

Planning Enforcement

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Planning Enforcement Biodiversity Net Gain preparedness

Adam Sheppard, Amelia Rose, Frances Summers, Scott Britnell
April 2024



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BCP Council



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Introduction

Structurally, the report first frames the research having regard to ecological decline, local government financial circumstances, and the positioning of planning and planning enforcement within this. The legislative and policy context is then highlighted, after which the research methodology is presented. The results form the core of the report, from which a series of recommendations are presented.

The project team consisted of:

- Adam Sheppard MRTPI FRGS FHEA - Adam joined the University of Birmingham in 2023 as an Assistant Professor of Urban Planning. Prior to this Adam taught for over a decade and a half in the RTPI Planning School at UWE Bristol, as well as at the University of Gloucestershire. Adam moved into academia from industry in 2007, having previously worked in Development Management in local government. Adam teaches across undergraduate, postgraduate, and Degree Apprenticeship, particularly focused upon development management, as well as community participation and engagement, skills, and aspects of planning history. He is currently involved in research projects concerned with enforcement, Biodiversity Net Gain, urban rewilding, meanwhile use, Permitted Development, AR/VR, and GIS. (Bio: [Adam Sheppard, University of Birmingham](#))
- Frances Summers MRTPI – Frances is a Chartered Town Planner currently working as a Senior Planning Officer at BCP Council. Frances has a wide range of experience in both policy, research, teaching, and development management within the public and private sectors. Frances won the RTPI SW Young Planner of the Year and was selected as one of The Planner’s Women of Influence in 2021 for work with the Dorset Young Planners, and due to her involvement in the preparation and examination of local plans. Since then, Frances has determined major development schemes, and contributed to the RTPI SW Regional Management Board, having a voice at a national level. Frances is a Visiting Lecturer at Bournemouth University, having previously worked with UWE Bristol and the University of Gloucestershire; in addition to teaching, she researched alongside Adam into best practice for pre-applications and planning performance agreement as part of a PAS funded project with Hyas Associates: <https://www.local.gov.uk/pas/development-mgmt/pre-application-advice-and-planning-performance-agreements-ppas>.
- Amelia Rose MRTPI – Amelia currently works as a Planning Officer in DM at BCP Council, working on a range of applications within a busy Local Planning Authority. She has also had two years of experience in Planning Policy where she worked on successful Regulation 18 consultation and towards a Regulation 19 consultation on the Dorset Council Local Plan. She has also had experience within a local design consultancy, working on public realm projects and neighbourhood plans, where she has gained extensive knowledge of community engagement and urban design. She has been part of the RTPI Dorset Young Planners group since the start of her career, including two years as group Chair. In 2022, she received a commendation in the RTPI SW Young Planner of the Year Award.
- Scott Britnell MRTPI – Scott is a Planning Enforcement Officer of 15 years’ experience, working across five Local Planning Authorities in the Southwest of England. He is currently working for South Gloucestershire Council. He has also worked as an Appeal Planning Officer and a Planning Inspector with The Planning Inspectorate. While he has worked within Development Management, Scott has sought to specialise in Planning Enforcement. Scott has delivered a variety of guest lectures at UWE Bristol and has worked alongside Adam on previous planning enforcement research.

Background

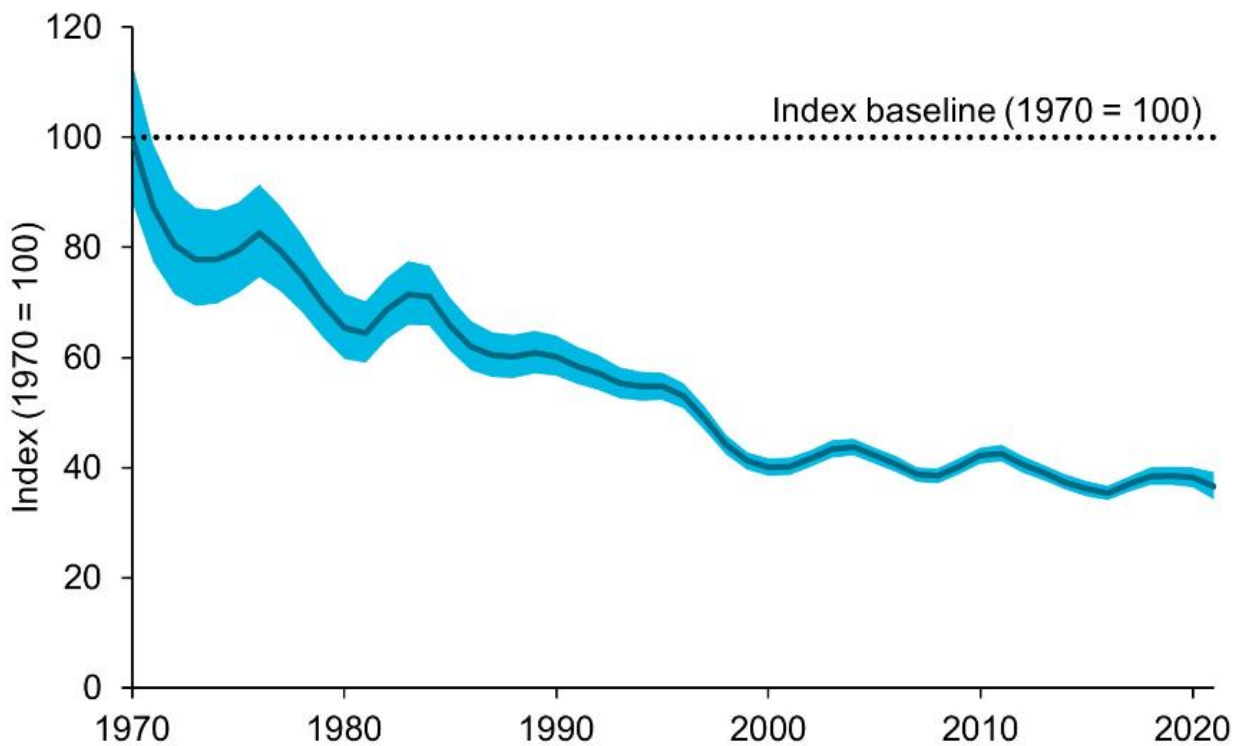
Biodiversity decline

“Scientists have warned that we are entering the sixth mass extinction, with whatever we do now likely to define the future of humanity....” “We have no time to wait. Biodiversity loss, nature loss, it is at an unprecedented level in the history of mankind,” says Elizabeth Mrema, the executive secretary of the Convention on Biological Diversity.” (BBC, 2020)

“The world is witnessing a colossal decline in global biodiversity. One million animal and plant species are threatened with extinction. Most terrestrial biomes are damaged. Since 1970 there has been a 68 percent decrease in population sizes of mammals, birds, amphibians, reptiles, and fish. This global picture is reflected in the UK, one of the most nature-depleted countries in the world. 15 percent of UK species are threatened with extinction. Of the G7 countries, the UK has the lowest level of biodiversity remaining.” (House of Commons Environmental Audit Committee, 2021)

The language concerning the decline in biodiversity is understandably stark given the story presented by the data from 1970 through to 2021. A global phenomenon, the UK has a poor record concerning biodiversity decline in consideration of the degree of depletion experienced:

Figure 1: Trend in the relative abundance of priority species in the UK, 1970 to 2021



(JNCC, 2023)

The UK has, however, been taking steps to address this decline. Following the United Nations Conference on Environment and Development (1992, Rio de Janeiro), the UK became the first nation in the world to introduce a Biodiversity Action Plan (BAP) in 1994. This was the UK’s response to the Convention on Biological Diversity (CBD), signed up to by the Government at the 1992 summit.

Over the course of the last 30 years a series of policy and regulation initiatives have attempted to address the identified decline. A significant example of this occurred in 2010 via the Aichi Targets. These targets were adopted at

the 2010 UN Convention on Biological Diversity (CBD), held in Nagoya, Aichi prefecture, Japan. The aim of the Aichi Targets was to halt biodiversity loss by 2020. The UK's own review into performance against the 20 targets set to achieve a cessation of biological decline advised that 'at a minimum, the UK has failed to meet 14 of the 19 Aichi biodiversity targets' (House of Commons Environmental Audit Committee, 2021)

The IPBES's 2019 Global Assessment of Biodiversity and Ecosystem Services highlighted an unprecedented period of decline in nature and accelerating rates of species extinction since 2005 and predicted that this would have significant impacts on economies, livelihoods, food security and quality of life (IPBES, 2019). In this context they identified five drivers of biodiversity decline which were, in order of importance:

1. changes in land and sea use.
2. direct exploitation of organisms.
3. climate change.
4. pollution; and
5. invasion of alien species.

(ibid)

In parallel, in 2018, the Government published its 25-year Environment Plan and in the same year announced the Environment Bill. This ultimately became the Environment Act of 2021. Although planning practice has been impacted upon by international, European, and domestic Acts for decades with regards environmental protections, the Environment Act nevertheless represented a significant development from a legislative perspective. Reflecting the identification of changes in land use as *the* most significant driver of biodiversity decline, the Environment Act of 2021 embraced the planning system to enable biodiversity gains where changes in land use do occur, directly addressing the historical pattern of decline. The Environment Act includes a range of measures, but perhaps most significant and high profile has been Biodiversity Net Gain (BNG) for England. It is anticipated that BNG will interface with Local Nature Recovery Strategies (LNRS) and the Environmental Land Management (ELM) programme.

Biodiversity Net Gain is essentially an approach in England intended, following a process of development, to achieve an outcome in which the natural environment is left in a measurably better state than beforehand. The requirement for the delivery of BNG is via the Environment Act of 2021, with initial commencement (major development) originally intended to be from November 2023, ultimately realised in February 2024. BNG will be at the forefront of the English ecological response as specific to the urban planning space; the introduction of the requirement for BNG is a seminal moment in the interface between planning and ecology in some respects. However, although a moment of opportunity, BNG implementation is potentially not without challenges.

Biodiversity Net Gain introduction

Biodiversity Net Gain is an approach to development that aims to leave the natural environment in a measurably better state than it was before. Following its introduction from the 12th of February 2024 (majors) / 2nd April 2024 (small sites) through the Environment Act of 2021, the aim of BNG therefore is to deliver measurable improvements for biodiversity through creation of new habitats, or enhancement of existing habitats, in association with development. This can be done through on-site or offsite measures, or through a combination of the two (PAS, 2024). The requirements are summarised as follows:

"The [Environment Act](#) sets out the following key components of mandatory biodiversity gain:

- *Amends Town & Country Planning Act (TCPA).*
- *Minimum 10% gain required calculated using the [Biodiversity Metric](#) & approval of a biodiversity gain plan;*
- *Significant on-site habitat and all off-site habitat secured for at least 30 years for at least 30 years via conditions, planning obligations or conservation covenants.*

- *Delivered on-site, off-site or via a new statutory biodiversity credits scheme; and*
- *National register for net gain delivery sites.*

It does not change existing legal protections for important habitats and wildlife species. It maintains the mitigation hierarchy of avoid impacts first, then mitigate and only compensate as a last resort.” (LGA, 2024)

The town planning process/system acts as the vehicle for delivering BNG, with the delivery operationalised in association with the planning application process, conditions, and legal agreements (S106 / Conservation Covenants). Other pre-existing requirements regarding, for example, protected species, remain. BNG represents a legal requirement and as such is a fixed addition within the process of development as is, for example, the Community Infrastructure Levy where present. Implementation will therefore be via the planning process, with planning professionals working in partnership with other key built and natural environment professionals. Within the local government sector, Development Management officers, inclusive enforcement specialists/officers, and ecologists will be instrumental.

BNG and the planning profession

The introduction of BNG comes at a time when the planning profession is in a challenging position. The 2023 State of the Profession report (RTPI) notes that:

“The planning system faces challenges across the UK. The cost of living and housing crises coincide with the rise of planning backlogs, the underfunding of local authority planning departments, and persistent labour shortages of planning professionals. In England, this is compounded by political uncertainty around “planning reform” on both sides of the aisle. These issues manifest as foregone construction of homes and infrastructure. Frustration with the state of the planning system also results in personal attacks on professionals in public and social media.”

