

BNG training for planning people

Version 0.9: rough like a badger
31st January 2024

What are PAS doing to help?

- Training materials (at 31st January 2024)
 - Introduction and context (important!)
 - Scenarios
 - Worked example and localisation
 - Planning Committees and BNG
 - Deeper dive: “significant” onsite gains
 - Deeper dive: the metric?
- Templates (good practice legal agreements)
 - S106 x 3
 - Condition x1

Original version as published – no updates

1. Introductions
2. BNG in context
3. Scenarios
4. BNG hot topics
 - a) Timing and risk
 - b) Hierarchy and the BNG objective
 - c) Supply and demand
5. Mindmaps
6. Worked example

- PAS is part of the Local Government Association
 - Since 2005
 - Team of 17 plus peers and suppliers
- Funded by DLUHC, Defra, Natural England
 - 13 projects
 - Helping local planning authorities understand and respond to planning reform + providing excellent services
- Growing environmental team
 - BNG, nature recovery, protected sites, nutrient pollution
 - Wider thinking about role of local authorities

- We work with local authorities only
 - You're welcome to [sign up to our bulletin](#)
 - And steal anything from [our website](#)

Environment

We have three key workstreams on planning and the environment: Biodiversity Net Gain, Nutrient Neutrality and Nature Recovery. We are also looking at how to help councils join this all together to plan for a better environment.



- **Biodiversity Net Gain:** helping local authorities prepare for mandatory net gain commencing in January 2024.
- **Nature Recovery:** helping local authorities to get ready for delivering the Nature Recovery Network and Local Nature Recovery Strategies and sharing best practice.
- **Nutrient Neutrality:** supporting local planning authorities in water catchments affected by this issue.

In addition to the above, PAS did some work in 2022 on **Environmental Outcome Reports (EOR)** and you can read more about that [here](#).

We have a practitioner network for local authority officers interested in BNG, which meets every 6-8 weeks and for which we host an online discussion forum. Please fill out this [Microsoft Form](#) if you would like to join.

- Working on BNG since 2021
 - Now scaling up that support for the next while
 - Mainstreaming BNG – making it BAU
- Closely with policy leads at Defra, DLUHC and NE
 - And others (like Future Homes Hub)
- We run a great network of practitioners
 - Thanks to everybody for their thoughts, work, etc
 - A joint effort!
- We don't all agree and PAS may end up being wrong

BNG in context

What is this?

- Our attempt to provide a framework to explain how BNG works. We get asked:
 - “*What can we insist on at validation?*”
 - “*How are we expected to monitor habitats?*”
- The answer = It depends!
 - BNG can work in several different ways
 - It’s essential to know which way is relevant to the case in hand
- You want there to be The One Way to do BNG
 - There are at least three
 - And in all cases it needs to be proportionate

What is this?

- We are going beyond explaining the PPG (etc)
- We are suggesting there are weaknesses in the current arrangements, and how you might address them
 - This isn't something we enjoy doing
 - Hopefully over time we can retreat from this position as the system is updated
- For this reason our materials will keep changing
 - Make sure you use the latest one
 - We'll try to track what we change and why

What is this?

- Remember everything is tied back to the Environment Act
- PPG (etc) cannot go beyond and invent new layers
 - *Defra must define “made”*
 - *DLUHC must change validation requirements*
 - They can't (yet)
- Keep it simple should be our mantra
 - And refer back to the regs before getting into a battle
 - Developers want a simple life too

- BNG is causing panic. It's new.
 - It's slightly odd with some strange design choices
 - Bits of the system are missing
- For many applications, BNG will be a marginal consideration amongst lots of others
 - Triage, triage, triage! Try to avoid ecologists if you can*
 - Think of initial values. Is this a big deal?
 - Urban places will want to think about the [Green Infrastructure Framework](#) and how to apply its five standards locally
- Don't let BNG float off and be kept separate

- BNG is going to change over the next while
 - Widespread and genuine goodwill to make it a success
 - Make the best of it (especially local markets!)
 - Over time the LNRS will set big picture into which DM decisions get made, and help increase certainty
- This is not just an intro slide – this message is really important
 - BNG happens alongside other DM considerations
 - For many urban areas, other environmental policies will have more impact

Scenarios

- Three basic scenarios, some of which have subsets
 1. Establishing a habitat bank
 2. A development providing its own uplift
 3. A development buying its uplift
- By understanding each scenario, we can explain what happens throughout the DM lifecycle
- Sometimes all scenarios are in play (but that's OK)

