



Department of Environment, Food and Rural Affairs

Net Gain - Consultation proposals

Ancient Tree Forum Response

The Ancient Tree Forum (ATF) has pioneered the conservation of ancient and veteran trees and is the main UK organisation concerned solely with their conservation. The ATF seeks to secure the long-term future of ancient trees through advocacy of no further avoidable loss, good management, the development of a succession of future ancient trees, and seeking to raise awareness and understanding of their value and importance. The ATF campaigns for UK Governments to recognise their international responsibilities towards the amenity, biodiversity and heritage provided by ancient and veteran trees.

Through our engagement with threats to trees especially from proposed developments, we have direct knowledge and experience of the effectiveness or otherwise of the current legislation, and planning policy to conserve and sustain the irreplaceable habitat of individual ancient and veteran trees, wood pasture and parkland and priority habitats composed of such trees.

Introduction

The recent changes to the NPPF are a very positive step so that it is imperative that these proposals do not weaken the existing planning policy protection for irreplaceable habitats including ancient and veteran trees, wood pastures and parkland. However, the recent NPPF changes are not sufficiently comprehensive as they do not give adequate importance to the protection of mature trees, i.e. those that as yet do not have veteran features, or significant veteran features, but have potential to be future veterans, so providing for continuity and sustainability of this irreplaceable habitat. We are already aware of challenges to categorisation of trees as veterans in order to downgrade protection level, and increased pressure not to retain other high value mature trees as well as threats to remove legally unprotected trees (e.g. those not protected by TPO) prior to submission of applications. Development is an increasingly significant cause of loss and deterioration of these trees and negative impacts on the sustainability of their unique biodiversity. The current system is failing to conserve these irreplaceable trees and their habitats.

Trees typically develop significant veteran features beyond maturity – often only after more than a hundred years, or even several hundred. They are, by definition, irreplaceable and cannot be substituted by any number of newly planted trees. A Biodiversity Net Gain scheme could play a role in providing resources for restoration and creation of habitat types such as wood pasture and parkland, but since it is axiomatic that irreplaceable habitats cannot be replaced, their loss or deterioration cannot ever result in biodiversity net gain.

Any new scheme must be based upon sound scientific evidence, ecological principles, and well-managed. It must join up and be embedded within the separate streams of work on land management (New Environmental Land Management Scheme), spatial planning and



restoration (Nature Recovery Networks), and be adequately funded for implementation, long term management, and enforcement.

Our general position

We believe that the following principles need to be enshrined within the design, implementation, and oversight of any scheme for biodiversity net gain:

- Irreplaceable habitats, including ancient and veteran trees, and ancient woodland, wood pasture, and parkland should be regarded as inviolable, as set out in the revised National Planning Policy Framework (NPPF). They should not be subject to any net gain metrics.
- Biodiversity Net Gain should be mandatory for all development (subject to the caveat that:- it cannot be achieved on projects that impact irreplaceable habitats). Planning policy clearly states that the loss of irreplaceable habitats must only be permitted in wholly exceptional circumstances. On the very rare occasions where this bar is deemed to be reached, it must be acknowledged that biodiversity loss is inevitable and there can be no net gain in this context. Therefore, any net gain approach must fully recognise this limitation, and make clear that exceptional levels of compensation will be required (i.e. at least the top of the latest DEFRA Metrics).
- The mitigation hierarchy must be followed, and should apply to all developments, including those that fall out of the Town and Country Planning Act (such as major infrastructure projects). All development proposals should have a transparent assessment of the full impacts of the development on the environment at the earliest stage to assess viability and apply the mitigation hierarchy to avoid and reduce impacts. The first step of the mitigation hierarchy is to avoid impacts, including seeking alternative sites.
- Net gain should be part of a nationally agreed scheme, with scientifically based metrics that take account of the value of habitats and species both on development sites and any potential receptor site. Net gain must show that it goes above merely off-setting for loss – i.e. there must be a genuine net gain.
- Any application for development should be judged based on need for and the benefit of the development against the environmental damage caused on the site and in relation to fragmentation of habitat in the wider landscape. For irreplaceable habitats, proposed compensation measures must not be part of the assessment of the merits of the development proposal, as set out in current FC/NE Standing Advice.
- A Biodiversity Net Gain scheme must be led by a national plan as part of a wider strategic view of spatial planning for the delivery of nature improvements and natural capital.
- Net gain should be part of a regulatory framework that delivers scientifically valid evaluation and monitoring. Greater knowledge is required within ecologists /arboriculturists to correctly identify and value ancient and veteran trees and the wider habitats of which they are a part, e.g. wood pasture other priority habitats. Local planning authorities also often lack the ecological and tree expertise and resources to assess and implement this approach in a way that will secure long term biodiversity

