

BNG Briefing

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Timing could prove critical as market evolves and expands

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Landowners considering selling BNG units have a conundrum – sell them as soon as possible in the belief this ‘nascent’ market will yield the best returns or hold off in the hope that prices rise.

Although we are moving from the ‘pioneer’ to the ‘early adoption’ phase, meaning more units are becoming available, some experts suggest prices could go higher, especially as a key priority of the new government is to build more houses which will raise demand for BNG units.

The market could also be currently undervalued, with some sellers not necessarily taking all the set-up and ongoing management costs into consideration or acknowledging that a project is, in effect, a permanent change of use rather than a 30-year endeavour. Also, some of the units have been offered by NGOs such as Wildlife Trusts which have lower set-up and management costs than a

‘traditional’ farmer or landowner might, so can pitch prices lower.

A lot of open-market units are selling between £25,000 and £35,000, but there’s a big variation around this, with some of the more ‘complicated’ habitats, such as woodland or lakes, priced at two- or three-times this.

There are some potentially big revenues to be had by the ‘pioneers’ and the danger with waiting is, of course, that the market becomes saturated, so some will always try to capitalise on a ‘first-mover’ opportunity.

But the advantage of waiting is it

allows the market to mature, both in terms of demand and price, plus sellers can benefit from the early learnings when it comes to, for example, the structuring of legal agreements.

It’s important to remember there can be large up-front costs in a BNG initiative, with money needed for the investment-readiness work such as baselining, writing a habitat management plan and legal fees. In theory you could spend that only to find that the Local Planning Authority doesn’t deliver on the legal agreement you’ll need to be truly market-ready.

The real pioneers when it comes to BNG have often had the experience, staff, infrastructure and capital already in place – whereas if you are, say, a ‘traditional’ farming landlord taking a piece of land back in hand for this purpose, you may not have that same delivery infrastructure.

It can make sense, therefore, to pursue BNG on a modest scale with a “toe in the water”, but remember that although that reduces your risk, there’s a scalability aspect. Basically your legal fees might be almost as large for a 10ha site as for a 100ha site.



Whatever the size of the project you're considering, it's important not to focus solely on the unit prices. Consider your situation. Ask what is the minimum unit price that you need to make it worthwhile? Can you see the potential to sell, say, enough units in the next 18 months to three years? Really drill down into the costs of the project. It's important to do detailed modelling and discounted cashflows. There are parallels with considering a Countryside Stewardship or Sustainable Farming Incentive project – don't just add the headline per ha payment rate as one line on your budget, instead work out the actual gross margin.

Defra issues statutory biodiversity credit prices based on the cost to create, maintain and monitor different habitat types. It says buying statutory credits is a 'last resort option' for developers who are unable to use on-site or off-site units to deliver BNG and they include a mark-up to prevent them undercutting the off-site market, but they are seen by some as indicative of where open market prices might head. The credit prices issued last

November included hedgerows at £44,000/credit, medium habitat distinctiveness grassland at £42,000/unit and watercourses at £230,000/credit.

What's complicating the situation is the lack of comparables on the open market – and a lot of the offers on various platforms are not truly 'market-ready' because they are not yet on the Defra register and don't have the requisite legal agreement in place. Some commentators are predicting further obstacles to the market expanding, in the face of a shortage of Section 106 (s106) agreements or Conservation Covenants.

Where Local Authorities are proving to be slow in terms of working with us on s106 agreements, we have been exploring working with the so-called 'responsible bodies'. This is an alternative means of securing a site for BNG via the Conservation Covenant route and could yet prove to be a quicker and more flexible option than via a s106.

Some landowners, meanwhile, are pressing on with BNG projects, working on the basis that they can

always switch to a Plan B in that they could put the land into an SFI option (which have latterly become more attractive financially).

Better nature outcomes and more environmentally friendly land use is fundamentally what we will continue to expect from rural land use so BNG seems here to stay. And while the Labour government could change some aspects of it, it's unlikely it will unpick the legislation as the principle seems to have been accepted.

It's still a very young market and one with lots of unknowns, but it offers many opportunities for farmers and landowners. Whether you enter it immediately or hold off until the market becomes more established is perhaps not the most critical factor determining if it will stack up financially for you. What's more important is that you understand the true costs and returns from any project, understand how it will dovetail with your wider farming operations and make sure you are comfortable with whatever level of financial risk you are exposing yourself to in a bid to secure the revenue.