1. Establishing a habitat bank
 - a) Private provider
 - b) Council provider
2. A development providing its own gain
 - a) On-site
 - b) Linked site
3. A development buying its gain
 - a) Off-site units
 - b) National credits

1. Establishing a habitat bank

- A bank of habitat units can be set up by a landowner, using a trust, bank or broker (or not)
 - In a few situations will require a planning application (construction? Forestry? + others tbc). This is BNG exempt
- Units are registered (and controlled) via a section 106 with an LPA. **Yes! A s106 without a planning application!**
 - The s106 is just the vehicle to register obligations on land
- Soon will also be able to register via a conservation covenant with a Responsible Body

1. Establishing a habitat bank

- For now, if LPAs want local off-site markets LPAs *must* enter into s106 with providers.
 - Many don't want to / are suspicious / not interested
- Providers can help councils = PPA + cover s106 costs
- Important opportunity to positively influence the local market and baseline quality
 - We have sample s106 as a starter for 10
 - You might want “rules” to follow when deciding whether to work with a provider or not
 - Want providers in it for the long-term who deliver results

1. Establishing a habitat bank

- Many councils will also become providers
 - Short term this is tricky – can't s106 with yourself as a LPA
 - District and County?
 - Special Purpose Vehicle?
 - Conservation Covenant?
 - Lease the land out to a Trust for 30 years?
 - Hopefully this will get fixed, as councils are good organisations from a risk management perspective
- Create gains at risk?
 - Many of you won't have another option in the short term

2. Developments providing their own gain

- A planning application for a development
- Gains are either on-site or a linked site controlled by applicant
 - Introduces the idea of “significant” gains.
 - See our discussion on what significant might mean for LPAs
- Gains are secured via a s106 or condition
 - S106 can include monitoring fees, but tricky to enforce
 - Conditions easy to enforce, but cannot include monitoring fees
- In this scenario, gains are dealt with during consent
 - Unless you enter into another s106 post consent?

3. Developments buying their gain

- A planning application for a development
 - BNG is post consent
- Gains are bought post-consent
 - Perhaps reserved earlier? Want to know £
- Proof of receipt (part of the Biodiversity Gain Plan) forms part of discharge condition
- Operation of metric designed to encourage the use of local mitigation, with national backstop where necessary

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Scenario	Secured	Monitoring and enforcement		
1a. Private bank	Via s106 or concov	Via the HMMP & obligation		
1b. Public bank	Via concov (or upper tier s106)	Via the HMMP & obligation		
Scenario	Pre-application	Application	Post consent	Monitoring and enforcement
2a. Development onsite gains	Yes please!	S106. Draft Biodiversity GP	Biodiversity GP	As per s106 or condition
2b. Development linked gains	Yes please!	S106. Draft Biodiversity GP	Biodiversity GP	As per s106
3a. Development Bank units	Maybe	Biodiversity statement?	Biodiversity GP	n/a
3b. Development National credits	Maybe	Biodiversity statement?	Biodiversity GP	n/a

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- Applications follow the BNG hierarchy
 - Onsite / Offsite / National
- So you can expect a mix
 - A bit of onsite, a bit of off-site?
- But still helpful to understand how each of them work

BNG hot topics

Hot topics

1. Information requirements and back-ended risk
2. The hierarchy and planning judgement
3. Supply & demand and going over 10%

- BNG is by design a post decision matter
 - A pre-commencement condition
 - Discharged on receipt of the Biodiversity Gain Plan
- Applicants can avoid saying much until then
 - Unless gains are significant and on-site
- This creates a point of high risk right at the end
 - **Do we agree on the mix of on- and off-site?**
 - Doesn't suit either party – LPAs trying to fix via validation lists
 - In the short term expect a patchwork, and requirements for a BNG statement that goes beyond statutory minimum

Hot topic #1

- Over time this risk must be reduced down
 - An understanding of BNG priorities from the LNRS generally
 - And at site allocation stage specifically
- A willingness to share intent from both sides
 - “This is what matters to our place”
 - “This is how we see it working on- and off-site”
- And a better understanding of what significant / important habitats are, and how to maintain them
 - Nobody wants habitats trashed by future residents, or complaints about scruffy stuff

