided, and where they can't be avoided they are mitigated. In relation to all habitats adverse effects should be compensated for, prioritising the creation or enhancement of on-site habitat.

For schemes with on-site habitat enhancements that are considered 'significant': [Biodiversity net gain - GOV.UK \(www.gov.uk\)](#) also see section above.

4. That the enhancements are **legally secured**:

Where off-site land is used:

5. That it is on the national Biodiversity Gain Site Register

We should check that any off-site biodiversity units are showing as allocated to the development on the national register: [Search the biodiversity gain sites register - GOV.UK \(www.gov.uk\)](#). These should match what has been entered into the submitted biodiversity metric.

It is insufficient for a developer to only demonstrate they have contracted for the sale of biodiversity units with the provider of a registered Biodiversity Gain Site, as the PPG requires the LPA to be satisfied that the units have been allocated to the development, and if they are conditionally allocated, that such conditions will be met, before they can approve the biodiversity gain plan and discharge the mandatory BNG condition.

As a result, applicants should provide the following with their BGP:

- *Either evidence that the allocation has been registered on the NE biodiversity gain site register; OR a copy of the NE email confirming that an application for registration of an allocation has been validly made and has been accepted; AND*
- *Either a certified copy of a (redacted) contract between the developer and the gain site provider whereby the developer has agreed to pay the full cost of the units to be allocated before the date that the planning permission would expire if not implemented; OR written confirmation that the full cost has already been paid and the allocation is not conditional.*

Where statutory credits are being used:

6. That there is proof of their purchase

The applicant must contact the LPA prior to purchasing statutory credits in order to get written confirmation that we agree there are no alternative options and that we are happy for credits to be purchased. It is likely to be difficult (if not impossible) to obtain a refund after purchasing if credits are purchased in error.

Where the applicant wants to allocate excess biodiversity units to other developments

7. That it is clear which units have been allocated to this development scheme

Note: they will require the habitats to be legally secured via s.106 or conservation covenant and registered on the national gain site register before they can be used for other development.

Appendix 3: Internal Guide on Responsibilities of different Teams regarding instructing a s106 for BNG

Previous versions of the BNG s.106 template are obsolete for mandatory BNG as the legislation has different legal implications/requirements to local policy. **We cannot take a contribution for mandatory BNG, the legislation doesn't allow it.**

The Legal Team have three s.106 templates that relate to BNG for post mandatory applications:

1. Template to secure 'significant' on-site habitat enhancement which is being proposed as part of the development scheme prior to decision making.
2. Template to secure an off-site Biodiversity Gain Site which is being proposed as part of the development scheme prior to decision making.
3. A template for Habitat Banks (large Biodiversity Gain Sites which sell biodiversity units to developers) which is not associated with any particular planning application prior to the site being registered on the national Biodiversity Gain Site Register.

The purpose of this guide is in relation to instructing a s.106 as part of the planning application process (template 1 & 2), to set out what the roles of the **Ecology Officer**, **Planner** and **Legal Team** in drafting the agreement.

Ecology Officer

- Identify on-site habitat that is defined as 'significant' in biodiversity net gain terms and which would require a monitoring plan.
- To check that any proposed off-site Biodiversity Gain Site is fit for purpose.
- To provide the Biodiversity Monitoring Fee as per our calculator
- To review and approve the Habitat Management and Monitoring Plan

- To review and approve the biodiversity metric(s) for the development scheme and biodiversity gain site (if separate).
- To confirm if any biodiversity units are available to be 'sold' to other development schemes (i.e. not all the resulting biodiversity units are allocated to this development).
- To advise of any site-specific requirements

Planner

- To decide what can be secured via condition and what needs a s.106 (see guidance above).
- Instructs the Legal Team to create a s.106 based on the Ecology Officer's recommendations.
- Ensures the correct documents are provided to append to the s.106, for example a plan of the land and the agreed Habitat Management and Monitoring Plan.

Legal Team

- To ensure that the relevant sections of the template are used and to amend as necessary for the specific scenario
- Ensure a charge is placed on the land for all Biodiversity Gain Sites
- Notify the Ecology Team (ecology@milton-keynes.gov.uk) of any completed s.106s which include an off-site Biodiversity Net Gain Site or which take a Biodiversity Monitoring Contribution