

Biodiversity Net Gain and Determination of Planning Applications FAQs

The following list of questions and answers have been drawn together based on “frequent” questions asked regarding BNG and the determination of planning applications.

1. How much information is required at submission stage and in what form should this be provided?

The statutory minimum requirements are¹:

- a) **Onsite pre-development** biodiversity value: habitat quantity, type and condition using the statutory metric submitted in full using the latest version (recently downloaded) and
- b) supported by **detailed pre-development habitat plans** and
- c) additional information regarding **degradation, irreplaceable habitats**, and/or **exemptions**.

The Ecology Team recommends that the following information is provided in addition to the statutory minimum requirements where possible at submission stage:

- a) **Onsite post-development** biodiversity value if required and/or known: habitat quantity, type and condition using the statutory metric and submitted in full using the latest version (recently downloaded).
- b) **Offsite post-development** biodiversity value if required and/or known: habitat quantity, type and condition as far as possible, particularly if in the ownership of the applicant.

This information above may be available where the on-site land or off-site land for BNG is in the ownership of the applicant.

Alternatively, this information can be provided at the statutory Net Gain Plan condition stage.

2. What else can be provided at submission stage to support the spatial planning decision-making process for BNG?

The ecology team recommend the submission of a draft Biodiversity Gain Plan at at submission stage and a draft HMMP (habitat management and monitoring plan) where these are available, particularly where on-site or off-site land for BNG is in the ownership of the applicant.

3. What information is required if the off-site BNG is not in the ownership of the applicant?

¹ please see further LCC Ecology Team Process Guide document

The Ecology Team recommends that information should be provided where available regarding the progress in finding the off-site BNG units or credits at determination stage. In particular, the Ecology Team recommends:

- a) confirmation of the intention to use an offsite provider with some evidence of engagement where available or;
- b) the intention to purchase statutory credits if a provider with the required habitat units is not likely to be available.

4. Is there standard wording available to secure BNG in the form of a condition?

No. The requirement for 10% BNG is deemed to apply to every planning permission granted unless it is exempt. Therefore, the government guidance states that the condition wording should not be included in a written notice.

Does a local planning authority have to impose the biodiversity gain condition when permission is granted?

Planning conditions are normally imposed on the grant of planning permission under [section 70 \(1\) and section 72 of the Town and Country Planning Act 1990](#).

By contrast, the biodiversity gain condition has its own separate statutory basis, as a planning condition under [paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990](#). The condition is deemed to apply to every planning permission granted for the development of land in England (unless exemptions or transitional provisions apply), and there are separate provisions governing the Biodiversity Gain Plan.

To ensure applicants are clear about this distinction, the local planning authority are strongly encouraged to not include the biodiversity gain condition, or the reasons for applying this, in the list of conditions imposed in the written notice when granting planning permission.

There is a separate requirement to [provide information about the biodiversity gain condition](#). This information must be separate to the list of conditions on the decision notice.

Paragraph: 024 Reference ID: 74-024-20240214

Reference Para 024 PPG

5. Is there standard wording for written decision notices, with respect to information about biodiversity gain?

Yes. There is a separate requirement to provide information about the biodiversity gain condition (see paragraph 024 above and paragraph 026 below). Planning Advisory Service (PAS) have provided some suggested paragraphs and this suggested wording has been lifted and placed in **Appendix 1**.

Suggested paragraphs for biodiversity gain Information on the written decision notice

To ensure consistency in approach to the information to be provided on the decision notice, [suggested paragraphs for Biodiversity Gain Information](#) (ODT, 33.2 KB) on the written notice are available to download.

Paragraph: 026 Reference ID: 74-026-20240214

Reference Para 026 PPG

6. How much information is required at BNG condition stage and in what form should this be provided? Is there a template, for example, to allow the discharge of the condition for the Biodiversity Gain Plan?

Yes. There is a standard template for a Biodiversity Gain Plan. This can also be provided in draft form at submission where available.

The Biodiversity Gain Plan template is available here:

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

7. Is there example wording for securing BNG through a Section 106?

Yes. There are examples of Section 106 wording for securing significant BNG through a Section 106 agreement here on the Planning Advisory Service website:

<https://www.local.gov.uk/pas/events/pas-past-events/biodiversity-net-gain-local-authorities/biodiversity-net-gain-0>

However, each district or borough will take their own approach and may have developed, or be developing, their own versions of Section 106 clauses. Information should be sought from the district or borough in which the planning application falls for further advice on this.