- At approval of planning application
 - “decision makers **may** need to consider more broadly whether the general condition is capable of being successfully discharged”
 - “matters for consideration **may** include [...] the appropriate balance expected between onsite gains, off-site gains [...] taking account of the biodiversity gain hierarchy” Paragraph: 016 Reference ID: 74-016-2023
- At discharge of general biodiversity gain condition
 - “In addition, in determining whether to approve the plan, a planning authority **must** take into account how the biodiversity gain hierarchy will be followed, and any reasons where it cannot be followed” Paragraph: 035 Reference ID: 74-035-2023

- At approval of planning application
 - “decision makers **may** need to consider more broadly whether the general discharge of condition is capable of being successfully discharged”
 - “Given this [ie that the mechanism is a discharge of condition], it would generally be inappropriate for decision makers, when determining a planning application for a development subject to biodiversity net gain, to refuse an application on the grounds that the biodiversity gain objective will not be met.”
 - “matter for consideration may include... the appropriate balance expected between on-site gains, off-site gains [..] taking account of the biodiversity gain hierarchy”
- At discharge of condition
 - “In addition, in determining whether to approve the plan, a planning authority **must** take into account how the biodiversity gain hierarchy will be followed, and any reasons where it cannot be followed”

Paragraph: 016 Reference ID: 74-016-2023

Paragraph: 035 Reference ID: 74-035-2023

- At what stage is this consideration proper?
 - And how does the BNG hierarchy relate to the NPPF hierarchy?
- Planning committee issues a consent, are they comfortable with the condition being dealt with under delegated powers?
- This is a bit of a muddle
 - Common sense suggests not leaving the consideration until the final moment

What is considered when determining the Biodiversity Gain Plan?

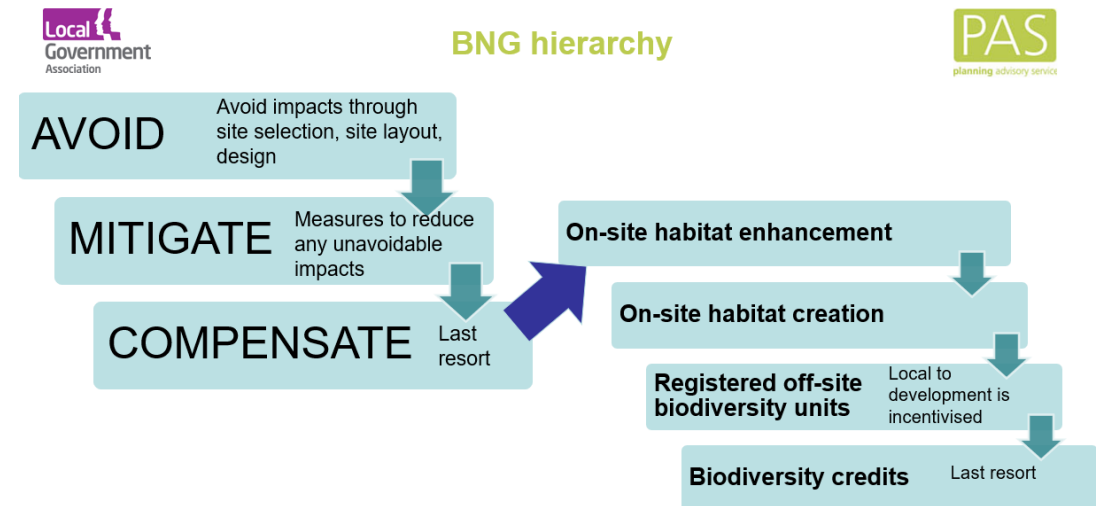
Under paragraph 15 of Schedule 7A, the planning authority must approve the Biodiversity Gain Plan if they are satisfied that:

- the pre-development biodiversity value of the onsite habitat is as specified in the plan,
- the post-development biodiversity value of the onsite habitat is at least the value specified in the plan,
- the registered offsite biodiversity gain allocated to the development has the biodiversity value specified in the plan in relation to the development,
- any biodiversity credits specified in the plan as purchased for the development have been so purchased, and
- the biodiversity net gain objective is met.

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

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

There are special provisions for the approval for the Biodiversity Gain Plan for phased development or if part of the development land includes irreplaceable habitat.