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gains. A capped amount of all tariffs received, should be used to ensure the proper assessment, implementation and monitoring of all projects.

- Receptor sites and their management should be achieved through the establishment of Conservation Covenants which provide for both restrictive and positive obligations on the parties to the agreement. All improvement and compensation projects must be accompanied by a management plan and an appropriate ring-fenced funding package, to ensure that they deliver the required net gain/compensation.

Response to questions

1. Should biodiversity net gain be mandated for all housing, commercial and other development within the scope of the Town and County Planning Act?

Yes.

2. What other actions could government take to support the delivery of biodiversity net gain?

The scope of biodiversity net gain should be extended to cover developments covered by hybrid bills (such as High Speed 2), those that fall within the Nationally Significant Infrastructure regime and the Transport and Works Act. The key issue is not the type of development but that net gain/compensation is secured. This should apply to those nationally important infrastructure projects which permit loss of irreplaceable habitat on the justification that their benefit outweighs such a loss (footnote 58 to para 175c). Whilst the proposals for biodiversity net gain to be implemented for TCPA applications is very welcome it must be recognised that the biggest developments and therefore often the biggest threats to biodiversity fall outside this regime. These developments are often Government sponsored. It would be inconsistent and untenable for the Government to promote a net gain approach for private developers, but to not follow the same approach for its own projects.

3. Should there be any specific exemptions to any mandatory biodiversity net gain requirement (planning policies on net gain would still apply) for the following types of development? And why?

a. House extensions

b. Small sites

c. All brownfield sites

d. Some brownfield sites (e.g. those listed on brownfield, or other, land registers)

No there should be no exemptions. The onus must be on the applicant to prove that there is no loss of biodiversity, and for the LPA to determine the appropriate amount of net gain.

4. Are there any other sites that should be granted exemptions, and why? For example, commercial and industrial sites.

No. These sites often have a large footprint and locations often of high biodiversity and the buildings and surroundings often offer considerable scope to contribute to biodiversity in innovative ways.

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5. As an alternative to an exemption, should any sites instead be subject to a simplified biodiversity assessment process?

Householder applications outside designated areas (including Local Wildlife Sites), irreplaceable habitats, and those complying with FC/NE Standing Advice to demonstrate they have no harmful impact on ancient and veteran trees, could be subject to a simplified process.

10. Is the Defra biodiversity metric an appropriate practical tool for measuring changes to biodiversity as a result of development?

The Defra biodiversity metric uses habitat as a proxy for biodiversity and this has limitations in terms of the impacts on individual species. There are also issues with the presumption that like-for-like compensatory measures in these circumstances, based on the creation of habitat with a notional equivalent value in 'biodiversity units', will automatically deliver ecological or functional equivalence. This is particularly the case with complex habitats, where time is a large factor in the achievement of something approaching equivalence, e.g. open grown, mature trees habitats.

Development still remains a significant cause of biodiversity decline, and a biodiversity net gain scheme could play a role in addressing the need to compensate the loss of nature through development. Further development is still needed to address identified shortcomings.