(RTPI, 2023a)

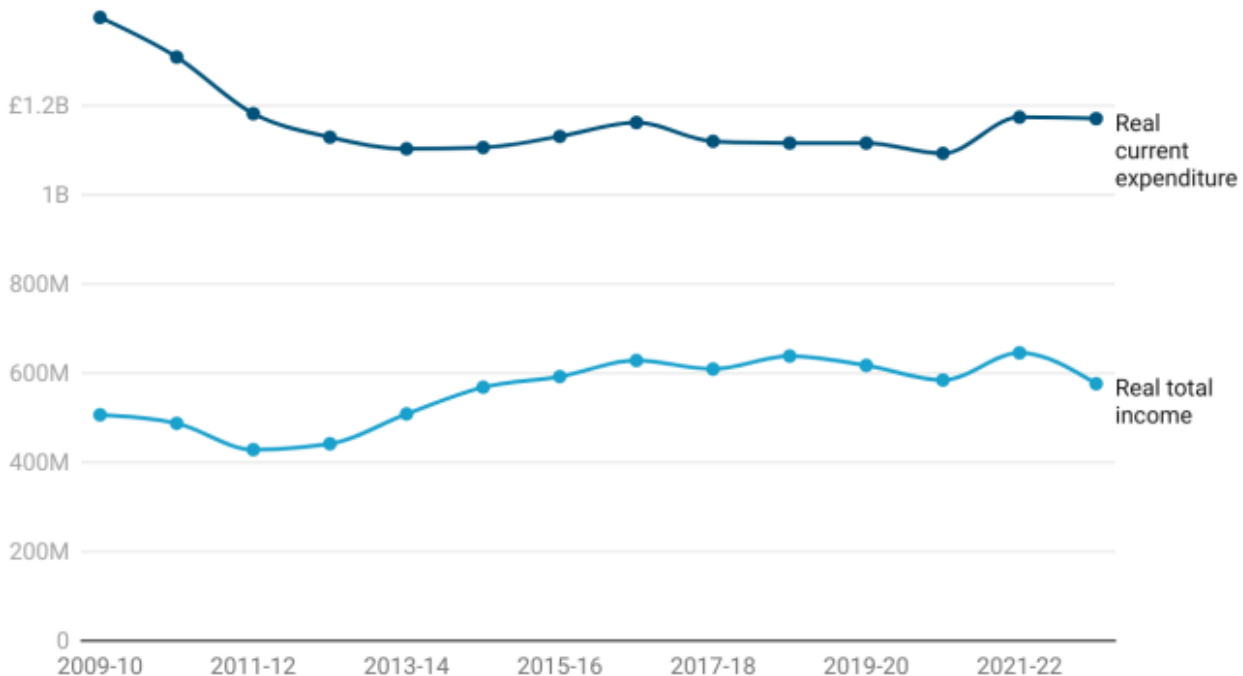
It is into this environment of challenge that BNG is rolling out into. A recent RTPI survey (2023b) found that:

- 61% of public sector planners cannot confirm they’ll have dedicated BNG resource and ecological expertise in-house in place by November.
- 79% of public sector planners believe that BNG practice would be improved with confirmation of additional ‘skills and staff’.
- 78% of public sector planners believe that BNG practice would be improved with additional ‘guidance, advice and support’.

New funding has potentially become available via the recent increase in planning fees, but this is non-ring fenced and the wider picture is one of reduced expenditure over the last decade:

Councils in England spend less on planning services even as revenues are increasing

Adjusted for inflation, local authority spending on planning services in England has been falling, even as income from planning services has been increasing. Total current expenditure on planning fell by 16% and income rose by 14%.



Planning Services refers to the aggregate of Development Control, Conservation and listed buildings planning policy, and Other planning policy lines found in the Revenue Outturn (RO) for Cultural, Environmental, Regulatory and Planning Services (RO5) table. These values are adjusted using a UK GDP Deflator to adjust for inflation.

Chart: RTPI • Source: DLUHC • Created with Datawrapper

(RTPI 2023a)

Importantly, the pressures (capacity, resources, income, demand) upon planning services are increasing, having regard to reforms to the local plan process, re-regulation via Prior Approval, and the ongoing expansion of the Development Management function – most recently via BNG. There are efforts/initiatives to develop skills, grow capacity, and improve pathways into the profession (by both government and the RTPI), but the challenge is significant, wider local authority resource constraints can restrict new appointments/growth/replacement staffing, and some areas of shortage (people and skills) will require long term attention and change. Options for redress are limited when mindful of the wider context:

“Local authorities in England deliver key services paid by local taxpayers and which are critical to their everyday lives. However, local authorities are now issuing section 114 notices at an alarming rate which puts them and local taxpayers at risk. In the last six years, eight local authorities have issued a section 114 notice, which notifies of severe financial distress — while none had done so in the preceding eighteen years. Moreover, local authorities are increasingly reporting concerns about their financial positions and their ability to maintain delivery of their services. The Government must act now if local authorities are to survive the severe crisis and financial distress that they face...It is no surprise that the financial crisis that local authorities are encountering comes after significant reductions in local authorities’ spending power which has itself coincided with increasing demand for their services and inflationary pressures driving up costs. Ultimately, the levels of funding available to local authorities, through council

tax, retained business rates, and government grants have not kept pace with these pressures, leading to a funding gap which is already estimated at £4 billion over the next two years.”

(House of Commons, 2024)

Local Authorities are therefore experiencing a period of financial distress, within which planning is not immune from impact and enforcement specifically particularly challenged. The roll out of BNG within this context is a significant consideration given the findings of this research.

The planning enforcement context

Effective planning enforcement is a key activity within wider urban and rural planning practice in ensuring that the aspiration, intention, and strategic vision concerning placemaking and the management of space is not undermined (IDA, 2008. Sheppard et al, 2013. Sheppard et al, 2023). Despite this, planning enforcement has a long-standing and ongoing challenge with regard to resourcing, attention, governance, and delivery (IDA, 2008. Sheppard et al, 2013 and 2014. RTPI, 2022). This context, itself in a background of austerity and wider resourcing challenges for local government, appears to be as accurate as ever:

‘The RTPI conducted a survey with responses from 133 enforcement officers representing about a third of local authorities in England. The results were striking. 80% of respondents reported that there weren’t enough officers in their team to carry out the workload, 89% that their councils are currently experiencing a backlog, 73% that their authority had struggled to recruit in the last year and 96% supported central government funding for direct action. Under 50% of authorities now have the capacity to monitor compliance of conditions once successful enforcement action has been taken...Thus, the last decade of cuts has had a tangible and damaging impact on planning enforcement’ (RTPI, 2022).

A new dynamic is the coming into force of [The Planning Act 2008 \(Commencement No. 8\) and Levelling-up and Regeneration Act 2023 \(Commencement No. 4 and Transitional Provisions\) Regulations 2024](#) on 25 April 2024. This has, most notably perhaps, introduced a single 10-year tariff that will apply to all breaches of planning controls and the introduction of Enforcement Warning Notices (EWA). With pressures on resources as they are, it has been suggested that a possible outcome of the 10-year tariff is delays in the taking of action where other more time sensitive matters are present (Room 106, ep90)

Planning enforcement and BNG

The Government noted in their response to the BNG consultation that the planning enforcement regime is expected to be the principal way of enforcing delivery of BNG (DEFRA, 2022). This has subsequently been reiterated in the policy and guidance now supporting the operationalisation of BNG. As such, planning enforcement has a key role to play in BNG success, covering the enforcement of delivery and maintenance of BNG for a 30-year period for each site/agreement. And yet, this research suggests enforcement services are poorly placed to operationalise this effectively given its existing challenges/circumstances and questions over skills, processes, systems, and wider preparedness for BNG rollout. RTPI NAPE Chair Olivia Stapleford has stressed concern (RTPI, 2023), and no detailed guidance from Government has thus far been forthcoming with regards the delivery of effective BNG enforcement.

Framed by the academic and professional wider context and circumstances of planning enforcement, this report will provide a focused interrogation with regards BNG implementation and preparedness in England specifically through the lens of planning enforcement.

Legislative and Operational Context

The legislation covering BNG in planning can be found within the Environment Act 2021, Schedule 14, which inserts Schedule 7A into the Town and Country Planning Act 1990, 'Biodiversity gain as condition of planning permission'. This states that the biodiversity gain objective is met in relation to development for which planning permission is granted if the biodiversity value attributable to the development exceeds the pre-development biodiversity value of the onsite habitat by at least the relevant percentage, which is currently set at 10%.¹

This legislation "was amended by the Levelling Up and Regeneration Act 2023. The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024 made consequential amendments to other parts of the 1990 Act."²

Other biodiversity net gain regulations most directly relevant to planning are³:

- [The Environment Act 2021 \(Commencement No. 8 and Transitional Provisions\) Regulations 2024](#) which commence biodiversity net gain for most types of new planning applications and provides transitional arrangements for section 73 permissions.
- [The Biodiversity Gain Requirements \(Exemptions\) Regulations 2024](#) which prescribe exemptions for categories of development to which biodiversity net gain does not apply.
- [The Biodiversity Gain \(Town and Country Planning\) \(Modifications and Amendments\) \(England\) Regulations 2024](#) which amend the Town and Country Planning (Development Management Procedure) (England) Order 2015 and the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 to include provisions in respect of applications for planning permission and the submission and determination of Biodiversity Gain Plans, as well as modifications of Schedule 7A of the Town and Country Planning Act 1990 for phased development.
- [The Biodiversity Gain Requirements \(Irreplaceable Habitat\) Regulations 2024](#) which set out the modifications for irreplaceable habitat.
- There are also regulations for the Biodiversity Gain Site register established under [section 100 of the Environment Act 2021](#) for registered offsite biodiversity gains.

The amount of legislation covering BNG, and existing legislation that needs to be cross referenced, reflects the fundamental change that will affect the planning system. It is also likely to represent a profound learning curve for Local Planning Authority (LPA) planners of all disciplines.

In addition to the above legislation, the Government have released BNG guidance. While helpful, it must be remembered that BNG is an evolving area of planning law and so it is likely that further/revised guidance will follow in the months and years ahead. The Government guidance provides advice for developers, LPAs and land managers wanting to engage with the BNG 'market'. As this review is concerned with how LPA planning enforcement teams will respond to alleged breaches of planning control relating to BNG, it will consider the advice offered to LPAs in this regard.

The Government guidance states that "...following the approval of the Biodiversity Gain Plan and commencement of development, there will be an important role for local planning authorities to monitor the implementation of biodiversity net gain Plan and, where appropriate, take enforcement action if commitments relating to the Plan are

¹ Environment Act 2021

² Taken from GOV.UK's Biodiversity net gain Guidance

³ List taken from GOV.UK's Biodiversity net gain Guidance

not met."⁴ This establishes two important roles for the Council, one being the proactive monitoring of the implementation of the biodiversity net gain Plan, and the other being enforcement action if the Plan is not carried out/ not complied with.

In terms of enforcement the guidance states:

"Effective enforcement is important to tackle breaches of planning control and maintain integrity of the decision-making process. Local planning authorities are already encouraged to prepare local enforcement plans, and set out the priorities for enforcement action, and they may want to update these to reflect the introduction of biodiversity net gain. This could cover both the initial delivery and ongoing management and maintenance mechanisms to assist monitoring of gains in the longer term.

*Appropriately worded planning conditions and planning obligations would also help achieve effective monitoring and enforcement of biodiversity net gain, particularly in relation to the maintenance and monitoring of significant onsite habitat enhancements and registered offsite biodiversity gains."*⁵

There are currently no new enforcement powers (legislatively) to assist LPAs specifically with the enforcement of BNG. The monitoring of BNG and responding to those cases where BNG requirements are not implemented according to the plan, will likely require the input of the Council's specialist Ecologist in most instances. LPAs must therefore develop effective cross departmental (and beyond) working, if this is not already in place, as it is unlikely that planning enforcement teams will have specialised ecologists sitting within them. Equally, ecology teams are unlikely to have the experience of robust and effective enforcement of planning matters. **Updating enforcement plans to include the delivery and monitoring of BNG is likely to require additional resources.** External relationships, including via PSRB opportunities, will need exploration.

In addition to planning conditions which are usually enforced by planning enforcement teams, and planning obligations which may or may not be the responsibility of enforcement teams to enforce, Conservation Covenants may also be used to secure BNG. *"A conservation covenant agreement is a private, voluntary agreement to conserve the natural or heritage features of the land. This can include buildings on the land. The parts of a conservation covenant agreement which set out what a landowner and responsible body must or must not do to help conserve the land become legally binding as a conservation covenant"*.⁶

Conservation covenants are likely to be a new concept to planning enforcement teams and indeed the wider planning team at LPAs. They are effectively legal agreements and so for planning enforcement teams where the responsibility for enforcing such agreements does not lie with them, this may not be an issue. However, for teams who do have such responsibilities, the use of Conservation Covenants is a matter which they will need to consider and plan/train/resource for.

Turning to Planning Practice Guidance - Paragraph: 006 Reference ID: 74-006-20240214, this states that:

How will biodiversity net gain be effectively monitored and enforced?

Failure to comply with the biodiversity gain condition by commencing development without approval of the Biodiversity Gain Plan will be a breach of planning control. Local planning authorities have a range of [planning enforcement powers](#) and have responsibility for taking whatever enforcement action may be necessary, in the public interest, in their area.

Effective enforcement is important to tackle breaches of planning control and maintain integrity of the decision-making process. Local planning authorities are already encouraged to prepare local enforcement plans, and set out

⁴ GOV.UK's Biodiversity net gain Guidance

⁵ GOV.UK's Biodiversity net gain Guidance

⁶ GOV.UK's Getting and using a conservation covenant agreement

the priorities for enforcement action, and they may want to update these to reflect the introduction of biodiversity net gain. This could cover both the initial delivery and ongoing management and maintenance mechanisms to assist monitoring of gains in the longer term.

Appropriately worded planning conditions and planning obligations would also help achieve effective monitoring and enforcement of biodiversity net gain, particularly in relation to the maintenance and monitoring of significant onsite habitat enhancements and registered offsite biodiversity gains.

The PPG therefore confirms the use of existing powers and processes with regards the implementation of BNG. An interesting dynamic here concerns the use of the term ‘public interest’ alone (as opposed to public *and* ecological interest). The positioning of ecology within BNG enforcement, the extent to which enforcement is focused upon the role of *delivering* 10% net gain, will be an interesting dynamic within enforcement decision making space, including with regards how this interfaces with the ‘public interest’, and the balancing of interests within this.