8. Does an applicant have to enter a Section 106 for offsite or significant on-site BNG?

No. But land MUST be secured and monitored for compliance for 30 years where there is either offsite BNG or significant on-site BNG. Land can be secured using either a planning condition, a Section 106 or a conservation covenant; fees for monitoring for compliance (for offsite or significant onsite BNG) should be included in Section 106 agreements.

How are significant onsite habitat enhancements treated as part of the determination of the planning application?

[Paragraph 9 of Schedule 7A of the Town and Country Planning Act 1990](#) requires that where an applicant relies upon a significant increase in onsite habitat biodiversity value, the habitat enhancement ("significant onsite habitat enhancement") must be subject to a [planning condition, section 106 agreement](#), or conservation covenant requiring the habitat enhancement to be maintained for at least 30 years after the development is completed.

The Department for Environment, Food, and Rural Affairs has published further [guidance about significant onsite habitat enhancements](#).

9. If the applicant reduced the gain from for example 17.7% would this remove the "significant" classification which requires a Section 106?

No. The "significance" in BNG describes the existing habitat type, its importance, its connectivity and the overall quantity. This is a [separate issue](#) from the percentage of BNG achieved by the proposal. All developments must achieve at least 10% BNG. Reducing the gain, for example from 17.7% to 10% in the above example, will not alter the "significance" of the on-site habitats present- and any on-site BNG would still need to be secured with a legal agreement.

10. Does the 10% gain of hedgerow units contribute to "significance"?

As above, the "significance" of the habitat does not link or refer to the quantity of gain, which is a separate measure. The significance of a habitat is defined on the government website and found here:

<https://www.gov.uk/guidance/make-on-site-biodiversity-gains-as-a-developer#significant-on-site-enhancements>

Significant on-site enhancements

Significant enhancements are areas of habitat enhancement which contribute significantly to the proposed development's BNG, relative to the biodiversity value before development.

Retention of existing habitat does not count as an on-site enhancement.

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 wildflower meadow or a nature park.

The maintenance of these significant enhancements must be secured with a [legal agreement](#) (planning obligation or conservation covenant) or planning condition for 30 years in the same way as off-site gains. LPAs will consider the most appropriate mechanism and this will need to be agreed at the planning permission stage.

Where to find further information and advice

Please refer to the information below before contacting the Ecology Team. You may find your answer in the information below. Thank you.

The place to look for general advice on the process is the Planning Practice Guidance found here:

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

The place to look for general advice on the use of the metric and its rules is in the statutory metric user guide, available to download here:

<https://www.gov.uk/government/publications/statutory-biodiversity-metric-tools-and-guides>

The Small Sites Metric: User Guide can also be downloaded from this same page.

The place to look for specific advice in relation to legal agreements to secure BNG is here, which is a government advice page.

Please note: this sits outside of the PPG suite of information and therefore you need to navigate directly to it:

<https://www.gov.uk/guidance/legal-agreements-to-secure-your-biodiversity-net-gain>

Appendix 1:

BNG suggested text for use on decision notices

(from government website reference PPG paragraph 026)

Suggested text for Biodiversity Gain Information on the written decision notice

Purpose of this document

The purpose of this document is to assist local planning authorities to comply with the requirements on Biodiversity Net Gain set out below, **by providing suggested text for use on decision notices**. The use of this suggested text is discretionary, and local planning authorities should make decisions on the content of their decisions notices and may wish to get their own legal advice. The Department for Levelling Up, Housing and Communities will keep this guidance under review based on practical feedback from local planning authorities and other relevant stakeholders.

Suggested text has been provided for the following scenarios:

1. Where the local planning authority at the time of granting planning permission considers that approval of a Biodiversity Gain Plan will be required before development commences.
2. Where the local planning authority at the time of granting planning permission considers that approval of a Biodiversity Gain Plan will not be required before development commences.
3. Where the local planning authority is unable to indicate at the time of granting planning permission whether the approval of a Biodiversity Gain Plan will be required before development commences.

The third scenario could occur if, for example key aspects of the development, such as onsite layout and landscaping, are not known at the time of the grant of planning permission. In cases such as this it may not be possible to determine whether permission attracts the de minimis exemption so that the biodiversity gain condition does not apply. For instance, outline planning permission may have been granted for a small development on previously developed land – with landscaping, layout and scale of the development being deferred to reserve matter approval.