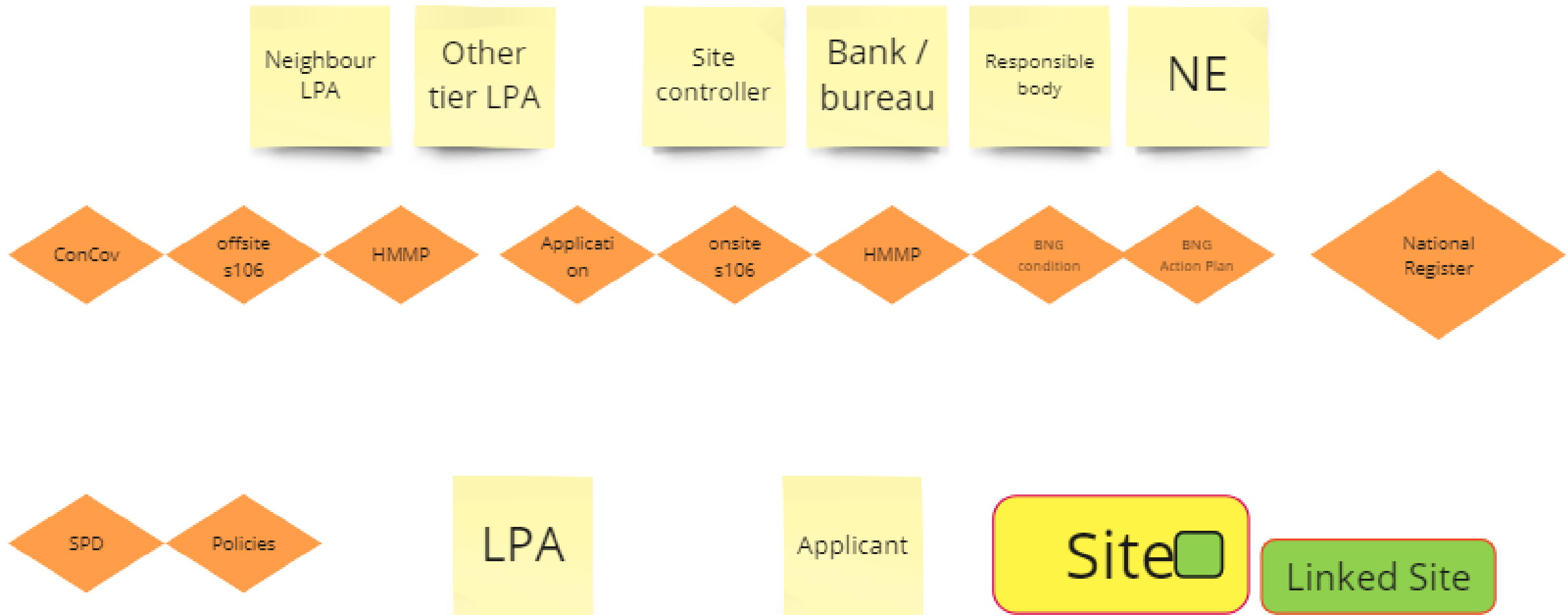
- Planning committees will probably have strong views about off-site
 - “Local is essential”
 - Delivering on corporate objectives is best (eg access to nature)
- A successful local off-site market will take time
 - You have a role in this
 - Some habitats might be rare / difficult / far away
 - We don’t know yet – this is one of the jobs for the LNRS
- Do you / your committee know what the market looks like locally?
- Remember that the metric has £ incentives for local too