Methodology

The research was undertaken using a mixed methods approach. A literature review was firstly undertaken to consolidate knowledge and understanding with regards the wider context and legislative / policy framework now in place. Following this, primary research was undertaken via a two-phase approach. Initially, an online survey was distributed with the support of RTPI NAPE to gain strategic insights and reflections for planning enforcement professionals. Subsequent to this, a focus group workshop was held to support a deep dive into some of the themes highlighted in the initial online survey.

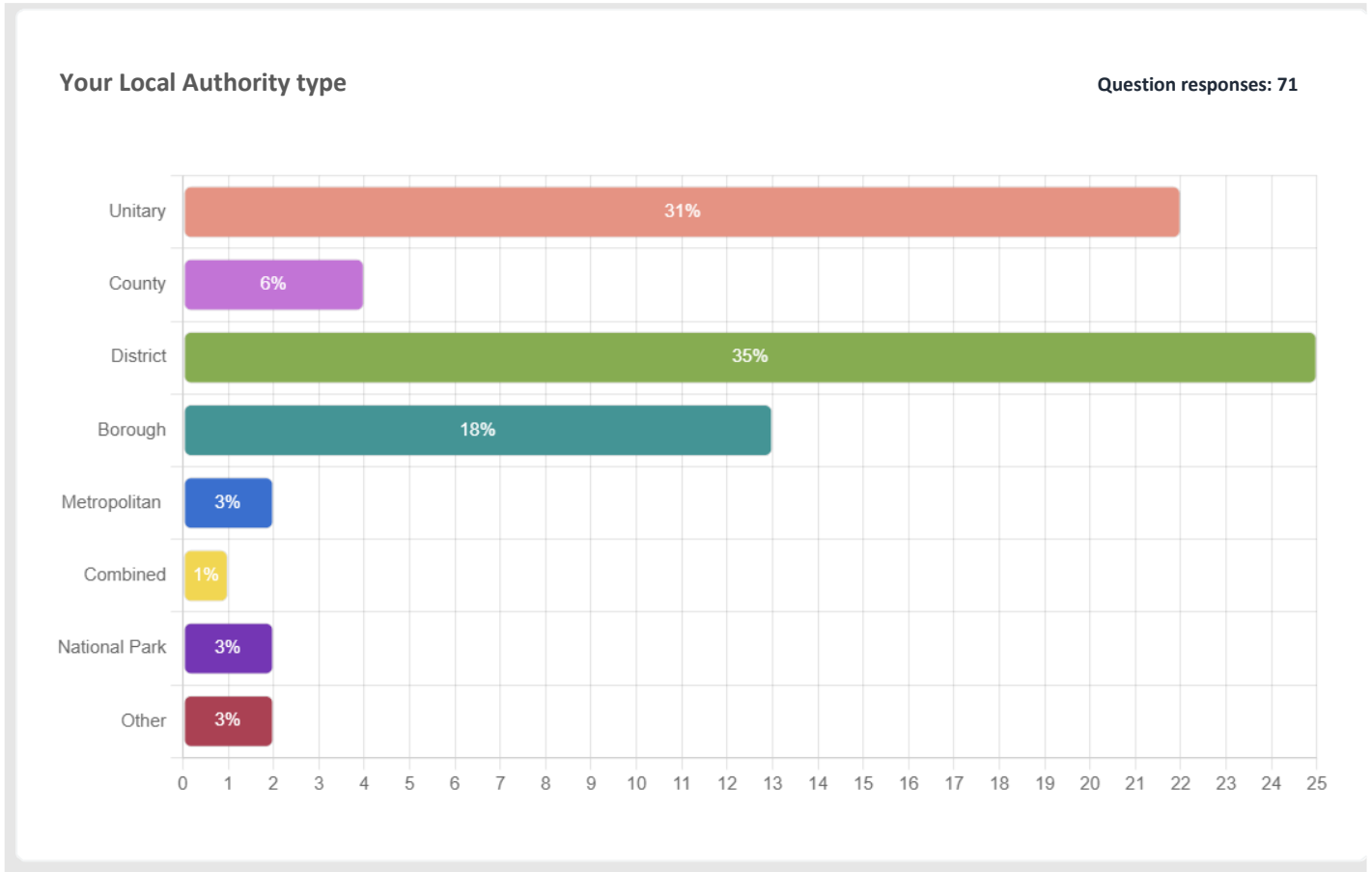


Results and findings were reviewed and analysed by the team and are presented below.

Survey results⁷

72 respondents completed most questions in the questionnaire, consisting of a mix of ecologists, planners, enforcement officers and managers within a planning environment. The vast majority of respondents worked in local government roles, with 78% of respondents being Enforcement Officers, but respondents were not limited to this, with 11% working in Development Management roles and smaller proportions of Ecologists and Policy Officers.

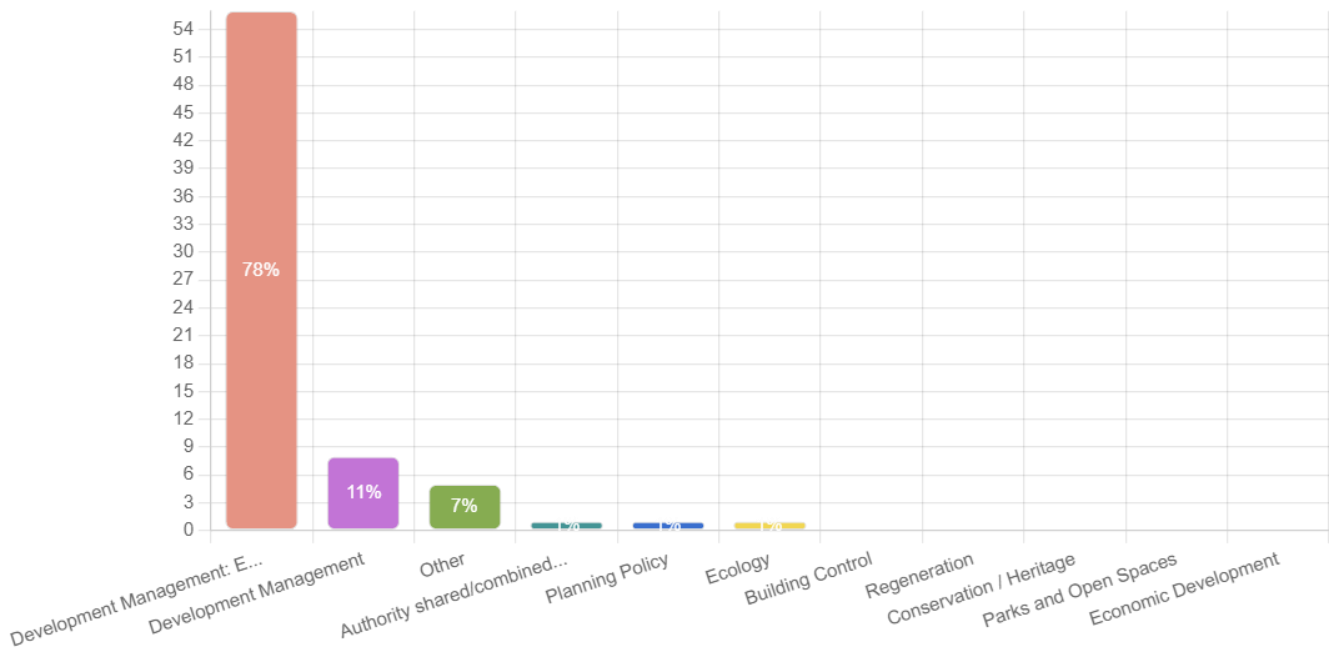
Participant information



⁷ N.B. Data rounding has created a 1% overall variation in some total calculations

Your role

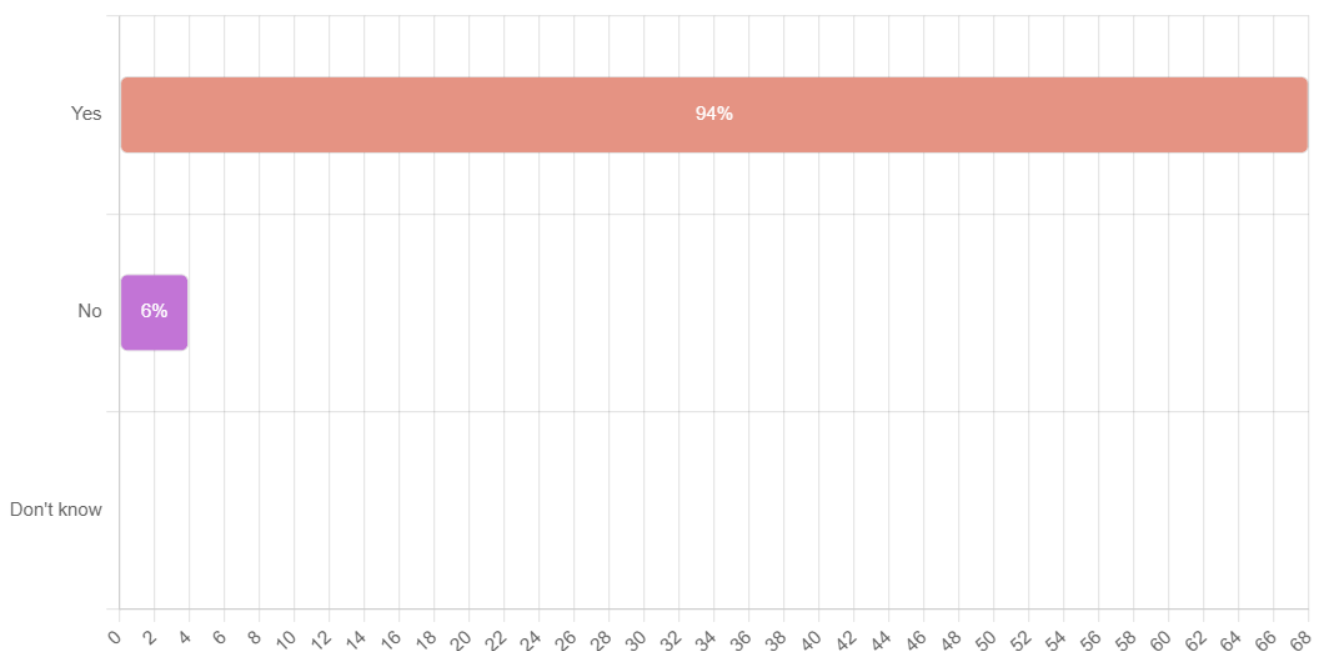
Question responses: 72



Organisation structure

Does your organisation have a dedicated planning enforcement team? (rather than a Council wide enforcement service which covers planning enforcement)