11. What improvements, if any, could we most usefully make to the Defra metric?

The metrics must make it clear that the loss of an irreplaceable habitat would always entail net loss. Crucial data is lacking on identifying such habitats, e.g. wood pasture and parkland. This is important firstly, so that their direct loss or harm from development can be avoided, and secondly that they are not considered as sites for inappropriate or damaging habitat creation, e.g. standard woodland creation. Instead they should be considered as potential sites for restoration, improving connectivity and buffering, possibly as part of compensation measures.

For irreplaceable habitats, in the rare cases of the NPPF's 'wholly exceptional' criteria being met, then compensation measures should be developed on a case by case basis and set at a suitably high level. This must exceed the highest level of 'biodiversity quality', as set in the Updated DEFRA metrics. However, any project meeting the "wholly exceptional" criteria will still always result in biodiversity loss and therefore should never be referred to as having achieved "net gain".

12. Would a mandatory 10% increase in biodiversity units be the right level of gain to be required?

No. For the more complex and species rich habitats, or for those habitats for which there is a considerable time lag to habitat functioning, then a substantially larger increase in biodiversity units should be expected to account for temporal net loss.



When the new habitat creation includes a high level of uncertainty because of complexity of habitat or time to completion, the value should be at the highest level.

13. In clearly defined circumstances, should developers be allowed to pay through the tariff mechanism without fully exhausting on-site and local compensation opportunities?

No. The mitigation hierarchy must be followed and should apply to all developments, including Highways and major infrastructure projects. All planning proposals should undertake a transparent assessment of the full impacts of the development on the environment and use the mitigation hierarchy to avoid and reduce impacts.

15. How could biodiversity assessments be made more robust without adding to burdens for developers or planning authorities?

The planning process should be no more burdensome or expensive than is necessary, but it should be as strenuous and exhaustive as required to safeguard those things which have been identified as public benefits of particular value, especially if they are irreplaceable. Applicants, their advisors and planning authorities need accurate, comprehensive and reliable data generally, and locally, for speedy identification of unsuitable sites, or those with high value constraints, e.g. veteran trees. This can never be complete or fully up to date, so reliance also has to be on those doing pre-application surveys (ecologists and arboriculturists), to correctly identify the features of a habitat type and correctly identify veteran and ancient trees, in addition to any protected species that they may be associated with.

In our experience wood pasture and undesignated parkland is consistently overlooked and ancient and veteran trees not correctly identified. This is then compounded by the lack of expertise in ecology or identification of ancient and veteran trees within the LPA. Tree officer posts are disappearing and therefore those making planning decisions are entirely reliant on information provided by the applicant without separate scrutiny.

If biodiversity net gain is to be successful and irreplaceable habitats not lost and have a positive and lasting impact on our environment, then decisions must be based on accurate evidence and assessed by a suitably trained and experienced assessors.

16. Should a baseline map of broad habitats be developed?

There is no national inventory of ancient wood pasture and parkland – although there is a very provisional priority habitat layer, which requires ground truthing. The Ancient Tree Inventory which identifies ancient and veteran trees is a provisional layer only, is not comprehensive, and as a citizen science project is heavily weighted to publicly accessible land.

Absence of, or big gaps in, mapping data prevents early identification of sites of, or, individual trees of irreplaceable habitat value. This may add unnecessary costs in late identification of unsuitable sites and delay to development in relocation or redesign. Completion of, and inclusion as a statutory layer of wood pasture and parkland should be a high priority. This will prevent their consideration for

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development generally, and ensure that their habitat is recognised and appropriately considered for any proposals for compensation or biodiversity net gain.

Habitat maps, especially if covering all habitat types, would prove a useful planning tool. However, the maps rely on the need to update them at regular intervals, and there remain issues of quality and/or habitat assessment at this scale. So, the provision of broad habitat maps will not negate the need for properly trained assessment of the starting habitats, or for proper oversight of the decision making process by fully trained LPA staff or contractors.