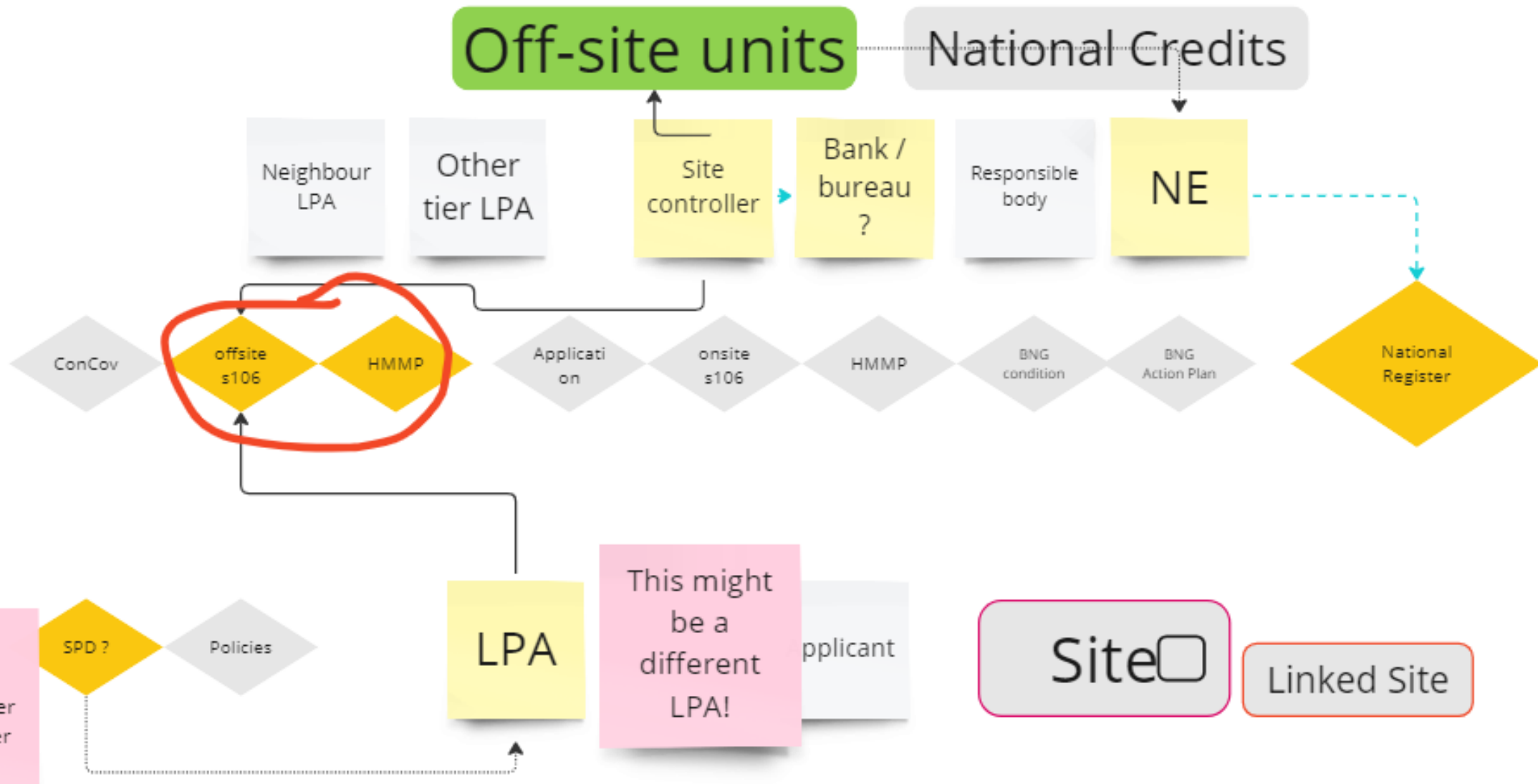
- How much can LPAs insist on local mitigation?
 - Early messages about councils suddenly insisting on 100% onsite
 - Will this become even more of an issue when councils have their own sites?
- Lots of concern more widely about what LPAs will do in their local plans
 - Nobody wants the 10% to be a ceiling
 - But in what circumstances is it fair to go further?
 - There is lots to learn about how nature works in the planning system, and which habitats can survive residential settings

Mind maps

Off-site units

National Credits





Might use policies to decide whether or not to enter into s106

This might be a different LPA!

Worked example

Worked example

- Really natural to want to see a worked example
 - So that you can explain to validators (and applicants!) what they need to do at various stages
- We've tried to oblige
 - But it depends
 - Remember the scenarios
- You will have a local approach
 - Many places have already started
 - Your worked example needs to reflect your local requirements
- We've done a basic version to illustrate why...

Worked example

- A major site
 - Let's follow one through
- Statutory minimum vs a common sense approach
 - Reducing risk
- **The most common scenario:**
 - There is some BNG value onsite post development
 - Some trees, some landscaping, not “significant” and secured by condition via the approved plan
 - The remainder is bought from a bank

- Encouragement and good practice (especially if significant on-site or linked gains site)

Applicants are **encouraged to** engage with local planning authorities before submitting their application in order to identify, understand and seek to resolve issues; this will help to improve both the efficiency and effectiveness of the planning application process, reduce issues around validation, and improve the quality of the application.