It is acknowledged that elements of the suggested text go beyond the statutory requirements. Local planning authorities wishing to use the suggested text should decide which option is appropriate for each written notice and may wish to adapt it depending on the nature of the permission granted, as well as include details of their own advice or other services which they offer to applicants.

Footnotes have been provided in the document to signpost guidance to local planning authorities when setting up the text in their back-office system. Local planning authorities should keep the information they provide on decision notices under review to ensure that it is consistent with any changes to the legislative framework.

Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended by The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024) requires that where planning permission is granted, the written notice of the decision must include:

- (i) information relating to the condition in paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 (biodiversity gain condition) including that there are exemptions, transitional arrangements and requirements relating to irreplaceable habitat,
- (ii) information to note the effect of section 73(2D) of the 1990 Act (earlier Biodiversity Gain Plan in relation to a previous planning permission regarded as approved for purposes of paragraph 13 of Schedule 7A)
- (iii) details of the planning authority under paragraph 12(1) of Schedule 7A (biodiversity gain in England), and
- (iv) where development is to proceed in phases and the modifications in Part 2 of the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 apply, a statement to that effect and to the effect that Biodiversity Gain Plans are required before development may be begun (the overall plan) and required before each phase of development may be begun (phase plans).

The purpose of these decision notice requirements is to signpost the applicant to the statutory framework for Biodiversity Net Gain.

Suggested Text where the local planning authority considers that approval of a Biodiversity Gain Plan will be required before development commences

Biodiversity Net Gain

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition “(the biodiversity gain condition”) that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan if one is required in respect of this permission would be *[insert name of the planning authority²]*.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are listed below.

Based on the information available this permission is considered to be one which will require the approval of a biodiversity gain plan before development is begun because none of the statutory exemptions or transitional arrangements listed below are considered to apply.

[the following is suggested text for inclusion in the decision notice where the local planning authority considers that the permission falls within paragraph 19 of Schedule 7A to the Town and Country Planning Act 1990.

The permission which has been granted has the effect of requiring or permitting the development to proceed in phases. The modifications in respect of the biodiversity gain condition which are set out in Part 2 of the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 apply.

In summary: Biodiversity gain plans are required to be submitted to, and approved by, the planning authority before development may be begun (the overall plan), and before each phase of development may be begun (phase plans).]

Statutory exemptions and transitional arrangements in respect of the biodiversity gain condition.

1. The application for planning permission was made before 12 February 2024.
2. The planning permission relates to development to which section 73A of the Town and Country Planning Act 1990 (planning permission for development already carried out) applies.
3. The planning permission was granted on an application made under section 73 of the Town and Country Planning Act 1990 and
 - (i)the original planning permission to which the section 73 planning permission relates* was granted before 12 February 2024; or
 - (ii)the application for the original planning permission* to which the section 73 planning permission relates was made before 12 February 2024.
4. The permission which has been granted is for development which is exempt being:

² 'name of the planning authority' - this will usually be the local planning authority which granted permission but other provisions may apply where the local planning authority was not the decision-maker for the planning application. See paragraph 12 of Schedule 7A of the Town and Country Planning Act 1990, and Part 1A of The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024.

4.1 Development which is not ‘major development’ (within the meaning of [article 2\(1\) of the Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#)) where:

- i) the application for planning permission was made before 2 April 2024;
- ii) planning permission is granted which has effect before 2 April 2024; or
- iii) planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 where the original permission to which the section 73 permission relates* was exempt by virtue of (i) or (ii).

4.2 Development below the de minimis threshold, meaning development which:

- i) does not impact an onsite priority habitat (a habitat specified in a list published under section 41 of the Natural Environment and Rural Communities Act 2006); and
- ii) impacts less than 25 square metres of onsite habitat that has biodiversity value greater than zero and less than 5 metres in length of onsite linear habitat (as defined in the statutory metric).

4.3 Development which is subject of a householder application within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. A “householder application” means an application for planning permission for development for an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse which is not an application for change of use or an application to change the number of dwellings in a building.

