



# Future Homes Hub



## Biodiversity Offsets Checklist

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**A checklist in the absence of a Section 106 agreement, conservation covenant and Biodiversity Gain Site Registration**

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## **Biodiversity Offset Checklist in absence of a S106/CC and Biodiversity Gain Site Registration**

This checklist is intended for developers to give confidence that the offset provider has, or will be developing, a credible biodiversity offset if it has not yet been legally secured or registered. It is based on a set of principles formalised by Business and Biodiversity Offsets Programme (BBOP) in 2018 that are still relevant today (See Table 2 pp. 8-12).

It is understood that these principles are being updated for the Nature Market by BSI, but until they are published, this checklist is intended to help assess the credibility of an offset being marketed by a provider.

The developer should ensure that they have followed all due process and the most up-to-date guidance associated with delivering a biodiversity net gain for a development prior to the identification of a suitable offset provider. This includes implementation of the mitigation hierarchy and establishing the type and amount of units required using the Statutory Metric.

Please note that the checklist below only demonstrates that the offset meets the BBOP principles. It is recommended that the developer undertakes adequate due diligence on the offset provider and their business credentials, to ensure that the business is a going concern.

**Table 1: Biodiversity Offsets Checklist**

<b>Offset provider can demonstrate and provide evidence of the following:</b>		
1	Use of Statutory BNG metric by a CIEEM qualified ecologist.	
2	That the outcome of calculations shows an uplift in biodiversity units having taken into account, as appropriate, any existing biodiversity (such as field margins) being lost through the habitat creation and enhancement works.	
3	That the units being created meet the trading rules.	
4	A georeferenced map of site and plan including a Habitat Management and Monitoring Plan (HMMP).	
5	Copies of soil surveys, hydrology surveys and other suitable investigations which demonstrate that the gain site/habitat bank is appropriate for the target habitats.	

<b>Offset provider can deliver the following evidence associated with Governance:</b>		
1	A clear breakdown of costs per unit including cost of long-term maintenance.	
2	Evidence of land ownership or contractual arrangements that allow project to be implemented over agreed timeframe (e.g. staged payments based on progress).	
3	Evidence of how any potential failure to deliver biodiversity units will be mitigated, replaced and insured against.	
4	There is no legal obligation for the project to take place (e.g. restocking conditions due to felling licences or remediation under environmental damage regulations).	
5	Has the offset project received public finance (e.g. environmental payments) that might be in contravention to the BNG rules on additionality.	
6	Can evidence proof of funds for carrying out creation, enhancement and management works, with ring fenced/bonded funds for contingency works, and the ongoing 30-year management obligations.	
7	Offset provider can demonstrate that they are establishing a legal agreement through LPA or Responsible Body and that there is a reasonable prospect that this legal agreement will be completed on or prior to your intended commencement of development.	
8	Offset provider can demonstrate how the units are monitored via an LPA through the S106 agreement or the Responsible Body if going down the CC route and how that monitoring will be funded for the full 30+ year management period.	
9	A commitment and the expertise to successfully feed into a statutory Biodiversity Gain Plan to successfully discharge the developer's pre-commencement planning condition and enable a successful and timely commencement of development.	

<b>The Offset Provider's HMMP must show:</b>		
1	No irreplaceable habitat has been impacted by the offset project.	
2	Habitats created or planned for are of higher distinctiveness and/or condition than baseline habitats.	
3	The persons responsible for implementation, management and monitoring.	
4	That there is a 30-year management plan from the date(s) of habitat creation and enhancement works.	
5	The monitoring plan in place.	
6	The planned contingencies and can demonstrate adaptive management processes in place.	

<b>Where available the offset provider can demonstrate:</b>		
1	Project aligns with important local habitats or improves on current habitat variety and extent.	
2	Project links habitats together.	
3	Project is part of a Regional or Local Nature Recovery Strategy to benefit those benefits from an improved "strategic significance" score in the metric (and so an improved unit yield).	
4	Local community engagement through consultation and/or demonstrate local support for offset.	

## Appendix 1: Assumptions and considerations

The work undertaken was based on conversations with a number of experts from SLR Consulting, Persimmon, Bellway, Barratt Developments, Natural England, Country Land and Business Association (CLA), Institute of Ecology and Environmental Management (CIEEM), Vistry, the Planning Advisory Service (PAS), Home Builders Federation (HBF), and Freeths.

The core assumption behind this checklist is that it should be aligned with the [BBOP Biodiversity Offset principles](#) and that sites registered on the Biodiversity Gain Site Register should meet these principles. Additionally, in order to establish the market for biodiversity units Offset Providers should first establish that their offsets meet the basic requirements before being asked for, what might be considered, more ambitious requirements or 'stretch principles'.

The checklist was derived through undertaking a comparison of the requirements of the BBOP principles, the BNG register and typical clauses within a Section 106 (the example used is taken

from Buckinghamshire LPA, the most advanced and relevant to this assessment). The raw results of the analysis are found in Table 2 on page 8.