Iford eyes second s106

A second s106 agreement is close to being signed at Iford, which will mark another groundbreaking moment for the Sussex Estate.

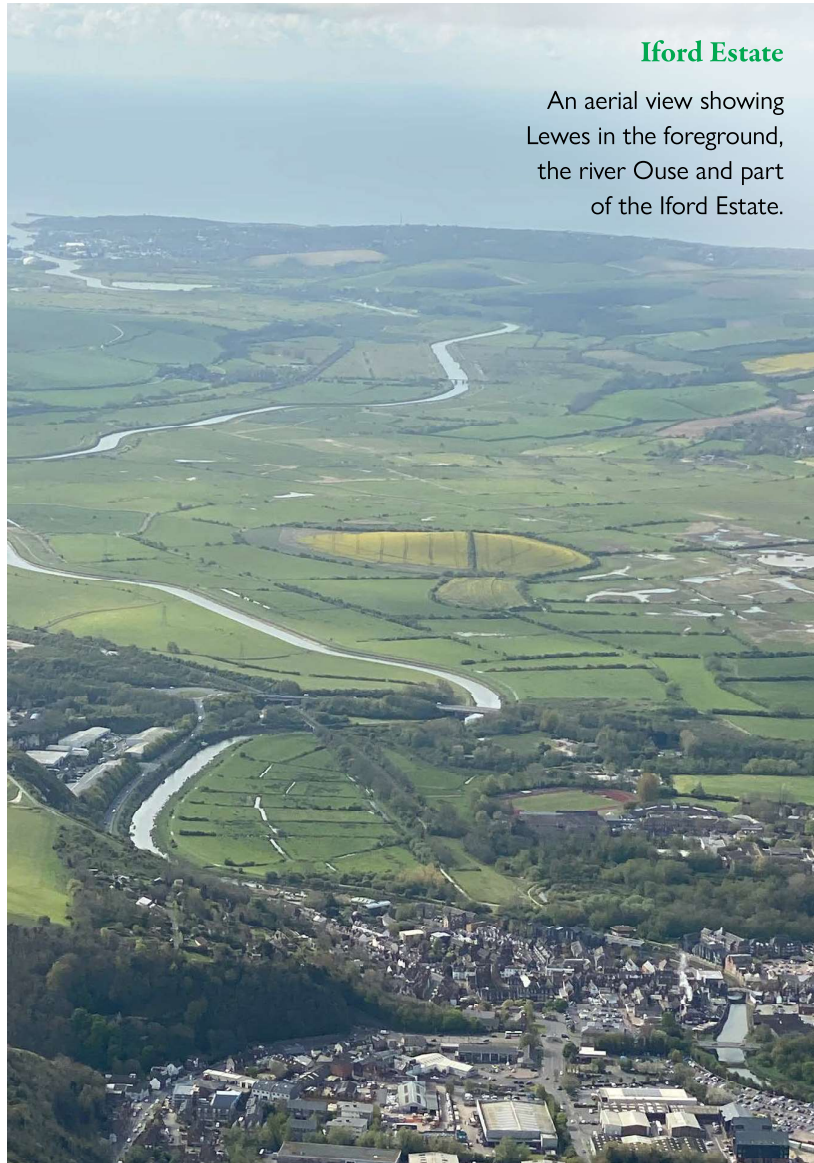
The Estate inked its first such agreement with the South Downs National Park Authority (SDNPA) in July 2023 covering 31ha of land (equating to 210 biodiversity units) becoming the first landowner to appear on the SDNPA's register of land formally 'dedicated' for BNG provision.

Now it is about to complete another deal which covers improving 13ha of existing woodland and establishing 5ha of new woodland on arable land.

The move is in response to demand from developers for higher distinctiveness habitat types, as well as the appetite among corporates to invest in voluntary biodiversity credits (VBC) for Environmental, Social & Governance (ESG) reasons.

Iford Estate Manager Ben Taylor believes this will be the first s106 in the UK permitting 'voluntary' gain – and anticipates a strong demand from local small- and medium-sized enterprises.

"A lot of these businesses really care about the impact of their operations on the planet, so might jump at the chance of an offering which only costs a few hundred or a couple of thousand pounds," he says.



Iford Estate

An aerial view showing Lewes in the foreground, the river Ouse and part of the Iford Estate.