4.4 Development of a biodiversity gain site, meaning development which is undertaken solely or mainly for the purpose of fulfilling, in whole or in part, the Biodiversity Gain Planning condition which applies in relation to another development, (no account is to be taken of any facility for the public to access or to use the site for educational or recreational purposes, if that access or use is permitted without the payment of a fee).

4.5 Self and Custom Build Development, meaning development which:

- i) consists of no more than 9 dwellings;
- ii) is carried out on a site which has an area no larger than 0.5 hectares; and
- iii) 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).

4.5 Development forming part of, or ancillary to, the high speed railway transport network (High Speed 2) comprising connections between all or any of the places or parts of the transport network specified in section 1(2) of the High Speed Rail (Preparation) Act 2013.

* “original planning permission means the permission to which the section 73 planning permission relates” means a planning permission which is the first in a sequence of two or more planning permissions, where the second and any subsequent planning permissions are section 73 planning permissions.

Irreplaceable habitat

If the onsite habitat includes irreplaceable habitat (within the meaning of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) there are additional requirements for the content and approval of Biodiversity Gain Plans.

The Biodiversity Gain Plan must include, in addition to information about steps taken or to be taken to minimise any adverse effect of the development on the habitat, information on arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat.

The planning authority can only approve a Biodiversity Gain Plan if satisfied that the adverse effect of the development on the biodiversity of the irreplaceable habitat is minimised and appropriate arrangements have been made for the purpose of compensating for any impact which do not include the use of biodiversity credits.

The effect of section 73D of the Town and Country Planning Act 1990

If planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 (application to develop land without compliance with conditions previously attached) and a Biodiversity Gain Plan was approved in relation to the previous planning permission (“the earlier Biodiversity Gain Plan”) there are circumstances when the earlier Biodiversity Gain Plan is regarded as approved for the purpose of discharging the biodiversity gain condition subject to which the section 73 planning permission is granted.

Those circumstances are that the conditions subject to which the section 73 permission is granted:

- i) do not affect the post-development value of the onsite habitat as specified in the earlier Biodiversity Gain Plan, and
- ii) in the case of planning permission for a development where all or any part of the onsite habitat is irreplaceable habitat the conditions do not change the effect of the development on the biodiversity of that onsite habitat (including any arrangements made to compensate for any such effect) as specified in the earlier Biodiversity Gain Plan.

Suggested Text where the local planning authority considers that approval of a Biodiversity Gain Plan will not be required before development commences

Biodiversity Net Gain

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for development of land in England is deemed to have been granted subject to the condition (biodiversity gain condition) that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan, if one is required in respect of this permission would be [*insert name of the planning authority*³].

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are listed below.

Based on the information available this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements in the list below is/are considered to apply.[INSERT the list indicating the exemptions which are considered to apply]

Statutory exemptions and transitional arrangements in respect of the biodiversity gain condition.

1. The application for planning permission was made before 12 February 2024.
2. The planning permission relates to development to which section 73A of the Town and Country Planning Act 1990 (planning permission for development already carried out) applies.
3. The planning permission was granted on an application made under section 73 of the Town and Country Planning Act 1990 and
 - (i)the original planning permission to which the section 73 planning permission relates* was granted before 12 February 2024; or
 - (ii)the application for the original planning permission* to which the section 73 planning permission relates was made before 12 February 2024.
4. The permission which has been granted is for development which is exempt being:
 - 4.1 Development which is not 'major development' (within the meaning of [article 2\(1\) of the Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#)) where:

³ 'name of the planning authority' - this will usually be the local planning authority which granted permission but other provisions may apply where the local planning authority was not the decision-maker for the planning application. See paragraph 12 of Schedule 7A of the Town and Country Planning Act 1990, and Part 1A of The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024.

- iv) the application for planning permission was made before 2 April 2024;
- v) planning permission is granted which has effect before 2 April 2024; or
- vi) planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 where the original permission to which the section 73 permission relates* was exempt by virtue of (i) or (ii).

4.2 Development below the de minimis threshold, meaning development which:

- iii) does not impact an onsite priority habitat (a habitat specified in a list published under section 41 of the Natural Environment and Rural Communities Act 2006); and
- iv) impacts less than 25 square metres of onsite habitat that has biodiversity value greater than zero and less than 5 metres in length of onsite linear habitat (as defined in the statutory metric).

4.6 Development which is subject of a householder application within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. A “householder application” means an application for planning permission for development for an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse which is not an application for change of use or an application to change the number of dwellings in a building.