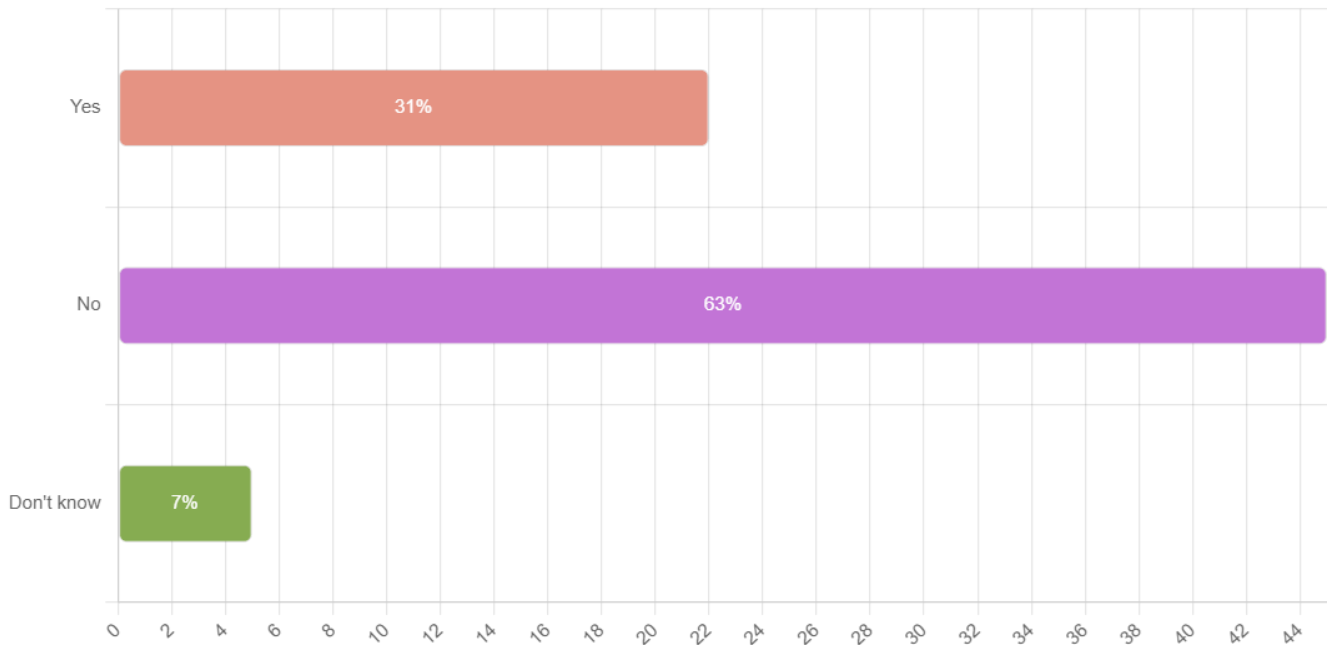
Question responses: 72



Resources

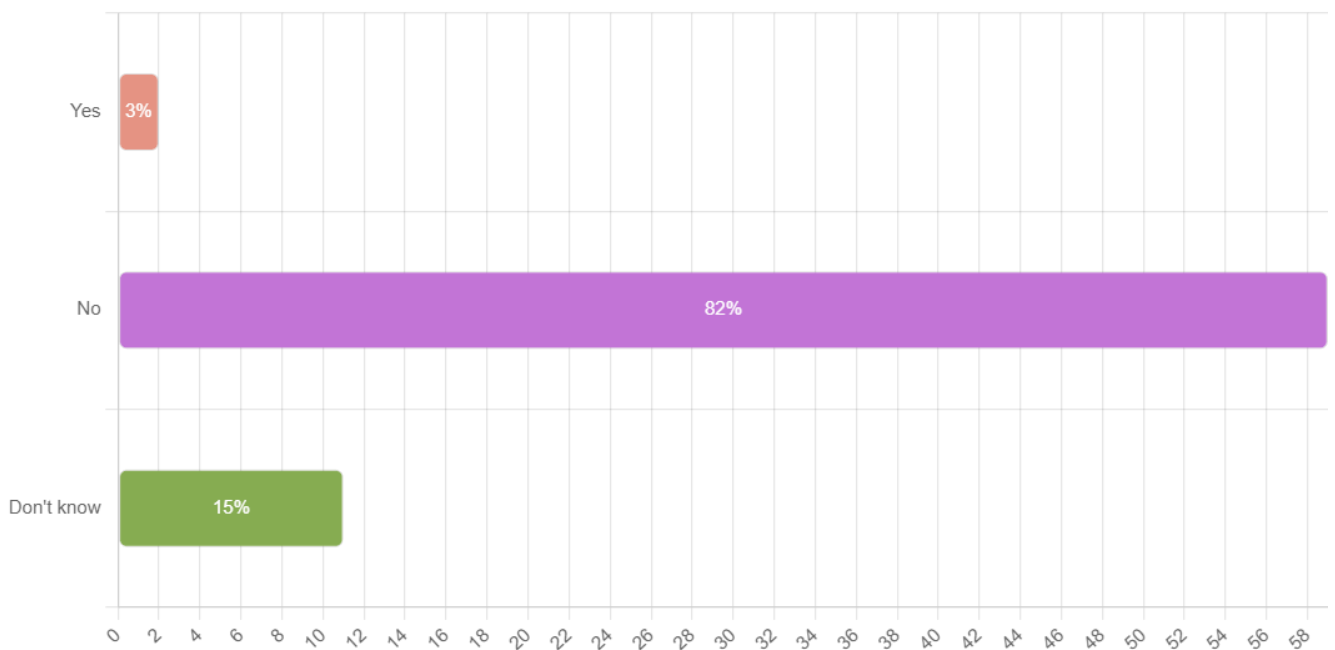
Do you feel your planning enforcement service is adequately resourced to meet current service demands?

Question responses: 72



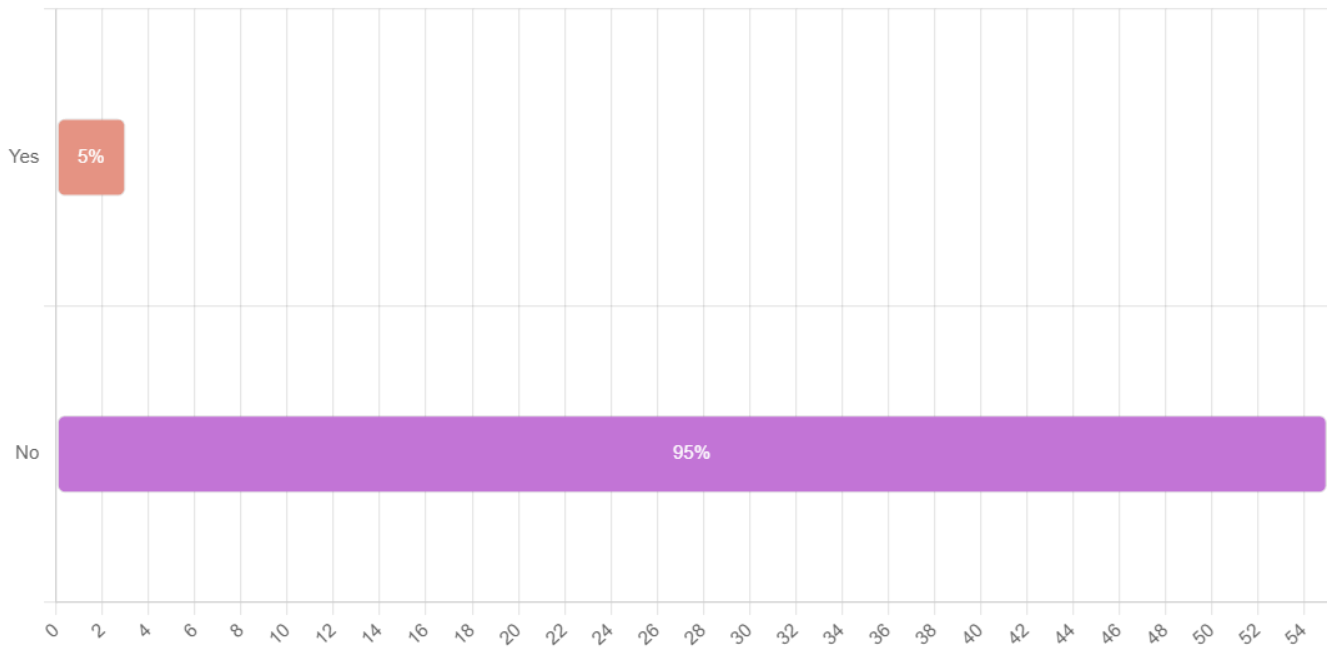
Do you feel your organisation's planning enforcement service is adequately resourced to meet expected the further service demands specifically related to BNG in 2024 in addition?

Question responses: 72



If you answered no to the previous question, are you confident resources will be forthcoming in a timely manner?

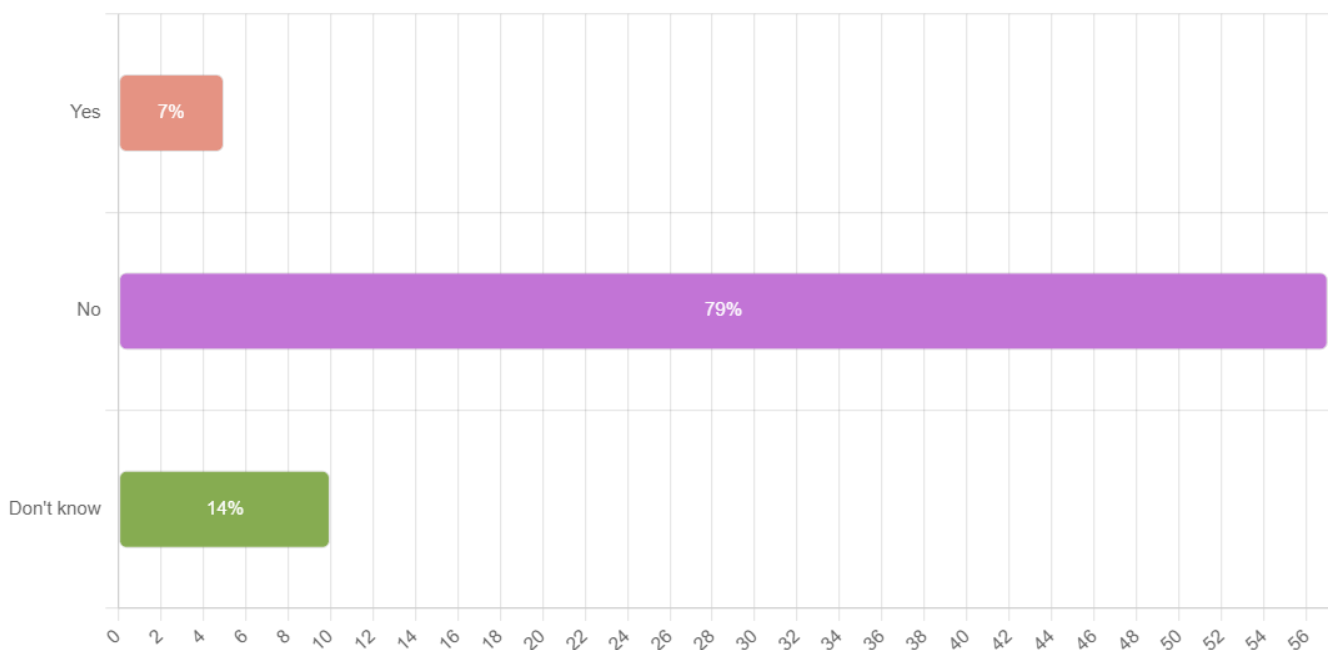
Question responses: 58



Skills, knowledge, and understanding

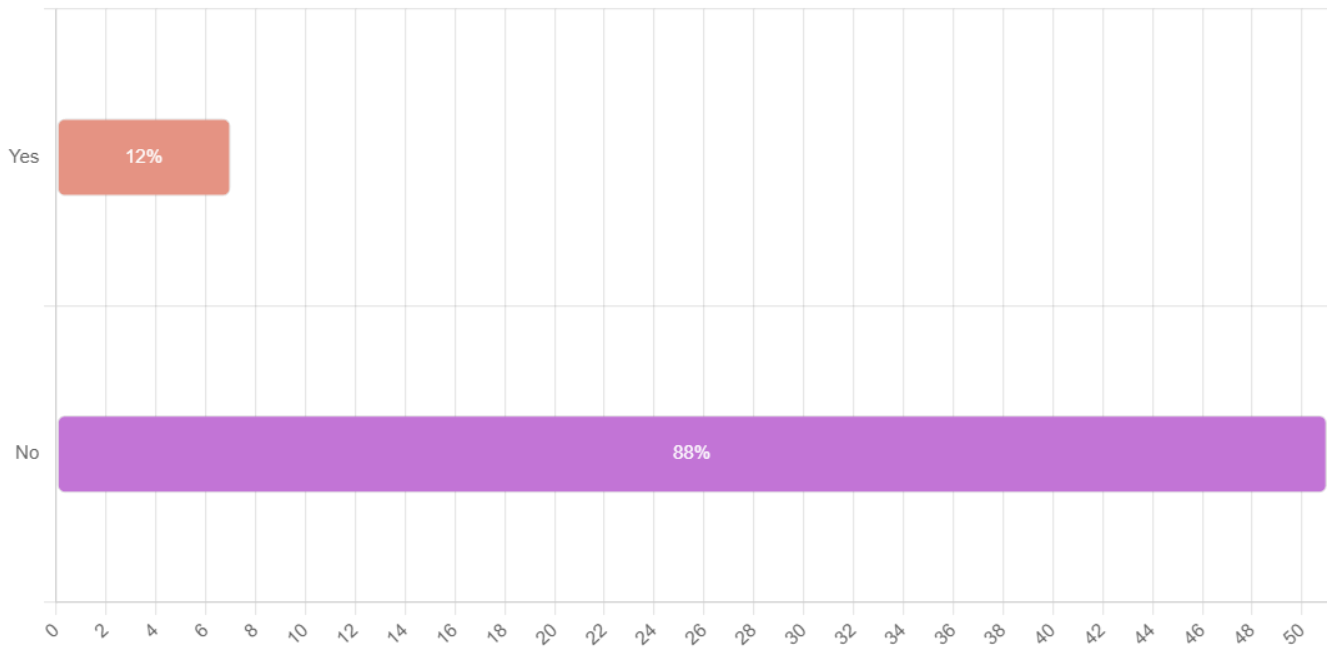
Do you feel your planning enforcement team have, or will have, the requisite skills, knowledge, and understanding to provide a BNG related enforcement service in Spring 2024?

Question responses: 72



If you answered no to the previous question, are you confident this will be addressed in a timely manner?