**17. Should this be applied, as a minimum baseline, to:
a. net gain calculations for all development?**

No - There are definite positive purposes to which local/national baseline maps may be put - and these will play a vital part in net gain implementation - but it would not be appropriate to apply them universally.

b. net gain calculations in cases of suspected intentional habitat degradation?

For reasons identified in Q16, re: incomplete and missing map data, this may be of limited use in this situation. Without prior strong evidence of presence and condition of trees qualifying as ancient or veteran, or of other status, as might have been categorised according to BS5837, if removed there would be no grounds for applying any kind of 'net gain' calculation'. All trees not protected by TPO/Conservation area or by felling licence legislation are vulnerable to intentional removal to facilitate development.

Lack of management of an area or intentional damage in order to facilitate development must always be addressed in the net gain calculations. In the case of irreplaceable habitats FC/NE Standing Advice states that the existing condition of the habitat should not be taken into account when assessing the merits of a development proposal. The existing condition is not a reason to give permission for development, and should never be a material consideration.

18. What other measures might reduce the risk of incentivising intentional habitat degradation?

Individual trees on potential development sites are always extremely vulnerable to intentional damage or loss, if deemed to be an impediment to grant of planning permission. Greater use should be made of existing legislative mechanisms to prevent pre-emptive felling/damage as they are a well-established means of effective deterrence with financial penalties. Various improvements have been proposed to government to make TPO/CA and Felling Licence control more effective, and to reduce potential burdens. We would welcome an opportunity to re-visit and discuss these suggestions to prevent the intended net gains of these



proposals from resulting in the opposite. We note there are some positive proposals in relation to felling licence enforcement in DEFRA's 'Consultation on Protecting and Enhancing England's Trees and Woodlands', which we will be responding to separately.

As a priority, legislative tree protection should be applied to all land with trees identified for development by LPA in forward/local plans. Controls should also be applied to areas of low-density development with high levels of tree canopy cover. Consideration should also be given to protecting trees which have been identified as of special high levels of importance, whether locally, regionally or nationally. Criteria have been developed by The Ancient Tree Forum and Woodland Trust with stakeholders, which could be a basis for identifying such trees from those already recorded on the Ancient Tree inventory. As stated, this is not a complete inventory and more resources should be allocated to fund the continuation of this voluntary work and the maintenance of the Inventory.

It is critical that all mapping is up to date and regularly reviewed. LPA's and developers alike must understand that just because a site isn't mapped doesn't mean it isn't ecologically important. The data may be absent, incomplete, or out of date.

19. How can the risks of penalising landowners making legitimate land use change decisions before deciding to sell their land for development be mitigated?

The use of a notification system for felling or work to trees as in Conservation Area legislation enables a local authority to be aware of and agree to works reasonably justified by landowners. Failure to notify carries penalties and so acts as an effective deterrent.

20. The provision of compensatory habitats will need to be guided by habitat opportunity maps. At what scale should these maps be developed?

a. Locally (e.g. local authority or National Character Area)

b. Nationally (i.e. England) as a national framework to be refined, updated and amended locally

Nature Recovery Networks (NRN) – as set out in the Governments 'A Green Future: Our 25 Year Plan to Improve the Environment' should underpin decision making on where compensatory habitat should be placed.

The NRN could play a crucial role in protecting and restoring biodiversity, habitats and the wider environment in England. The NRN needs to be well planned using relevant evidence and the development of local Nature Recovery Maps to inform its location, scope and breadth; it needs to be designed so that it fulfils multiple purposes that benefit people and wildlife; it needs to be delivered over a range of scales, fulfilling national and local agendas. Legislative underpinning through the Environment Act will be crucial to ensuring that the NRN is delivered and updated.



NRNs must also take account of habitats such as wood pasture and parkland and ancient and other veteran trees for which there is, as yet, an inadequate level of mapping.