"It's a chance for them to make a difference to nature on their doorstep in the National Park. They can visit – plus tell customers, clients, employees and suppliers about their contribution."

The South Downs is the first National Park in the UK to open a formal scheme for voluntary biodiversity gain to the private sector – meaning that firms of any size across England can invest in high-ethic, effective nature recovery to mitigate any negative impact their operations might have on the environment.

Ben recently notched up the first post-mandatory BNG sale – eight

units (covered by the first s106) bought by a developer in Greater Manchester.

Nationally, 'grassland' units seem to be priced between £25,000 and £35,000, but the value of woodland units could be about twice that, he adds.

Values could rise further, he suggests. "I hear of some people offering units for sale cheaply, but I'm not convinced they've done their sums properly. A buyer also has to think about whether the price they are paying reflects the price of delivery – because they don't want to be investing in a project that fails a few years



down the line.”

The 1,200ha estate near Lewes has a 30-year landscape-scale vision with nature recovery at its heart, using BNG as the main vehicle for securing the necessary investment. It will ultimately see about 800ha of land permanently dedicated to nature recovery, involving the generation of about 3,000 biodiversity units.

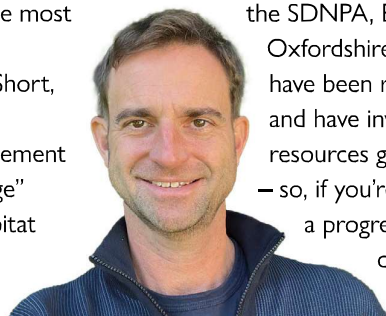
The plan includes the creation of floodplain grazing marsh providing habitat for breeding and wintering waders; species-rich grassland for rare plants, insects and mammals; plus tree-planting on parts of the farm to link up with existing woodland in this more sparsely wooded section of the South Downs National Park.

CLM Director Anthony Weston, who is the principal environment consultant to the project and has 20-plus years’ experience of habitat work, describes it as one of the “biggest and best” nature creation, enhancement and restoration projects in the country.

“Part of the attractiveness of Iford as a venue for providing BNG is how it fits within the wider landscape. It’s in a National Park, in the Ouse Valley and adjacent to SSSI and National Nature Reserve land, as well as containing large areas of ‘priority’ habitats.

“It’s well placed to link those, allowing aggregated gain. It’s part of a patchwork of natural and semi-natural habitats, rather than an island. We will increase the diversity of species over the whole estate, whilst still retaining food production as the principal land use on the most fertile land.”

According to David Short, a Partner at Lux Nova Partners, this new agreement represents “cutting-edge” law in terms of the habitat type it covers, the potential market and,



Grassland at Iford

A grassland mix sown in spring 2023 which includes rough stalked meadow grass, perennial rye grass, common bent, creeping bent, cocksfoot, Yorkshire fog, sweet vernal grass, crested dog’s-tail, soft brome, false oat-grass, red fescue, white clover, red clover, oxeye daisy, sainfoin, ribwort plantain, yarrow, wild carrot, bird’s-foot trefoil, black medick, self-heal, cat’s-ear, red campion, white campion, pale flax, scarlett pimpernel and mouse-ear.

therefore, the necessary legal clauses.

“The first s106 at Iford was drafted over a year ago which was before a lot of the statutory regulations and guidance were issued – and before the national biodiversity gain site register was launched – so we now understand much better how the register will work and have reflected that.”

David (pictured below) is expecting to see s106 and Conservation Covenants both eventually widely used, but for some landowners the latter could prove preferable, he suggests.

“There are a few LPAs such as the SDNPA, Buckinghamshire, Oxfordshire and Devon that have been really proactive and have invested their own resources getting up to speed – so, if you’re in an area with a progressive LPA, s106s could make sense. In other places,

landowners may prefer to explore the Conservation Covenant route (ie where the necessary legal agreement and project monitoring is issued and done by a ‘responsible body’).

“Some people are suggesting the latter could be more expensive in terms of the ongoing monitoring costs, but this may not prove to be the case – and dealing with a responsible body might enable you to move quicker than with a local authority. “Flexibility is also a factor and because Conservation Covenants are new and being drafted from scratch, they may be more flexible,” says David.

“This is an exciting area to work on as a lawyer,” adds David. “While there are concepts and clauses that we can take and adapt from agreements in other sectors – such as the energy market – BNG units are very much a new ‘commodity’ so this is fascinating law.”

