

Section 106 Charging Policy and Schedule:

Off-site and significant on-site

Biodiversity Net Gain Monitoring

Leicestershire and Rutland Area Partnership

Please note that this Section 106 charging policy and schedule applies to planning applications that fall within the jurisdiction of the following districts and boroughs:

<i>Blaby District</i>	<i>North-West Leicestershire District</i>
<i>Harborough District</i>	<i>Oadby and Wigston Borough</i>
<i>Hinckley and Bosworth Borough</i>	<i>Melton Borough</i>
<i>Leicestershire County Council</i>	<i>Rutland County Council</i>

Introduction

Across Leicestershire and Rutland, we are taking a 2-tier authority approach to Biodiversity Net Gain (BNG) to establish a consistent process and policy wherever possible¹.

This policy guidance and accompanying charging schedule ensures that everyone involved (such as Local Authorities, planning applicants and solicitors) understands the process involved in securing measures required for BNG through Section 106 legal agreements. It describes how planning obligations relate to BNG and how this can be implemented and monitored through the planning obligations process. It also explains the charging scheme that will be applied.

Please note: Leicestershire County Council provide an Ecology Advice Service against a Memorandum of Agreement (MoA) on behalf of several Local Planning Authorities (LPAs) within the counties of Leicestershire and Rutland. This means that the Ecology Advice Service will have responsibility in this capacity for the review of the BNG content of planning applications, in addition to the monitoring described. Leicestershire County Council Ecology Advice Service will be monitoring compliance for off-site and significant on-site BNG on development sites in the districts and boroughs that are within this service agreement, listed above.²

What are obligations and why are they important?

Planning Obligations are legal agreements made to address the impacts of a proposed development, which mitigate the negative effects of development; and to make proposals for development acceptable in planning terms.

Section 106 Agreements

These legal agreements are negotiated between parties with an interest in the land and the local planning authority.

Section 106 Agreements are generally drafted as part of the granting of planning permission. They are legally binding. They are not the same as planning conditions.

What is BNG and what is required through Section 106 Agreements?

BNG is a mandatory requirement for planning applications and was introduced by Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021).

Mandatory BNG is a requirement for all development to provide a biodiversity net gain of 10% post-development, over and above its original biodiversity value. This applies to all development sites at County, Unitary, District and Borough level, unless the development type is specifically identified as exempt.

Any habitat included in BNG must be appropriately managed and monitored for a term of 30 years. This requirement can be met via financial and/or non-financial contribution towards BNG measures. In addition, a monitoring fee to monitor compliance of the development sites in respect of BNG will be required. This can be secured through **either** a Section 106 Agreement **or** a Conservation Covenant (see later section for information about a conservation covenant).³

¹ A partnership between Leicestershire County Council, Rutland County Council, Leicester City Council and Leicestershire districts.

² The districts included in this arrangement are as follows: *Blaby, Harborough, Hinckley and Bosworth, Leicestershire County, North-West Leicestershire, Oadby and Wigston, Melton and Rutland*

Responsibility for BNG and monitoring

- The landowner is responsible for carrying out the habitat creation, enhancement, and management work to deliver BNG off-site or on-site (where “significant”) as set out in the approved plans.
- The landowner is also responsible for monitoring and reporting on this to the LPA.
- The person responsible for ensuring the landowner does what they have committed to do is the other party to the legal agreement. In the case of a planning obligation through a Section 106 Agreement, the LPA as the other party should monitor for compliance and enforce the agreement.

Difference between on-site and off-site rules for legal agreements

The 30-year management and monitoring obligations are mandatory for off-site BNG but only mandatory for on-site BNG in the case where on-site enhancements are deemed as “significant”.

What is included in “significant” on-site or off-site BNG?

This has been defined in national guidance⁴ as follows:

“What counts as 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 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
- **Enhancement to habitat condition**, for example from poor or moderate to good”

Conservation Covenants

A **conservation covenant** is a legal agreement, as an alternative approach to Section 106 Agreements. These can be used to secure the long-term management of land for the purpose of BNG. There are designated **responsible bodies** who can enter into conservation covenant agreements with landowners in England. In this situation, the BNG will be completed and managed by the landowner.