### **Biodiversity Gain Site (BGS) Registration requirements**

Whilst there is some alignment, between the documents or evidence required for the BGS Registration with the BBOP principles, a lot of the documents or evidence required are intended to be found in a s106 or Conservation Covenant (CC). So, if a biodiversity offset is on the register, it meets all but three of the offset principles, being

- Limits to what can be offset
- Equity

- Landscape context

However, because a site needs to be legally secured, providing that the s106 or CC contains clauses that meet these principles then it can be assumed that a registered site meets the BBOP principles and is credible.

### **Requirements to legally secure a site**

Some offset sites have not yet been registered as it costs to register and then again to allocate units to a development. Thus some providers wait until a developer approaches them before registering the site. The provider will still need to legally secure the site or at least be in conversations with the LPA or Responsible Body to establish whether it will gain a legal agreement.

The requirements for the s106 were reviewed against the BBOP principles. There were similar if not stronger alignments with the principles than the BGS

registration process. Therefore, if a biodiversity offset has been legally secured under a s106 similar to this template it will

meet all but two of the offset principles, being

- Equity

- Landscape context

Many landowners and their agents that have not engaged the LPA yet, as they will need to pay for the S106 and LPA monitoring fee. Additionally, at time of writing there is a limited number of [responsible bodies](#) to undertake conservation covenants (CCs). If no conservation CCs are available, the developer could wait until sites have been legally secured. Alternatively, the information in the last column in Table 2 below, which outlines the documents and evidence that the offset provider should provide, will help to demonstrate that the offset aligns with the principles and will most likely then be able to legally secure the site. This ultimately becomes the developer checklist (see Table 1 above) in the absence of a legally secured or un-registered biodiversity offset.

To purchase units from the site the provider will eventually need to legally secure and then register and then allocate those units but given the fact some potential providers are still not sure about the market or fully committing then the checklist could be useful.

### **Short Term Stretch Principles**

There are two BBOP principles that neither the s106 nor registration process meet; Equity and Landscape context. At present, these are deemed as desirable but not essential and are not fundamental to delivering credible biodiversity offsets. As more LNRs come on

board the Landscape Principle will need to become a basic requirement. However, some evidence requirements have been included in the last column (table 2) should developers or offset providers want to go further, voluntarily in the short term.

### **Insurance and financial vehicles**

Another area that neither the s106 nor registration process asks for is evidence of an appropriate financial vehicle to ensure the 30-year period can be financially secured, or that adequate insurance is in place. Evidence requirements around this are in the last column (table 2) but even if the site is registered and has been legally secured it doesn't mean that the funding will be available in 30 years' time. This will need further investigation.

### **In Summary**

A registered site meets the basic biodiversity offset requirements although does not provide confidence regards long term financial security.

A site that is not registered but has been legally secured meets the basic biodiversity offset requirements/principles (as long as it follows the Bucks template) although does not provide confidence regards long term financial security.

Principles around Equity and Landscape Context are, in the short term, probably more stretch goals than basic requirements. However, this should change longer term.

If a site has not been registered or legally secured, then the checklist (table 1) should give confidence to the developer that if all the

evidence is provided it will be likely to be secured legally and therefore registered and units allocated

Somewhere, whether it is in guidance or in s106s there should be a clause relating to evidence that the finances will be managed appropriately and last 30 years of management and monitoring requirements and that adequate insurance is in place.

**TABLE 2: Business and Biodiversity Offsets Programme Principles and alignment with example S106 clauses and Biodiversity Gain Site registration requirements.**

BBOP Principles	Required by BG Site Register and/or s106? i.e., is it a basic requirement?	S106 clauses (example from Buckinghamshire LPA)	Biodiversity Gain Site Registration Information required	Things to check in absence of a S106/CC and Biodiversity Gain Site Registration
No net loss: be designed and implemented to result in no net loss, or preferably gain, of biodiversity	Yes	Provide metrics and evidence within HMMP to LPA	All enhancement works need to be under a CC or planning obligation in a s106 - (6 (9))	Offset provider can demonstrate 1. use of Statutory BNG calculator. 2. outcome of calculations show an uplift in biodiversity units. 3. units being created meet the trading rules.
			(8 (2, d and e)) requires information in where the site is and where the enhancement works are.	Provide a georeferenced map of site and plan including a Habitat Management and Monitoring Plan (HMMP).