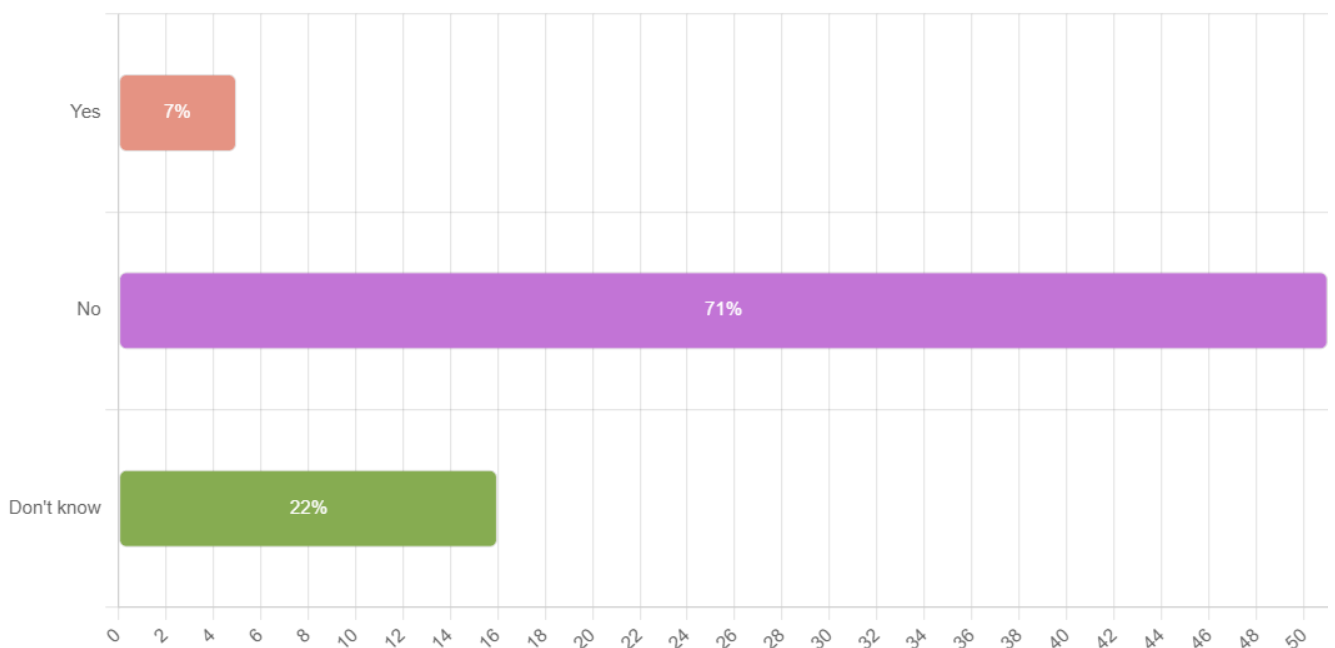
Question responses: 58



Systems and processes

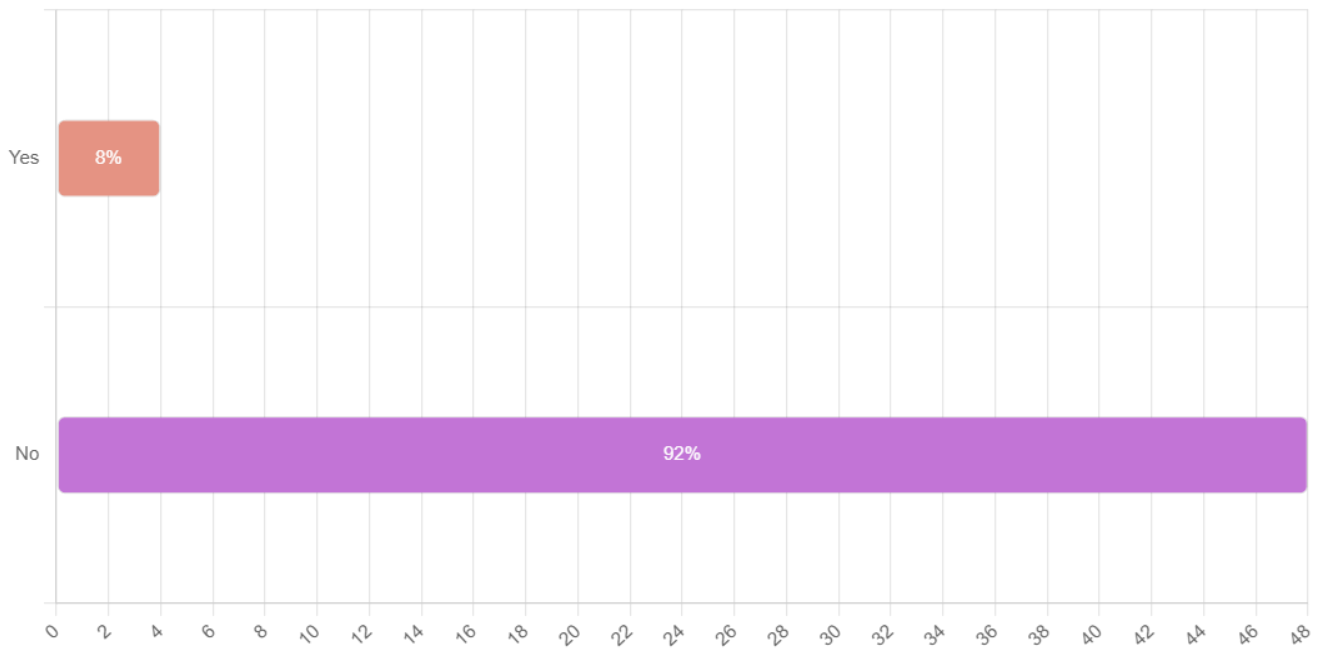
Do you feel you/your organisation has the necessary enforcement systems and processes to meet expected service demands specifically related to BNG from Spring 2024?

Question responses: 72



If you answered no to the previous question, are you confident these will be forthcoming in a timely manner?

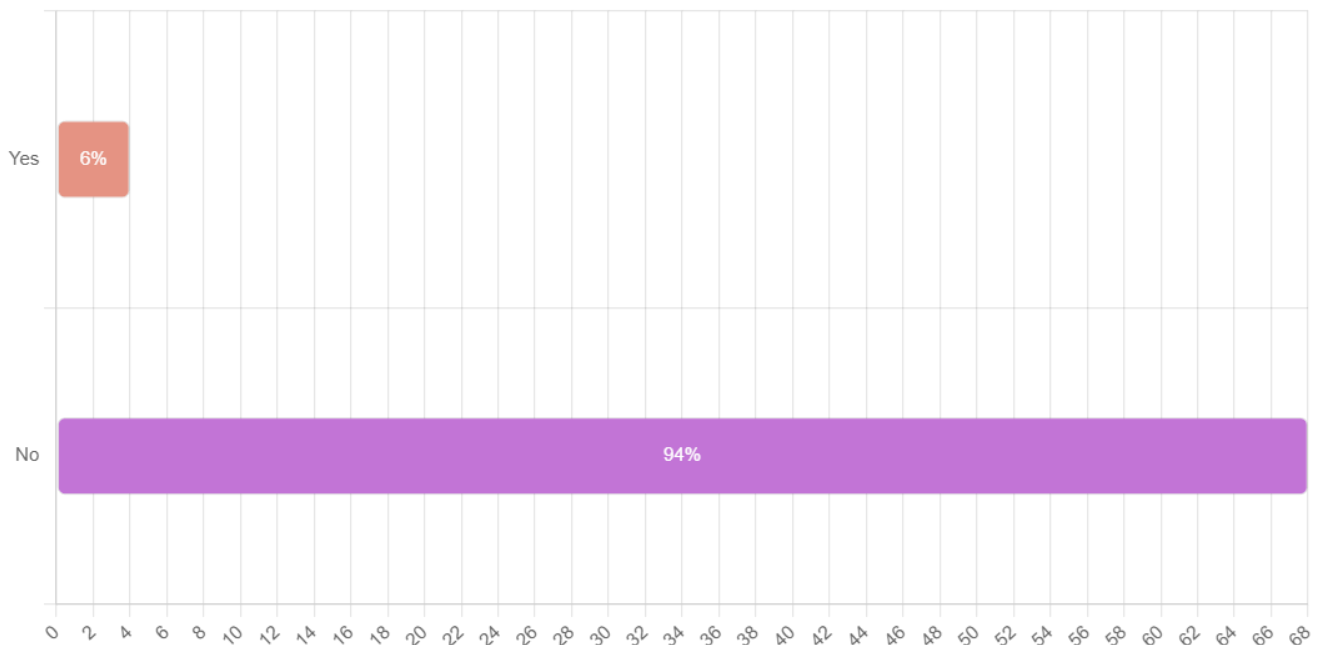
Question responses: 52



Guidance

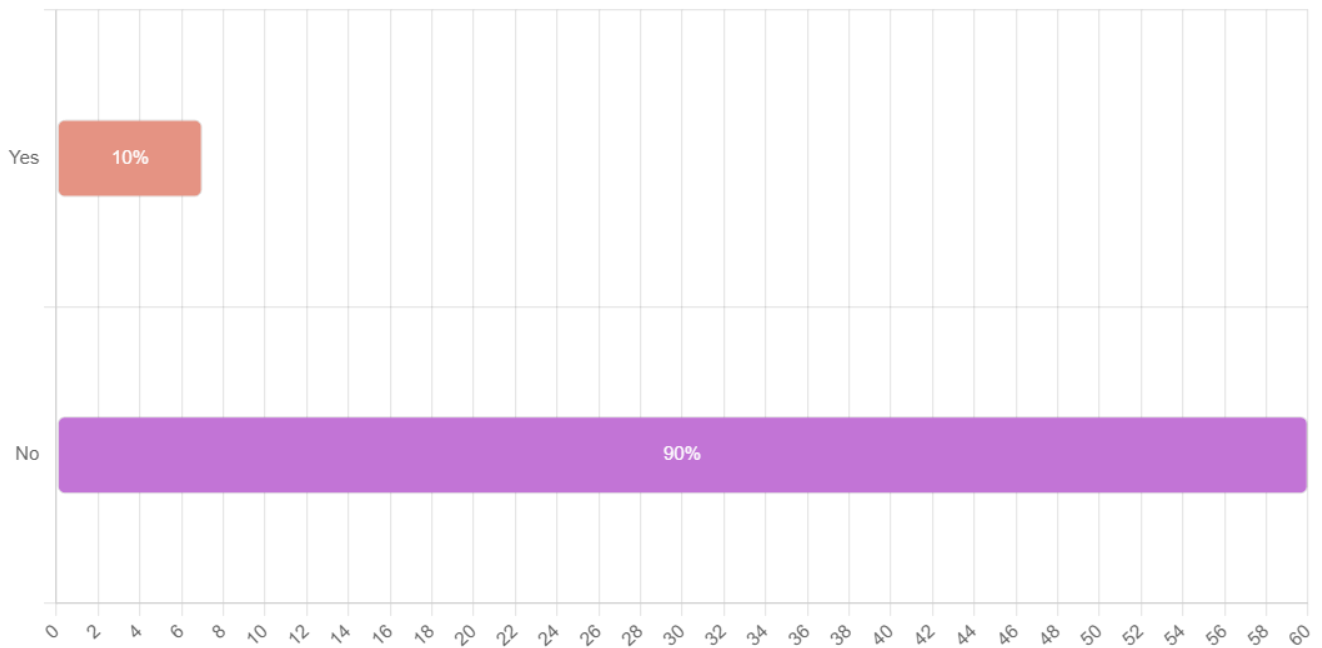
Do you feel you have the guidance and detail from Government to support the effective operationalisation of BNG specifically with regards enforcement and enforcement service implications?

Question responses: 72



If you answered no to the previous question, are you confident this will be forthcoming in a timely manner?