6 examples of how CLM has helped clients

Land ‘promotion’

1 A ‘call for sites’ by a Local Planning Authority is a well-established process when it comes to residential development, allowing landowners to ‘promote’ their land as a possible location. Some Local Planning Authorities are now mirroring that process for strategic offset sites. We have put forward a site on behalf of a farmer – effectively, lobbying to have his land allocated as a strategic offset. We put a proposal together for the future of the farm – including this offset site delivering about 130 units, as well as a vision for a tourism venture with a range of accommodation. Using the Statutory Metric, we devised a set of habitat creation proposals and calculated the number of ‘units’ it would create. Local Planning Authorities are frequently asked by developers where they should provide BNG, so getting land ‘zoned’ as such means it should be more likely to come to the attention of the market.

Possible sale to a habitat banker

2 A habitat banker was looking for 10ha of offset land for an unnamed development in the locality. Their suggestion was they’d lease the land for 31 years, paying an annual rent, with the farmer managing it in a way prescribed by the developer. The habitat banker would then be able to sell the units generated. Our role wasn’t to do the baseline

survey and propose a habitat creation and management plan, such as we’ve done elsewhere, it was more akin to the farm business consultancy we do – basically a financial analysis of the proposal, viewed in the light of other potential uses of that land. Effectively, the farmer would be paid a management fee for delivering the work, rather than actually selling the units. That would take some of the risk out of it for them, but also meant there would be less potential ‘upside’ as the habitat banker would take this margin. It represented a relatively straightforward proposition for the farmer as they wouldn’t need to invest time and effort calculating a baseline or devising a proposal. However, we advised our client against accepting a suggested figure of £1,000/ha/pa for 30 years (albeit index-linked) and, after lobbying for an up-front lump-sum which the habitat banker was not prepared to agree to, are now working with this landowner to develop their own habitat bank with a view to then selling units direct to developers.

South coast baselining

3 A south coast farmer asked us to do a habitat baseline survey. He was keen to explore natural capital opportunities – and wanted to get ‘market-ready’ so he would be in a position to have conversations with developers or ‘green funds’ who wished to

fund habitat creation or improve their Environmental, Social and Governance (ESG) standards. We have calculated a baseline, modelling what could potentially be done in terms of habitat creation and what that will mean in terms of units generated and their value. We also had initial conversations with a number of potential purchasers and are currently in conversation with the LPA and a responsible body on legally securing the site. It’s a mainly arable holding, but on a stretch of coastline, so it’s potentially an exciting area for reedbed or floodplain grazing marsh creation. This means it’s desirable from a BNG perspective as the habitats that can be created are of a high distinctiveness and can be used to offset a wide range of habitats lost to development. In tandem with selling units in this way, the proposal also means the landowner has an opportunity to offset any development that might take place on their own land.

1ha offset

4 We have been involved in an agreement between a landowner and a Local Authority seeking to offset the loss of SSSI land. It will involve turning existing grassland into SSSI-quality grazing marsh habitat. Following hydrology studies, a key element of the work will be ground re-profiling, lowering levels in places, so enabling the grazing marsh to be established. With inundations →

more likely, plants such as marsh marigold and crested dog's-tail will thrive in the wetter conditions, leading to a sward composition equivalent to nearby SSSI land. It will become a great habitat for invertebrates and encourage wading birds such as lapwing (a 'red' species on the Birds of Conservation Concern list meaning it's in 'most urgent need of help') and the redshank and wigeon (both classed as 'amber'). The negotiated payment will be significant, with the local authority carrying out the infrastructure and habitat-creation work, as well as the monitoring of the site, and the landowner undertaking the long-term management of the site to achieve the intended results.