If planning obligations are going to be used, it is good practice to submit information about any potential planning obligations which may need to be entered into connected to the application. This is something that local planning authorities may add to local lists of information requirements. For example, if pre-application engagement has indicated the need for:

- significant increase of onsite biodiversity enhancements, then applicants are encouraged to provide a draft Habitat Management and Monitoring Plan as part of the application which sets out the proposals for long term maintenance of habitats to be secured through planning condition or planning obligation.
- an off-site biodiversity gains site specifically to provide gains for the development, then applicants are encouraged to provide the local planning authority with draft heads of terms clearly setting out the obligations that they are likely to be bound by in a section 106 agreement, should permission be granted.

Paragraph: 009 Reference ID: 74-009-2023

- Encouragement and good practice (especially if significant on-site or linked gains site)

A draft BNG or Ecology statement – we are intending to do some landscaping but will need to buy some units. We can't deliver it all onsite because

= how we have minimised adverse effect

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- the application **must** be accompanied by minimum information set out in Article 7 (the minimum requirements)
 - Is the application subject to BNG condition?
 - Pre-development value and metric details
 - Baseline date, degradation
 - Any irreplaceable habitat
 - Onsite habitats on a plan
- Further information **may** need to be provided to assist the consideration of
 - Significant onsite BNG enhancements
 - Use of offsite gains

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Separate General biodiversity condition placed on decision notice (model paragraphs tbc)

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Post development value, the gap, and comfort that the units/ credits are available and priced into the development values – ie a draft Biodiversity Gain Plan

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Consent

Planning committee consent the application

They have as part of their decision making the draft biodiversity action plan (ie they can consider the BNG hierarchy)

Separate General biodiversity condition placed on decision notice (model paragraphs tbc)

- a Biodiversity Gain Plan [must be] submitted in writing no earlier than the day after planning permission has been granted.

Under paragraph 14(2) of Schedule 7A a Biodiversity Gain Plan must include the following matters:

- information about the steps taken or to be taken to minimise the adverse effect of the development on the biodiversity of the on-site habitat and any other habitat
- the pre-development biodiversity value of the on-site habitat
- the post-development biodiversity value of the on-site habitat
- any registered off-site biodiversity gain allocated to the development and the biodiversity
- value of that gain in relation to the development; and
- any biodiversity credits purchased for the development

Lots here – condition is discharged by officer under delegated powers because it is in line with the draft

Paragraph: 032 Reference ID: 74-032-2023

In addition, under Articles 30C(2) and 30C(4) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 the following specified matters are required, where development is not to proceed in phases:

- name and address of the person completing the Plan, and (if different) the person submitting the Plan
- the reference number of the planning permission to which the plan relates;
- a description of the development to which the plan relates
- the completed biodiversity metric calculation tool, stating the version of the biodiversity metric used and showing the calculation of the pre-development and post-development biodiversity value
- a description of arrangements for maintenance and monitoring of habitat enhancement to which paragraph 9(3) of Schedule 7A to the 1990 Act applies (habitat enhancement which must be maintained for at least 30 years after the development is completed)
- (in cases where there is no irreplaceable habitat on the development site) how the biodiversity gain hierarchy will be followed and where to the extent any actions in that hierarchy are not followed, the reason for that
- the relevant date for the purposes of calculating the pre-development biodiversity value of onsite habitats
- pre-development and post-development plans —
 - showing the location of onsite habitat;
 - drawn to an identified scale and showing the direction of North; and
- in relation to any part of the development for which planning permission is granted where the onsite habitat of that part is irreplaceable habitat arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat

Post completion

- No enforcement / monitoring required for BNG (it is picked up by the provider of credits / units)
- On-site gains are secured by condition, so in theory can be fixed via a breach of condition notice
- Not everyone agrees with this!
 - Some insist on s106 + monitoring for offsite in all cases

Reporting

- Who understands what happens next?
 - Onsite? (to the LPA) – produced by? Checked by?
 - Offsite? (via the national register)
- LPA role?

So ...

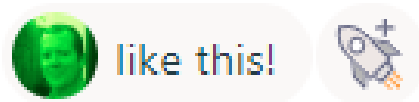
- Difficult for us to make definitive roadmap based on PPG
 - We don't think it makes sense to follow the statutory minimum model
 - The trick is to have local validation requirements that reflect common sense and the various scenarios
- So – do push for draft, initial, indicative (esp for post-development metric)
 - Where relevant
- Don't require final, binding
 - In all cases or we refuse to validate
- Remember that a developer wants to know upfront too
- And that they already have routines for thinking about landscapes, liabilities
- May need to be patient
 - You can't require local if it doesn't exist