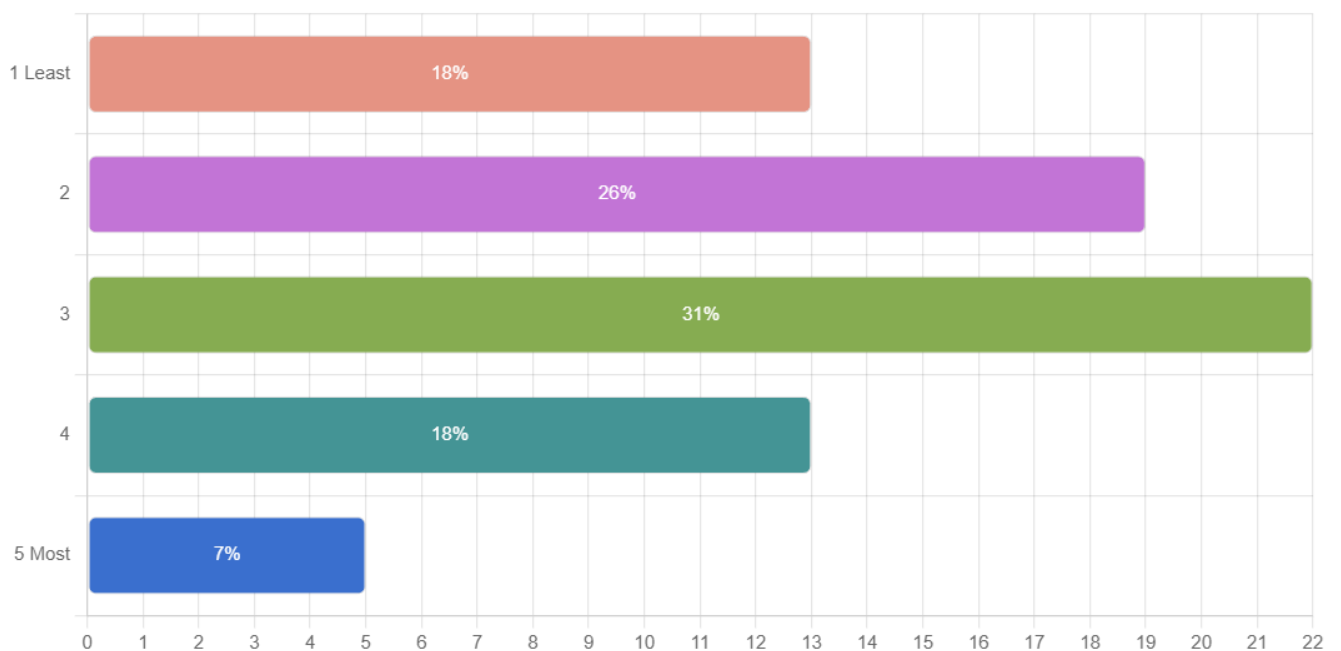
Question responses: 67



Understanding and leadership

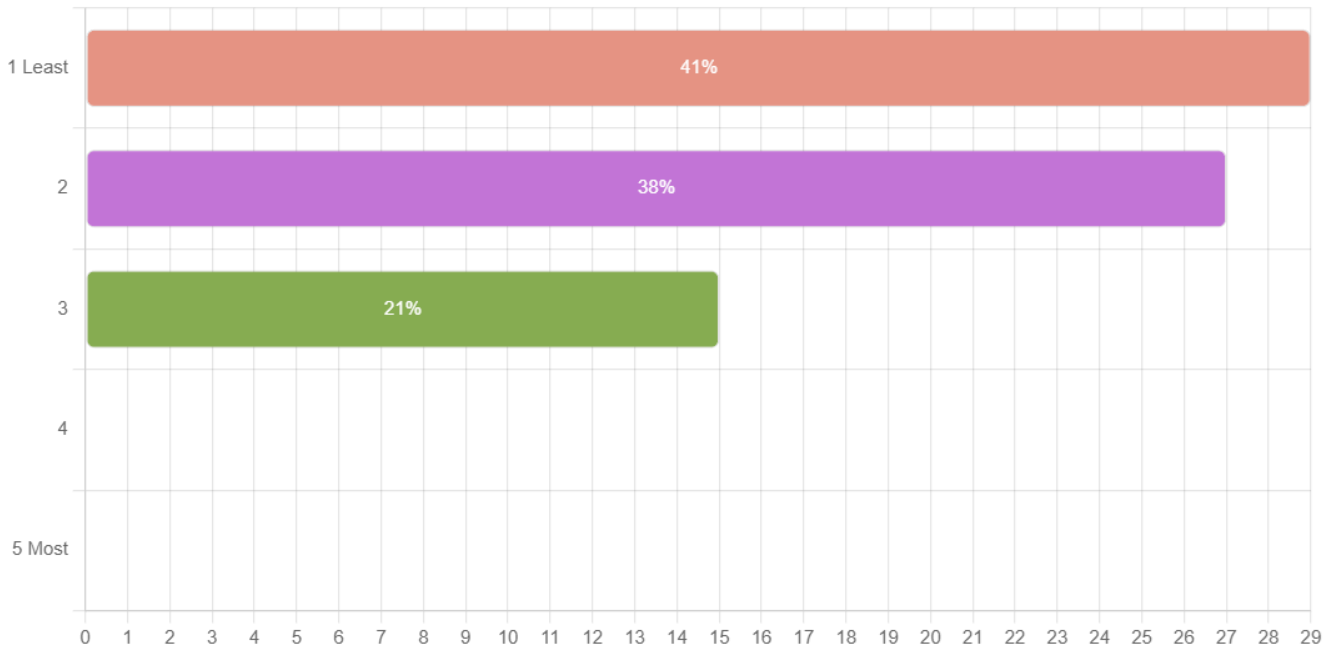
How comprehensively do you feel your organisation's senior leadership team understand, and are planning/providing for, the implications of BNG within your planning enforcement service?

Question responses: 72



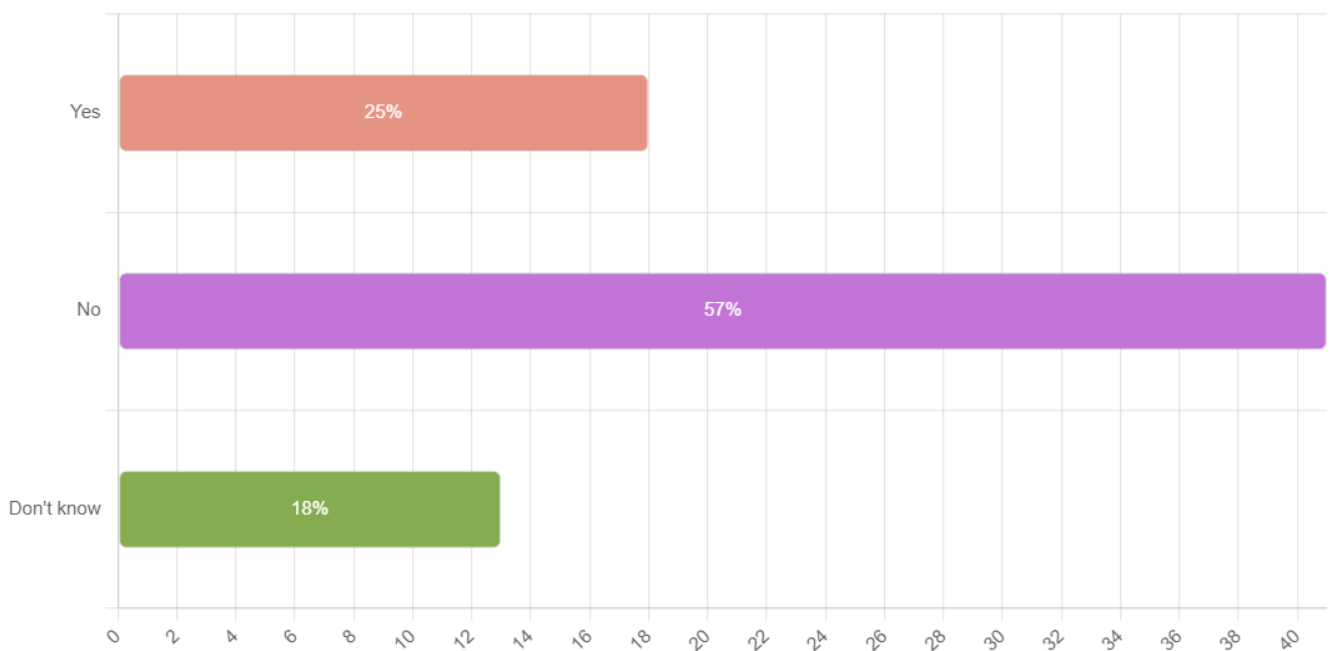
How comprehensively do you feel your politicians understand, and are providing for through their decision making, the organisational and delivery implications of BNG within your planning enforcement service?

Question responses: 71



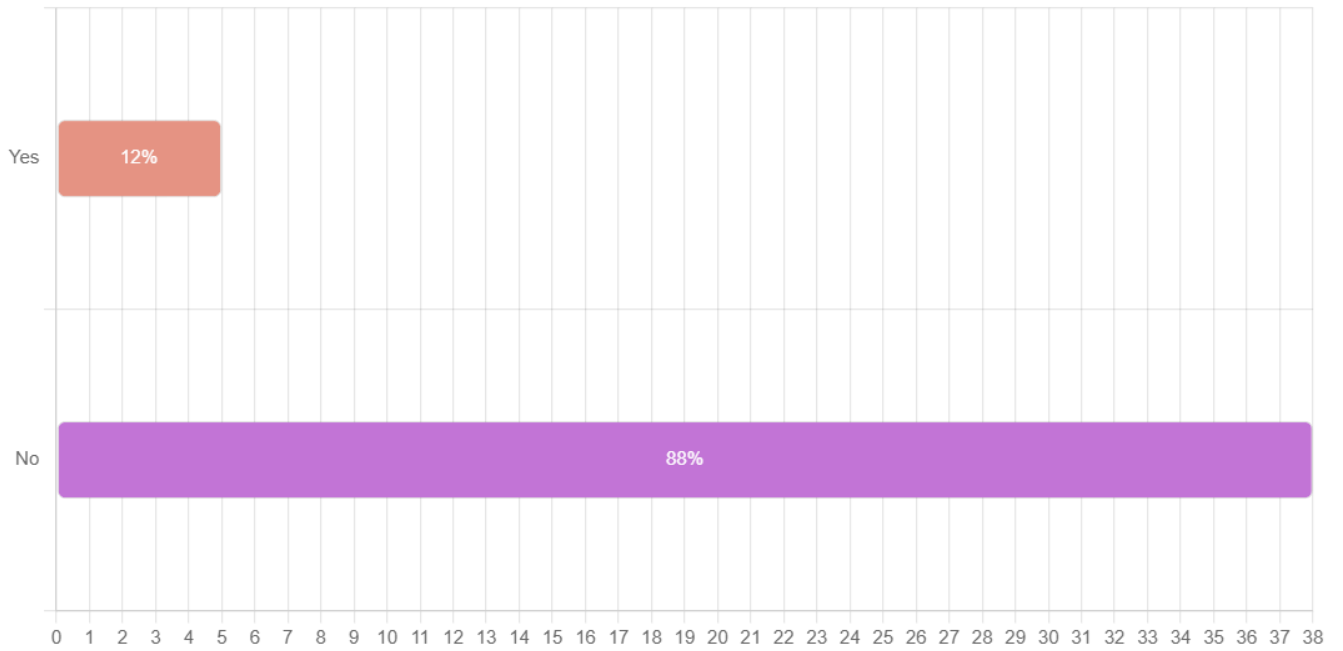
Do you feel your organisation has sufficient inhouse or outsourced ecological experts to meeting BNG work requirements?

Question responses: 72



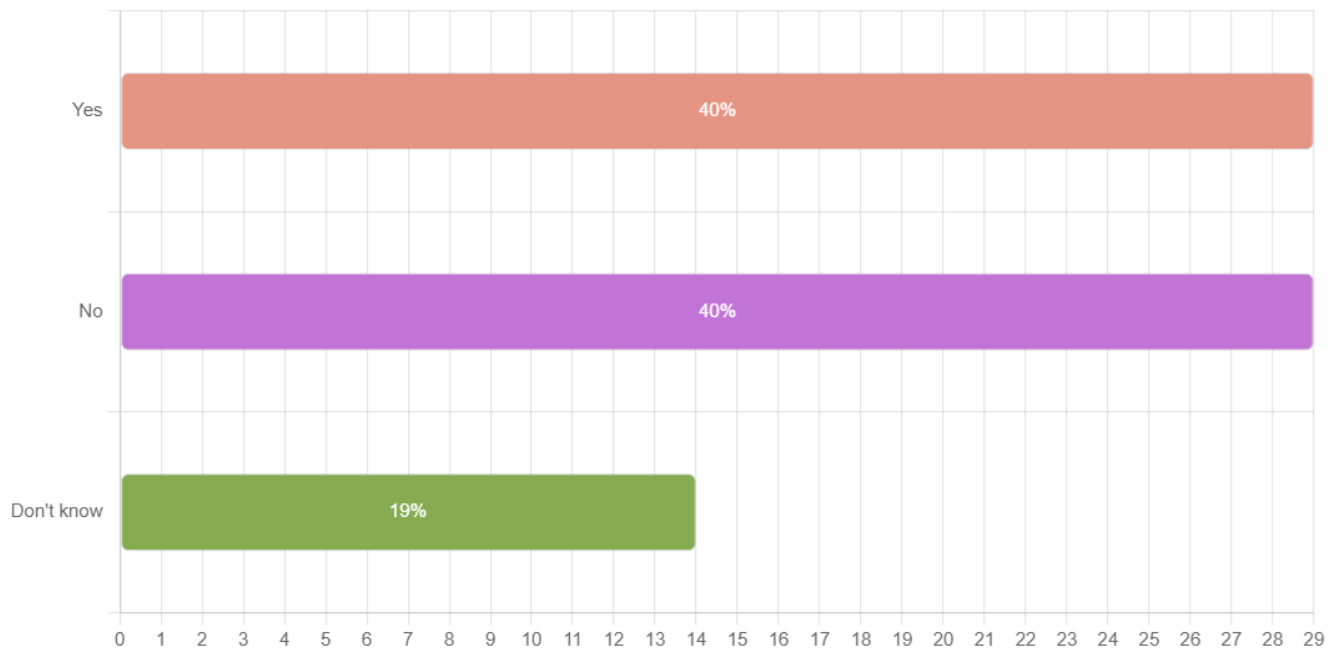
If you answered no to the previous question, are you confident resources/capacity will be forthcoming in a timely manner?