4.7 Development of a biodiversity gain site, meaning development which is undertaken solely or mainly for the purpose of fulfilling, in whole or in part, the Biodiversity Gain Planning condition which applies in relation to another development, (no account is to be taken of any facility for the public to access or to use the site for educational or recreational purposes, if that access or use is permitted without the payment of a fee).

4.8 Self and Custom Build Development, meaning development which:

- iv) consists of no more than 9 dwellings;
- v) is carried out on a site which has an area no larger than 0.5 hectares; and
- vi) 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).

4.5 Development forming part of, or ancillary to, the high speed railway transport network (High Speed 2) comprising connections between all or any of the places or parts of the transport network specified in section 1(2) of the High Speed Rail (Preparation) Act 2013.

* “original planning permission means the permission to which the section 73 planning permission relates” means a planning permission which is the first in a sequence of two or

more planning permissions, where the second and any subsequent planning permissions are section 73 planning permissions.

Irreplaceable habitat

If the onsite habitat includes irreplaceable habitat (within the meaning of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) there are additional requirements for the content and approval of Biodiversity Gain Plans.

The Biodiversity Gain Plan must include, in addition to information about steps taken or to be taken to minimise any adverse effect of the development on the habitat, information on arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat.

The planning authority can only approve a Biodiversity Gain Plan if satisfied that the adverse effect of the development on the biodiversity of the irreplaceable habitat is minimised and appropriate arrangements have been made for the purpose of compensating for any impact which do not include the use of biodiversity credits.

The effect of section 73D of the Town and Country Planning Act 1990

If planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 (application to develop land without compliance with conditions previously attached) and a Biodiversity Gain Plan was approved in relation to the previous planning permission (“the earlier Biodiversity Gain Plan”) there are circumstances when the earlier Biodiversity Gain Plan is regarded as approved for the purpose of discharging the biodiversity gain condition subject to which the section 73 planning permission is granted.

Those circumstances are that the conditions subject to which the section 73 permission is granted:

- i) do not affect the post-development value of the onsite habitat as specified in the earlier Biodiversity Gain Plan, and
- ii) in the case of planning permission for a development where all or any part of the onsite habitat is irreplaceable habitat the conditions do not change the effect of the development on the biodiversity of that onsite habitat (including any arrangements made to compensate for any such effect) as specified in the earlier Biodiversity Gain Plan.

[the following is suggested text for inclusion in the decision notice where the local planning authority considers that the permission falls within paragraph 19 of Schedule 7A to the Town and Country Planning Act 1990.

The permission which has been granted has the effect of requiring or permitting the development to proceed in phases. The modifications in respect of the biodiversity gain condition which are set out in Part 2 of the Biodiversity Gain (Town and Country Planning)

(Modifications and Amendments) (England) Regulations 2024 would apply if the permission were subject to the biodiversity gain condition.

In summary: Biodiversity gain plans would be required to be submitted to, and approved by, the planning authority before development may be begun (the overall plan), and before each phase of development may be begun (phase plans).]

Suggested Text where it is not known whether at the time of granting planning permission whether approval if a Biodiversity Gain Plan will be required before development commences

Biodiversity Net Gain

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition “(the biodiversity gain condition”) that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are listed below.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan if one is required in respect of this permission would be *[insert name of the planning authority⁴]*.

On the basis of the information provided to determine the application, it is not possible to indicate whether it is considered that this planning permission is one which will require the approval of a biodiversity gain plan before development is begun. This is due to *[insert reasons why e.g. landscaping, layout and scale of the development has been reserved for subsequent approval so it cannot be determined whether the permission would be subject to the de minimis exemption]*.

Before commencing development, you should consider whether a Biodiversity Gain Plan needs to be submitted and approved. Commencing development which is subject to the biodiversity gain condition without an approved Biodiversity Gain Plan could result in enforcement action for breach of planning control.

Statutory exemptions and transitional arrangements in respect of the biodiversity gain condition.

⁴ ‘name of the planning authority’ - this will usually be the local planning authority which granted permission but other provisions may apply where the local planning authority was not the decision-maker for the planning application. See paragraph 12 of Schedule 7A of the Town and Country Planning Act 1990, and Part 1A of The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024.