6.1 Confirm you have added post development details to the metric tool submitted with this application.

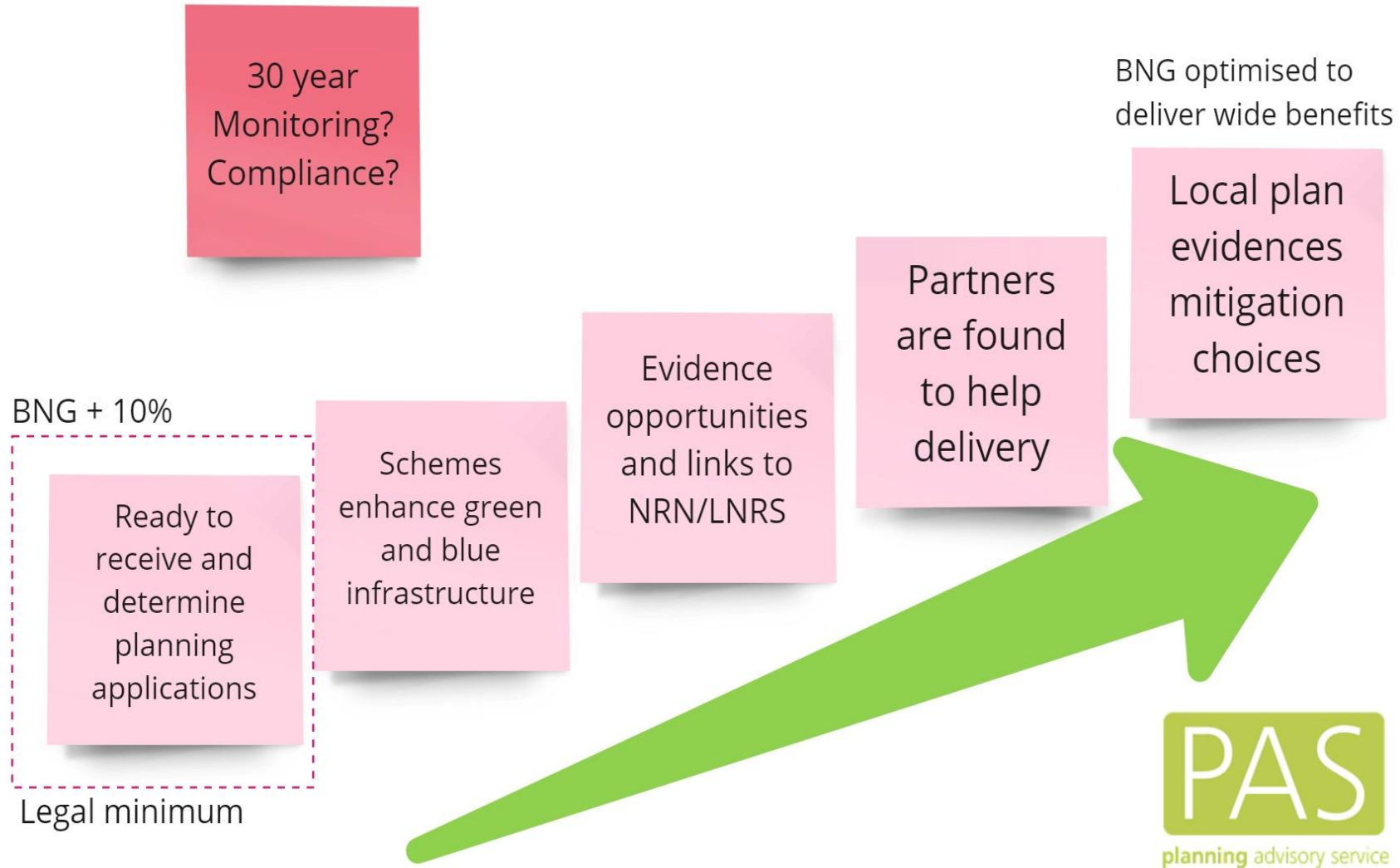
Failure to do so will result in the validation requirement not being met.

- Yes
- No

A Statement outlining how the proposed development will achieve Biodiversity Net Gain including an indication of whether BNG will be delivered on or offsite or through the purchase of statutory credits. If offsite provision is proposed an indication of where and how it is intended that these will be secured should be provided. A commentary of how the proposals comply with the Biodiversity Net Gain Hierarchy should also be included.



Is the on-site “significant” or not –
and if so a draft HMMP and heads of
terms for s106





Thank you

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