Question responses: 43

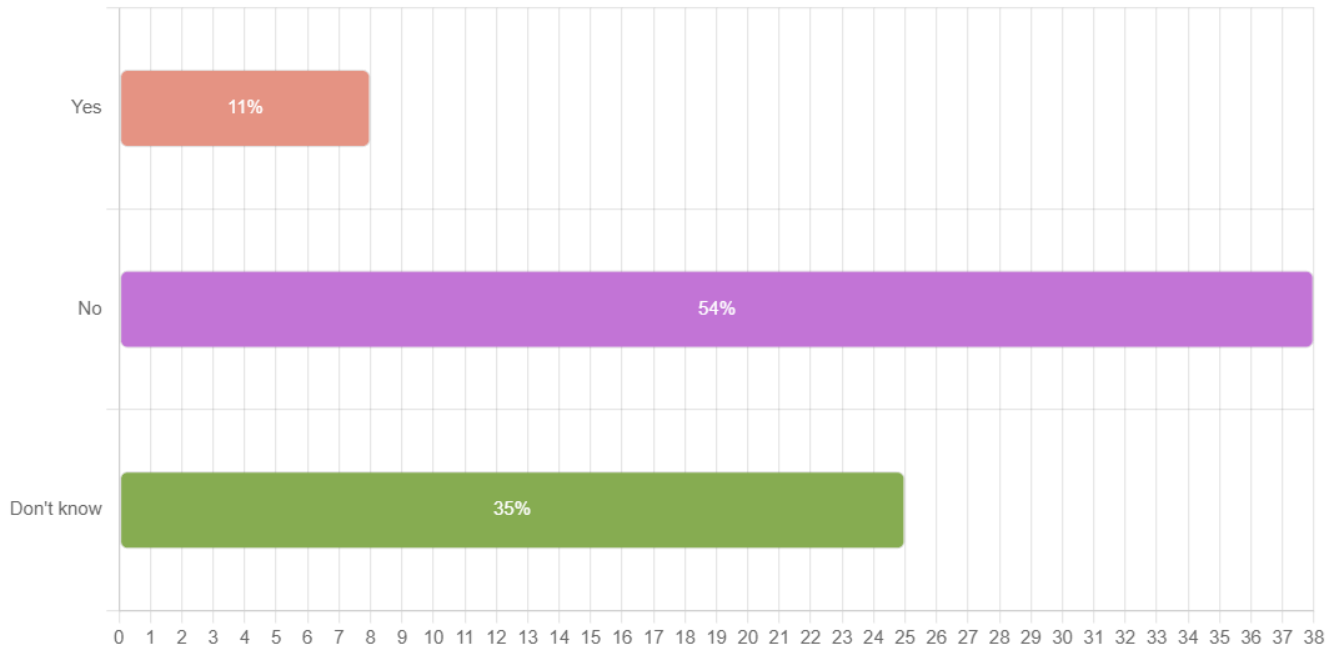


Has your organisation recently recruited/will you be recruiting ecologists specifically to tackle BNG?

Question responses: 72



Has your organisation recently recruited/will you be recruiting other new colleagues (beyond professional enforcement and ecology roles) to tackle BNG resourcing?



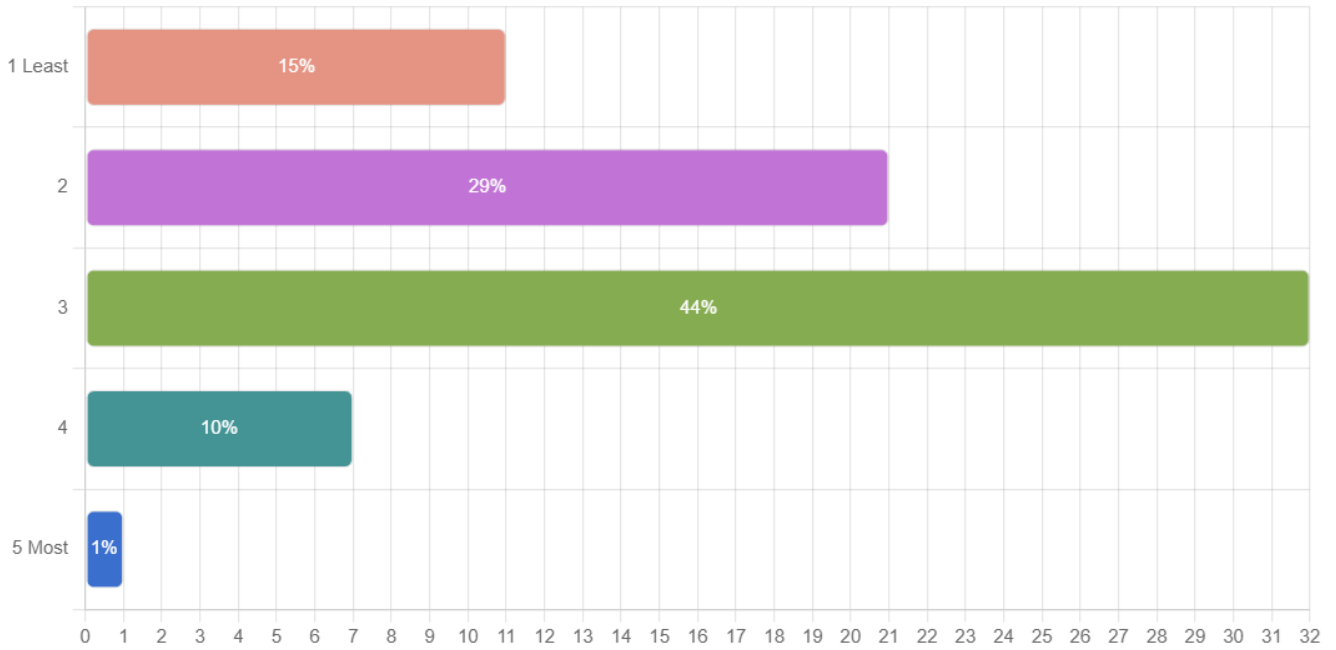
New roles identified in responses:

- *An Assistant Planner position focused on monitoring of conditions.*
- *once BNG payments come through we will aim to resource the BNG service with these monies*
- *We are setting up an SLA (Service Level Agreement) with our County Council ecology team*
- *New ecologist and a new tree and landscape officer*
- *LNRS (Local Nature Recovery Strategies) officer but won't be involved with BNG metrics/enforcement etc*

Confidence

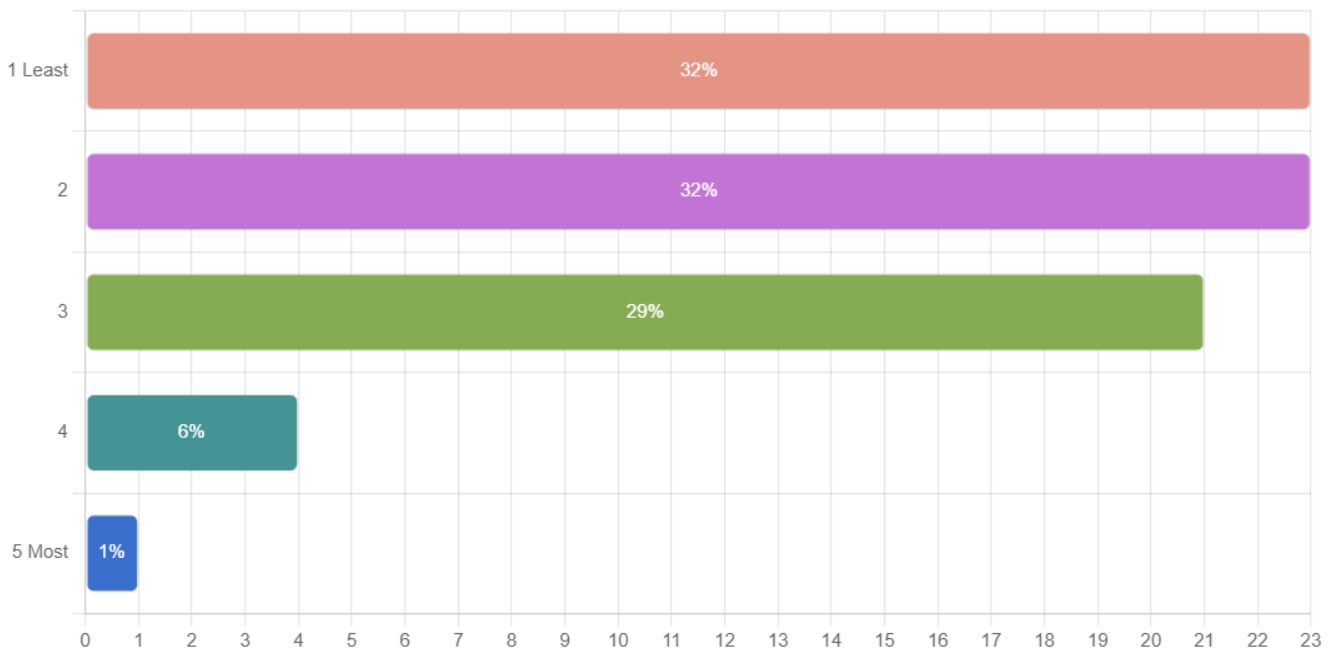
How confident overall are you that your LPA is prepared to effectively support the effective delivery of BNG in 2024?

Question responses: 72



How confident overall are you that your planning enforcement service is / will be prepared to effectively support the effective delivery of BNG within your LPA area in 2024?

Question responses: 72



Needs

What do you feel your organisation needs, or needs to do, to improve your preparedness for BNG?

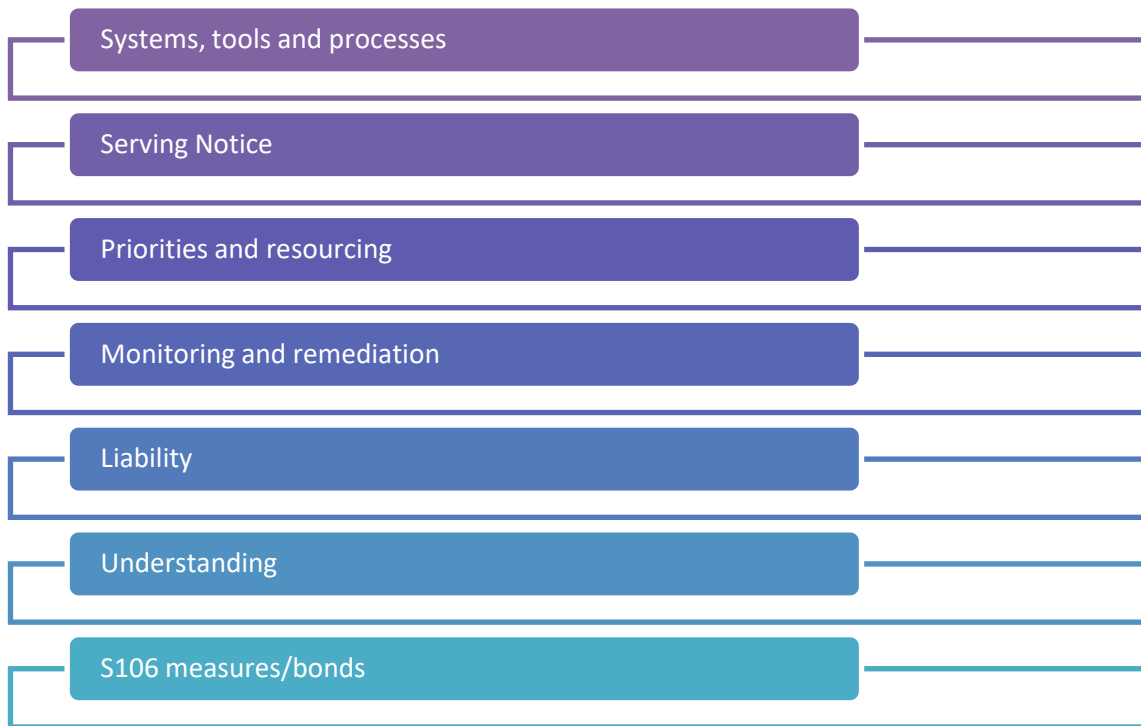
- *Detailed training / guidance of the requirements of enforcement officers.*
- *It is a bit unknown as it is not clear what resources are required at this stage as we do not know what work will be generated. Training for all will be required.*
- *Resource, training, guidance and a clear understanding of what is expected from planning enforcement and when. How planning enforcement fits into the bigger picture for BNG.*
- *Training sessions with all staff. Explain how officers need to implement BNG into our work. Recruit more ecologists or outsource work to ecologists.*

Final thoughts

- *We still have a huge amount to learn but we have now recruited a 4th Ecologist so are fortunate to have excellent in-house advice.*
- *My Authority have been very progressive in preparing for BNG in terms of the Natural Environment Team and training for DM officers (including minerals and waste, regular DM, policy and enforcement [ENF]). But ENF will be quite unprepared in 2024 when it actually becomes a requirement. However, I am reasonably confident that our Planning Manager will be good at ensuring this is considered by about 2026.*
- *It would be really useful for someone to supply a short simple BNG guide for local authorities - the key points, what it means for us and what we need to do. Nobody has time to pick through legislation and waffly articles.*
- *Very little thought seems to have been given to net gain related to watercourses and how that will be met adequately*

Focus group and survey discussion

With regard to the focus group, respondents from a range of backgrounds, but primarily Planning Enforcement Officers, attended (online) from various local authorities and planning consultancy across England. The focus group continued to paint a stark picture in confirming the concerns that have been set out within previous research (including RTPI, 2022), and provided additional depth into the issues raised within the survey. The information presented below is grouped into the following categories that quickly identified themselves as themes during the research:



It is noted that the primary data was collected across December 2023 and January 2024, since when further guidance has been provided. However, from an enforcement perspective this has been limited and is not considered to materially impact upon findings at the time of finalising and presenting this report (April '24). Important here is also the point that the discussion reflects the views of practitioners; irrespective of what may be considered to be known and possible, the concerns expressed reflect the reality of experience and positionality for those who kindly supported this research.