Please use the link below to find a responsible body on the national list of designated responsible bodies:

<https://www.gov.uk/government/publications/conservation-covenant-agreements-designated-responsible-bodies/conservation-covenants-list-of-designated-responsible-bodies>

Where off-site or significant on-site gains are secured by a conservation covenant, the responsible body will monitor for compliance and enforce the agreement.

³ There may be further guidance from the Department for Environment, Food and Rural Affairs (DEFRA). This policy will be updated to reflect any further national guidance.

⁴ BNG PPG paragraph 021

Potential impact of BNG on Viability Assessment

BNG as a mandatory requirement means that it “comes before” consideration of financial contributions and will sit outside of any viability assessment. This may have an impact on the viability of schemes, potentially having a knock-on impact on viability assessments.

Reciprocal Section 106 Agreements across LPAs

This partnership of districts, boroughs and counties is currently considering reciprocal arrangements for Section 106 requirements for BNG. This is for planning applications where **the LPA is the applicant and/or has partial or complete ownership of land** and is therefore unable to enter into a Section 106 Agreement with itself. Further supporting information on this will be provided separately.

Joint Section 106 Agreements between LPAs

The partnership is currently considering appropriate Section 106 arrangements **where land ownership is held across more than one LPA area** on a planning application site. Further supporting information on this will be provided separately.

Standalone Section 106 Agreements for offset sites or habitat banks

The partnership is currently considering the feasibility of offering a service for “standalone” Section 106 Agreements. This would provide **an alternative legal agreement approach to a conservation covenant for offset sites or habitat banks**. It would include a fee for this service comprising registration, verification and long-term monitoring for compliance. Further supporting information on this will be provided separately.

Inclusions to the Charging Schedule for Section 106 Agreements

What is costed and included within the BNG charging schedule?

The following matters must be included under the legislation, as part of the monitoring of compliance process for BNG:

- LPAs must monitor whether the landowner is meeting their obligations at the statutory intervals of 1, 2, 5, 10, 15, 20, 25, 30 years.
- Monitoring reports will be required to be submitted by the landowner to the LPA at these intervals.
- The monitoring reports must demonstrate how the delivery of habitat aligns with the agreed Habitat Management and Monitoring Plan (HMMP) and the UK Hab Condition Assessments submitted and agreed within the BNG process for the term of at least 30 years.

Charging Approach

- We have taken a **small, medium, large and very large** sites charging approach. This is to reflect the likely difference in staff resource to examine the submitted information and to undertake a site visit, according to the size of the site.
- An administrative charge has been included in the calculation. This includes survey and monitoring equipment, monitoring software and any associated staff training for the monitoring methodology.
- An overhead has been added to the total. This includes travel costs, printing, postage, indirect staffing, management time, corporate overheads and stationery.
- Pricing will follow a standard index-linked approach to obligation cost increase, linked to consumer price index (CPI).
- Payment will be required to be made directly to the signatory authority and then transferred to LCC Ecology Team. This should be paid either in full upon commencement of Habitat Creation and Enhancement Works; alternatively, payment could be in instalments, the first payment upon commencement of Habitat Creation and Enhancement Works and at intervals to be agreed between the applicant and the signatory authority.

The estimated time taken to complete the following itemised activities have been included in the costings:

1. Review

- baseline information submitted with the planning application - BNG gain plan, statutory metric, HMMP, maps and plans.
- information brought forward from previous monitoring reports.
- new information at the current point in the monitoring cycle- establishment of the habitats, management measures to date, results/interventions required.

2. Report

- complete a template short summary report processed through our data management system.

3. Site Visit

- site visit at year 1, 2, 5, 10, 15, 20, 25 and 30.
- a typical site visit would include a physical check of the DEFRA metric information and UK Hab Condition Assessment provided by the landowner at the monitoring intervals previously set out.

4. Support to Enforcement Team

- where lack of compliance needs to be referred to enforcement, this will include a short report to enforcement of recommendations and follow-on ecology information provided to enforcement teams.⁵

- ⁵ We reserve the right to make an additional charge to the applicant at the point of enforcement where this is in excess of hours accounted for in our standard approach.