1. The application for planning permission was made before 12 February 2024.
2. The planning permission relates to development to which section 73A of the Town and Country Planning Act 1990 (planning permission for development already carried out) applies.
3. The planning permission was granted on an application made under section 73 of the Town and Country Planning Act 1990 and
 - (i) the original planning permission to which the section 73 planning permission relates* was granted before 12 February 2024; or
 - (ii) the application for the original planning permission* to which the section 73 planning permission relates was made before 12 February 2024.

4. The permission which has been granted is for development which is exempt being:

4.1 Development which is not 'major development' (within the meaning of [article 2\(1\) of the Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#)) where:

- vii) the application for planning permission was made before 2 April 2024;
- viii) planning permission is granted which has effect before 2 April 2024; or
- ix) planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 where the original permission to which the section 73 permission relates* was exempt by virtue of (i) or (ii).

4.2 Development below the de minimis threshold, meaning development which:

- v) does not impact an onsite priority habitat (a habitat specified in a list published under section 41 of the Natural Environment and Rural Communities Act 2006); and
- vi) impacts less than 25 square metres of onsite habitat that has biodiversity value greater than zero and less than 5 metres in length of onsite linear habitat (as defined in the statutory metric).

4.9 Development which is subject of a householder application within the meaning of article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. A "householder application" means an application for planning permission for development for an existing dwellinghouse, or development within the curtilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse which is not an application for change of use or an application to change the number of dwellings in a building.

4.10 Development of a biodiversity gain site, meaning development which is undertaken solely or mainly for the purpose of fulfilling, in whole or in part, the Biodiversity Gain Planning condition which applies in relation to another development, (no account is to be taken of any facility for the public to access or to use the site for educational or

recreational purposes, if that access or use is permitted without the payment of a fee).

4.11 Self and Custom Build Development, meaning development which:

- vii) consists of no more than 9 dwellings;
- viii) is carried out on a site which has an area no larger than 0.5 hectares; and
- ix) 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).

4.5 Development forming part of, or ancillary to, the high speed railway transport network (High Speed 2) comprising connections between all or any of the places or parts of the transport network specified in section 1(2) of the High Speed Rail (Preparation) Act 2013.

* “original planning permission means the permission to which the section 73 planning permission relates” means a planning permission which is the first in a sequence of two or more planning permissions, where the second and any subsequent planning permissions are section 73 planning permissions.

Irreplaceable habitat

If the onsite habitat includes irreplaceable habitat (within the meaning of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) there are additional requirements for the content and approval of Biodiversity Gain Plans.

The Biodiversity Gain Plan must include, in addition to information about steps taken or to be taken to minimise any adverse effect of the development on the habitat, information on arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat.

The planning authority can only approve a Biodiversity Gain Plan if satisfied that the adverse effect of the development on the biodiversity of the irreplaceable habitat is minimised and appropriate arrangements have been made for the purpose of compensating for any impact which do not include the use of biodiversity credits.

The effect of section 73D of the Town and Country Planning Act 1990

If planning permission is granted on an application made under section 73 of the Town and Country Planning Act 1990 (application to develop land without compliance with conditions previously attached) and a Biodiversity Gain Plan was approved in relation to the previous planning permission (“the earlier Biodiversity Gain Plan”) there are circumstances when the earlier Biodiversity Gain Plan is regarded as approved for the purpose of discharging the biodiversity gain condition subject to which the section 73 planning permission is granted.

Those circumstances are that the conditions subject to which the section 73 permission is granted:

- i) do not affect the post-development value of the onsite habitat as specified in the earlier Biodiversity Gain Plan, and
- ii) in the case of planning permission for a development where all or any part of the onsite habitat is irreplaceable habitat the conditions do not change the effect of the development on the biodiversity of that onsite habitat (including any arrangements made to compensate for any such effect) as specified in the earlier Biodiversity Gain Plan.

[the following is suggested text for inclusion in the decision notice where the local planning authority considers that the permission falls within paragraph 19 of Schedule 7A to the Town and Country Planning Act 1990.

The permission which has been granted has the effect of requiring or permitting the development to proceed in phases. The modifications in respect of the biodiversity gain condition which are set out in Part 2 of the Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 will apply if the permission is subject to the biodiversity gain condition.

In summary: Biodiversity gain plans will be required to be submitted to, and approved by, the planning authority before development may be begun (the overall plan), and before each phase of development may be begun (phase plans).]