Offset of nearby development – pre-mandatory BNG

5 Keen to generate six units, a developer's agent was approaching local landowners looking for 1ha of arable land to convert to grass (and potentially move some reptiles to from the development site). The proposal was for a 30-year agreement to create and maintain that habitat, with a proposed one-off, up-front payment of £42,000. We reviewed the proposal for the farmer in

the context of 'comparables' (ie other deals we'd seen or been involved in) and also with other potential uses of that ground in mind. What would it make were it to be sold, say, as a paddock or as an extension to an adjoining house's garden? For all intents and purposes, the land would be being taken out of production for a generation, so our starting point was: What figure would the owner want to be paid, were they selling it? We also carefully considered the best location, settling on a piece of ground that was adjacent to other land that could be used for BNG, should the same or another developer ever suggest an additional proposal. We gave a lot of thought to what else the farmer could do with that piece of land – would tying it up in this way mean he'd miss out on any other opportunities? Would it impact on his operations elsewhere on the holding? The answer to these questions was 'no', it represented a low-risk proposition and a good chance to establish a track record as a BNG provider, potentially opening the door on further opportunities. In the end, we've negotiated a figure in excess of double the initial offer, with the developer paying the farmer's legal fees and adding an element to cover the monitoring of the BNG throughout the term of the agreement.

Planning a habitat for a developer

6 A national housebuilder was keen to conceive a habitat project on 26ha of its own land to generate the BNG units necessary to facilitate one of its development projects in the same county. We undertook the surveys and baselining to get a clear picture of the current habitat, then suggested options as to how they could create the necessary units. Steered by the council's vision for the area, plus what was feasible for the location, we worked up a plan for the permanent pasture ground. It involves enhancing the sward to encourage greater species diversity, along with planting scrub-woodland in spots where this wouldn't affect the ridge-and-furrow archaeology present on some of the ground. The proposal also includes enhancing existing hedgerows, planting new ones, plus establishing in-field trees, potentially including black poplar which is a rare species nationally, but characteristic of this landscape. Our role has also included engagement and communication with the local authority on behalf of the developer, assisting with the process of securing the site with a s106 to allow for the registration of the biodiversity units on the national register.



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How to get started

A good starting point is 'baselining', which involves establishing what biodiversity you currently have and modelling what you could enhance or create.

Wrapping your head around this is also useful if you're thinking of submitting any planning applications of your own, because you will probably also have to meet the BNG requirement.

Having credible, authoritative data will help you win the confidence of developers looking to do BNG deals and it also means you won't be reactive if an opportunity presents itself.

Instead, you will have a proper thought-through plan for how you can deliver BNG and how that fits with the rest of the business.

Your baseline is effectively the

value of your natural capital asset, but you can put this asset to various uses so consider BNG alongside other revenue-generating opportunities with the public and private sectors.

It's also worth looking at local planning policies, as some local authorities are already earmarking potential areas for offsetting. Similarly, look at the local Nature Recovery Strategy which informs this and will highlight priority habitats and species.

Meanwhile, talk to would-be stakeholders when your idea is still at the formative stage. Whether it's local wildlife trusts and archaeology groups or parish councils and water authorities, understanding their position will help you shape your plans and could help avoid potential objections.

Keep in mind...

1 Think long-term

BNG is a long-term proposition (30 years or longer) so discuss plans with your likely successor(s). It could provide a guaranteed revenue for decades, but you need to be comfortable tying up ground long term, possibly in perpetuity. There also could be inheritance (and indeed other tax) implications.

2 The fit with farming

It's important a project dovetails well with your current and future farming enterprises. There are great synergies to be had – a biodiverse-rich environment could turn the key, for example, on recreation and tourism opportunities. But consider all the knock-on implications – what might farming

fewer acres mean for your fixed costs, for instance, or might you need to introduce a livestock enterprise to graze a new meadow?

3 Opportunity cost

Don't just consider the returns BNG will bring – also cost out the income that alternatives could yield. The potential for other enterprises may be limited on some parcels of land, but elsewhere you may have multiple options.

4 Is it really me?

Be honest with yourself about your track record creating and maintaining habitats and biodiversity. Those with a proven pedigree and who are genuinely enthusiastic about BNG are more likely to be able to hit the ground running and make it work.



CLM is a land, business and property management consultancy.

It helps clients protect and grow their income and assets, improve their quality of life and create sustainable legacies. The 20-strong team includes land agents, business consultants, planners, valuers, environmental experts, agriculturalists, ecologists and property experts. From its headquarters in East Sussex, it supports clients nationwide as varied as family farms, landed estates, property developers, international investors and viticulturists. It offers a range of services relating to BNG and natural capital. As experts on the ecosystem services market and environmental schemes, the knowledge and insight of its consultants is frequently sought by journals such as *Farmers Weekly*, the *Financial Times*, *Property Week* and *Inside Housing*.

"CLM has evolved over the years into a sector-leading consultancy"

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