21. What other measures should be considered to identify biodiversity and natural capital priorities?

Central to identifying biodiversity priorities for irreplaceable habitats is the updating of Natural England's Ancient Woodland Inventory (AWI). For the majority of the country, only ancient woodlands over two hectares in size are recorded on the inventory, leaving smaller woods very vulnerable. Plus, many larger woods are omitted from the inventory. In addition, for much of the country, the Inventory has not been updated since it was first produced during the 1980s - in the era before digital mapping. There are therefore many mistakes, omissions and even incorrect inclusions.

Furthermore, the current AWI does not include wood pasture and parkland, except on an ad hoc basis. Designated historic parkland is mapped but other older, less modified, and historic parklands, important for biodiversity, are not recognised as they don't have later designed features.

The situation for ancient and veteran trees which are irreplaceable habitats is similar in that they are not comprehensively mapped, the primary source of information being the Ancient Tree inventory, held and maintained by the Woodland Trust. Resources are required to add records to and maintain this inventory.

Updated, comprehensive and accurate inventories would provide far greater clarity and certainty for planners and developers alike and are essential tools prior to the proper implementation of the net gain approach. They would ensure early desktop studies and site appraisals are accurate. Developments could be designed from the start in accordance with the FC/NE Standing Advice on Ancient Woodland and Ancient and Veteran trees, and in turn circumvent lengthy stand-offs with local residents, and campaigning groups keen to protect ancient woodland and its wildlife.

24. Should there be a minimum duration for the maintenance of created or enhanced habitats?

Yes

25. If so, what should the minimum duration be?

- a. Less than 25 years**
- b. 25 to 30 years**
- c. Longer than 25-30 years**
- d. Permanent**

Habitat created as compensation for irreplaceable habitat loss /deterioration must be permanent.

26. Would conservation covenants be useful for securing long term benefits from biodiversity net gain or reducing process and legal costs?



Yes. They should also apply to compensation agreements.

Currently offsetting sites are delivered principally via Section 106 agreements. However, there are problems with this process as the agreement only lasts for a maximum of ten years under current planning legislation and few authorities have the staff or capacity to assess enforcement or support offset management. The time period is too short for many habitats or species to develop sustainable communities and there is little or no protection if, at some later date, someone wants to propose the compensation land as a development site. The lack of clear mechanisms to define processes, provide financial support or secure the compensation site can mean that the best intentions fail to deliver.

27. What safeguards might be needed in the implementation of conservation covenants

Trees within habitats created as compensation for loss or deterioration of ancient and veteran trees, wood pasture and parkland, should be legally protected by the most appropriate mechanism e.g. TPO/ Conservation Area. In addition to protection this will serve to map the area and make the information publicly available.

The introduction of conservation covenants could play a key role in making the theory of biodiversity net gain a practical option primarily by providing a mechanism to secure the compensation site over the long term. The covenant process could also introduce a clear mechanism to define appropriate land management, a structure to achieve financial support and a monitoring and enforcement procedure that could pick up problems at an early stage. We urge DEFRA to hasten its work on conservation covenants as they are vital to the proper implementation of the net gain principle.

32. How should the tariff revenue be spent?

a. Locally (e.g. through a local authority)

b. Nationally (e.g. through Natural England or another national body)

c. Through a blended model, allowing spending at both levels

Yes

d. Other, please specify

A national fund, available to all owners for the conservation management of ancient trees listed on the Ancient Tree Inventory(ATI), and also available for the most valuable, at risk, veteran trees on the ATI (criteria to be agreed).

33. If tariff revenue was collected and spent nationally, should spending prioritise areas which have contributed the most through biodiversity net gain tariff payments?



Not necessarily. Revenue should be available to spend on restoration and extension, to aid sustainability of those habitats containing species which are at greatest risk (to include conservation management of ancient and veteran trees), and in those areas where the habitat is at greatest risk, i.e. in areas of highest priority to safeguard. A proportion should always be spent from the contribution area.