			(8 (2 g and h)) asks for the baseline and projected uplift on sites that have already started and also not started.	
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Additional conservation outcomes: achieve additional conservation outcomes above and beyond results that would have occurred anyway	Yes	BNG site must meet the Legal Additionality Test (the requirement that a Habitat Unit is not provided to meet an existing regulatory obligation on the part of the Owner as referred to in the Nature Markets Publication) and no double counting of units. (allowances for stacking and bundling)	No double counting. Can only register land once. "But the register operator may not register land in the biodiversity gain site register in relation to a particular conservation covenant or section 106 agreement if the land or any part of it, or any land including it or any part of it, is already registered in the biodiversity gain site register in relation to that conservation covenant or section 106 agreement."	Offset provider can demonstrate that 1. There is no legal obligation for the project to take place. 2. Project is not receiving public finance.
Adherence to the mitigation hierarchy: only be used after impacts have been avoided, minimised and biodiversity restored on-site	Yes	HMMP asks for information relating to decisions on habitat retention, enhancement and creation. This is provided to LPA.	All units generated must be made available for allocation to a Development - (6 (5)). The development that the units are to be allocated to must be identified - (8 (2 k))	Developers must demonstrate that they have implemented the mitigation hierarchy before going to purchase biodiversity units from an offset.
Limits to what can be offset: recognise limits to what can be offset (highly irreplaceable or vulnerable biodiversity is hard or impossible to offset)	Yes	The HMMP asks for information on irreplaceable habitats. This is provided to LPA.		Through the HMMP the Offset provider can demonstrate that 1. no irreplaceable habitat has been impacted by the offset project. 2. habitats created or planned for are of higher distinctiveness and/or condition than baseline habitats.
Stakeholder participation: involve stakeholders effectively in design and implementation;	Yes	Names of ownership, implementation and management provider all laid out in the HMMP	People need to be named for implementing and managing the works. (6 (2, 3))	Ensure HMMP identifies the persons responsible for implementation, management and monitoring.

<p>Long-term outcomes: „ planned to secure outcomes that last at least as long as the development project’s impacts, and preferably in perpetuity</p>	<p>Yes</p>	<p>for a period of no less than thirty (30) years from the Habitat Creation and Enhancement Works Completion Date.</p>	<p>needs to be managed for 30 years after the completion of the works -(6 (3))</p>	<p>Ensure an HMMP is in place and that it demonstrates a 30 year plan.</p>	
		<p>Provisions for breaches.</p>			<p>Offset Provider can provide</p> <ol style="list-style-type: none"> <li>1. a clear breakdown of costs per unit including cost of long term maintenance.</li> <li>2. evidence of land ownership or contractual arrangements that allow project to be implemented over agreed timeframe (e.g. staged payments based on progress)</li> <li>3. evidence of how any potential failure to deliver biodiversity units will be mitigated, replaced and insured against.</li> </ol>
		<p>Breaches leading to habitat destruction need to be paid for to provide replacement Biodiversity Unit(s)</p>			<p>Offset provider has defined the risks to delivery of biodiversity units and has a</p> <ol style="list-style-type: none"> <li>1. Monitoring plan in place, and either has</li> <li>2. planned contingencies, or</li> <li>3. can demonstrate adaptive management processes in place.</li> </ol>
		<p>Change in ownership notification</p>			
		<p>Dispute resolution through an Expert</p>			
		<p>Not allowed to do anything that affect the BNG site e.g. lien etc. without consent</p>			

Transparency: be undertaken in a transparent and timely manner, with results communicated to the public	Yes	Stipulate a Habitat Creation and Enhancement Works Completion Date	People named to undertake monitoring - (6 (4)). They also have to be named in the s106 or CC (6 (8))	Offset provider can demonstrate appropriate management plan is in place with named management delivery body. Should be in HMMP.
		Need to provide man and monitoring reports at set frequency	The s106 pr CC has to be registered in the local land charges register - (6 (7))	Offset provider can demonstrate appropriate financial vehicle is in place to deliver management and monitoring for the duration of the BNG requirement.
		Need to submit Biodiversity Net Gain Management and Monitoring remedial measures that are designed to ensure the aims of the Habitat Management and Monitoring Plan can be met when appropriate	(8 (2 e, f)) asks for the dates of when enhancements started or by what time they should be carried out or maintained as laid out in S106 and CC.	Offset provider can demonstrate that they are establishing a legal agreement through LPA or Responsible Body.
		2.2.1 manage and maintain the Biodiversity Gain Site in accordance with the Habitat Management and Monitoring Plan and for no other purpose inconsistent with the requirements of the Habitat Management and Monitoring Plan;	Documents required to be submitted for application are the CC or the S106 including any agreements that modify or change the obligations and documents that describe the enhancement works, management and monitoring on the site produced in accordance with the s106 and CC. - (8 (4))	Offset provider can demonstrate how the units are verified by an independent third party and how often. This could be via LPA through the S106 agreement or the Responsible Body if going down the CC route.

		Pay for Management Plan Monitoring by LPA		
Equity: be designed and implemented in an equitable manner, which means the sharing among stakeholders of the rights and responsibilities, risks and rewards	No			Offset provider can demonstrate local community engagement through consultation and/or demonstrate local support for offset.
Landscape Context: be implemented in a landscape context, taking into account biological, social, and cultural values	No			Can the provider demonstrate that 1. Project aligns with important local habitats or improves on current habitat variety and extent. 2. Project links habitats together. 3. Project is part of a Regional or Local Nature Recovery Strategy