Systems, tools and processes

The first question that was put to the focus group was to help identify areas where participants did feel comfortable with regards guidance and processes. Though many were positive about the emergence of BNG and were pleased enforcement was recognised as integral to its existence, consultees' confidence and understanding was essentially limited to the start date and the fact that enforcement officers would be expected to deliver the enforcement role.

The responses were broadly conclusive in their lack of confidence of their systems and processes with only 8% of respondents believing their organisation was prepared for the roll out of BNG. What's more, 21% weren't sure

whether they had the necessary systems and processes in place which could indicate a lack of communication between senior managers and their staff.

Respondents were aware that there is one pre-commencement condition placed on planning approvals that then allows a trigger point if this condition is not met, whereby a Breach of Condition Notice (BCN) can be served. This condition would be the same for all development:

[Schedule 14 of the Environment Act:

'Every planning permission granted for the development of land in England shall be... subject to the [following] condition: ...the development may not be begun unless a biodiversity gain plan has been submitted to the planning authority... and the planning authority has approved the plan...']

There were comments that this pre-commencement condition appears more like an informative, and yet is considered to the heart of the BNG requirement in the first instance by design. This requires submission of the Net Gain Plan, which would then need to be checked and approved. The position of BNG in the process from a pre/post decision perspective, and the implications of this concerning the use of conditions, was discussed. This raises questions from a commencement perspective; where development is commenced without the BNG Plan being submitted/approved, an enforcement response will be required. There were concerns raised within the group regarding whether the condition wording as provided in fact goes to the heart of the consent necessarily.

The role of the Plan and, potentially, S106 agreement in an effective approach to enforcement monitoring was discussed. It was suggested that the use of a S106 agreements would be important from a resourcing perspective, given enforcement monitoring fee requirements can then be charged for. The group were not aware of any other ways in which funding was proposed to be provided; they stated that LPAs can charge admin fees through S106, but more funding is potentially required to support monitoring and compliance as specific to enforcement (opposed to agreed ecological monitoring). The positioning of the S106 is therefore a key consideration and, mindful the condition-based approach to BNG, may create some challenges and foresight requirements in use. The interface between ecology led monitoring and the interrogation of monitoring reports, as distinct to the role of enforcement officers in monitoring and compliance activities, requires consideration.

Similarly, relating to conditions, a query arose relating to retrospective development. It was queried how the system would work with retrospective development that is BNG liable, considering a pre-commencement condition cannot be placed where the works have already commenced, as the applicant would be in breach from date of the issue of Decision Notice. Would there be a mechanism to amend the wording of the condition in these instances? It has subsequently been clarified that S73A application will not need to comply with BNG requirements; this is not only an example of the challenge of interpretation and rolling emergence of guidance but, as now clarified, creates an interesting new dynamic in decision making with regards to retrospective matters and planning decision making.

Some questions were raised around site specifics. A survey respondent stated that we would *'Need to be clear as to the requirements of future BNG provisions to be provided for each site, their delivery (whether on site, off site or bought units), their reporting and monitoring and how these will be enforced if across different authority boundaries and/or fall to a conservation trust to manage.'*

Procedurally, in relation to policy, an Officer raised concerns that it will be required for all BNG policy to co-exist alongside, and interface with, wider Green Infrastructure (GI) type policy (inclusive Local Nature Recovery Strategies, which proactively interface with BNG). Work would need to be done at all authorities in preparing new policy to ensure these interface effectively and can co-exist positively. Validation requirements for BNG and GI related matters would also be required to be tied in, albeit with regards validation the clear emphasis is now upon a condition and post-permission-based implementation.

Many councils were not aware of what tools were available for undertaking BNG work in practice, and they were concerned about a lack of expertise within this area for monitoring. Respondents were aware that there is to be a Natural England register of sites but on a local level, respondents wanted to use council GIS mapping, for which they wanted the Natural England layer to be implemented within these local systems for ease. One noted that they were looking at a software package that claims to help with monitoring. One respondent also shared information that they were aware of a suggested fee list for BNG in circulation, but this was not common knowledge. A central database for recording and monitoring was requested, alongside a *'procedure note for the use of the database, workflows and a 'How to Enforce' guidance note'*, a fee schedule, a flow chart of responsibilities within the process and standard letters and forms for use throughout the process. Data management, mapping, record keeping, and associated fees will all require planning, inclusive resourcing.

One respondent stated that they felt they required *'Further training on the processes and roll out of the service required. An action plan created with resources to supply the service prior to new resources and what resources will come in and what responsibilities these resources will hold.'* This was a good summary of the wants and needs of respondents within this topic.

Serving Notice

It was unclear how Notices would be served if the BNG condition is breached. Respondents queried whether they would have to provide a metric to show how the developer or landowners etc have not complied with conditions, and how they would go about this through a Breach of Condition Notice, or what Notice they need to serve. How would the required response be phrased? It was considered that the mechanics of the process had not been well thought out, or at least a lack of information; with no standard/suggested wording having been provided. The group were unsure how, fundamentally, it would be possible to state that 10% BNG is required to be served through a Notice; this appears different to a standard enforcement breach and potentially a lot more work. There has been no mechanism provided to serve a breach Notice. There is an interesting dimension to this too in relation to the characteristics of a natural process; planning enforcement, and BCN responses, are typically concerned with an occurrence where a clear and deliverable remedy is arguable and deliverable within a (relatively) short time period. Where nature processes are concerned, a more nuanced, extended, and complex approach may be required with regards the required response.

The group queried what needed to actually occur in practice within this context; when cases of BNG enforcement begin; how are they resourced and operationalised in the first instance and where did this sit as a priority (interfacing with points raised elsewhere in the discussion)?

There were also concerns that enforcement of BNG, through BCN and other enforcement processes, might require specific knowledge on biodiversity including species of plants that Enforcement Officers do not necessarily need/have at present.

Priorities and resourcing

One key recurring message related to confusion around where BNG should be placed in enforcement priorities. Due to the situation with local governments lacking funding and being short staffed, with some councils now in recruitment freeze due to budget cuts, respondents queried what the priority is with regard to enforcement and BNG and how much weight should be given to this compared to the many other priorities that enforcement teams face.

The survey results indicated that 61% of respondents considered their services were inadequately staffed to meet demands, with 82% considering that their planning enforcement service is adequately resourced to meet expected service demands specifically related to BNG in 2024. Of these, 95% were not confident that resources

were to be coming forward in a timely manner. One survey respondent noted *'Our service is on its knees! There is no resource, time or money for an additional statutory obligation.'*

Within the survey, one respondent noted how they did not even have a dedicated Enforcement Team at their LPA, and Development Management admin teams were expected to know enforcement procedure. It was made clear that *'current deficiencies in Enforcement service are such that it could not be effectively enforced without further resources'*. There was concern that a lack of staffing would lead to increased agency staff, whereby one noted how *'Local authorities are leaking staff to contracts/private sector who charge exorbitant rates further crippling LPAs.'*

In relation to this, respondents queried how they will know that there is a breach, particularly between reporting periods; do they wait until it is reported only, is reporting checked via site visits led by ecology, and/or is proactive monitoring *on-site* expected to be ongoing by enforcement with all consents (mindful the resourcing and skills implications of this)? Many concerns here related to the under-resourcing, with respondents stating that councils are working massively under their full capacity so how will they know when a breach has occurred, as it is naive to assume that monitoring will occur to proactively pick up breaches. This highlighted some key gaps in the knowledge of processes that enforcement teams will use relating to breaches.

Survey results also showed a lack of faith that senior leadership teams were planning and providing for the additional service demands of BNG within enforcement services. This question seems to indicate a lack of confidence in senior leadership teams (SLT) with 45 respondents believing their organisation's SLT were most likely less comprehensively prepared. It is unclear though where this lack of trust comes from and whether it is perhaps not linked to a lack of trust in capabilities of SLTs, but rather comes from a lack of budgets that they have to deliver required capacities. Within this, the positioning of enforcement within organisational priorities (as interfacing with targets etc) is potentially important. There was even less confidence in the abilities and understanding of elected Politicians to provide for BNG requirements within their decision making and the organisational and delivery implications of BNG; this is an area that is identified as a potential weakness in democratic decision making.

Though, stating this, the findings were not all negative; one survey respondent stated that their *'Authority had been very progressive in preparing for BNG in terms of the Natural Environment Team and training for DM officers (including minerals and waste, regular DM, policy and enforcement). But enforcement will be quite unprepared in 2024 when it actually becomes a requirement'*. They stated that they were reasonably confident that their Planning Manager would be good at ensuring this is considered by about 2026, but this is two years following the roll out of the BNG requirement.

One respondent noted within the focus group that where enforcement cases were previously lost, they had a third party that came around and dealt with the unauthorised matters. This posed questions on whether a similar working may happen with BNG. This would result in more costs for councils outsourcing more work at a great cost. One survey respondent noted that once BNG monies started to come in, though they were unsure how this would happen, they would start to resource the service with this funding. This reactive response was the only solution provided with a lack of funding to the service limiting recruitment in many LPAs.

Some suggested that radical changes were needed within enforcement teams if they were to take on this extra workload. Realistically, a few more staff was argued to be an inadequate response to provide sufficient resourcing when teams are already so stretched; a few more staff might just help to cover the shortages with current cases. One therefore considered a rethink of the system with *'Radical policies which enable the limited resources to be used more effectively and so that minor/trivial breaches need not be investigated.'*

After noticing job adverts for ecologists and sometimes planning ecologists, the study decided to ask if there were any plans to recruit ecologists specifically for tackling BNG and the responses were mixed. What is unclear from these answers is if the organisations who did try and recruit, were able to recruit which is perhaps

something that needs to be clarified. We also asked if any other staff were being recruited to help tackle the need to resource BNG to which around 50% of respondents said no with many not knowing.

Of the 12% who responded 'yes' to the above question, 5 respondents gave examples of the types of roles that were being recruited. They ranged from assistant planner to a new tree and landscape officer and creating a Service Level Agreement with the local county ecologist. One response was interesting in that they were recruiting for someone, but only once BNG monies were filtering through from applications at a future time. But many considered that not enough was being done. When queried what else was needed to ensure preparedness for dealing with BNG, many considered that more enforcement officers and ecologists are needed, training, and more consideration of enforcement at the start of processes.

Another outcome relating to this was regarding enforcement teams saying they felt 'left behind' in this process. One noted that there had been much training and many webinars focused on planners with regard to BNG, but less emphasis on training for enforcement teams within this. One respondent felt that enforcement teams were often an *'afterthought only considered when enforcement action is required'*, or an *'optional extra'* and *'totally misunderstood in so far that it is only seen as a priority when it is seen that somebody needs to be punished, but planning is not a punitive system, it is a permissive regime!'*. Similarly, within the survey, it was noted that detailed training and guidance of the requirements of enforcement officers is required. It was stated there were many unknowns as to what resources would be required, as teams were unaware of what work will be generated. Resource, training, guidance and a clear understanding is required of what is expected from planning enforcement and when. One officer wanted more information regarding *'How planning enforcement fits into the bigger picture for BNG, how officers need to implement BNG into their work, and more ecologists to assist in this work.'*

Enforcement teams were referred to as a *'Cinderella service'*, with one noting that *'The Planning Enforcement team have been kept in the dark over BNG. Main discussions are among the Planning team NOT enforcement. As usual we are supposed to learn as we go. In my experience Councils only ever plan to have planners ready for new legislation/guidance so they can meet their targets of determining applications on time then enforcement can take as long as it takes us to catch up on enforcing the matters.'* These responses were common, with others saying enforcement had been omitted from training processes on BNG. One stated they were *'concerned there is zero knowledge across the Authority over the Enforcement of BNG. We are more prepared in terms of planning applications and ecology (although woefully under-resourced in ecology).'*

One respondent raised concerns that *'it feels like upper management do not think that this is something that enforcement needs to deal with. It has not been part of any discussions within the planning enforcement team, yet colleagues in the applications team have had training.'* That enforcement was a non-statutory service was also mentioned, meaning that if cuts are made then BNG may not be a priority, and planning services would likely struggle further to enforce it. This would raise serious concerns with regard to the future of the roll out of BNG, especially given it requires monitoring for 30 years post completion of development.

Some noted how the issues relating to BNG were not just an enforcement and ecology issue in isolation; there was concern over capacities of already stretched legal services as well as development management departments *'which enforcement would need to consult and work with to successfully take action and defend decisions.'* One noted the implications for Minerals and Waste teams too, one querying *'Given that the monitor of M & W already charges for monitoring inspections will there be a further fee if there is a BNG requirement?'*, though they considered themselves to be in a better state than enforcement teams, one saying that *'Technically we already monitor BNG type conditions in respect of the restoration and aftercare of a worked site'* meaning one felt that they were *'currently in a way ahead of the game I would say in M&W but I could be wrong.'*

It was widely accepted within the survey that BNG is a good idea in principle to aim to curb the biodiversity crisis, but the details are lacking, and with an ever-increasing workload, undertaking something of this complexity will be a challenge, compiled by a huge gap in terms of knowledge and resources for Councils to deliver this.

Monitoring and remediation

Monitoring of BNG was a key recurring topic that was considered in relation to many factors. The respondents were concerned about accuracy the materials provided, and the ability to check this – again, a dependency relationship will exist with ecology colleagues and resource implications will be present; one respondent questioned how, with developers required to submit monitoring reports to LPAs, how is the LPA response coordinated and operationalised? The interface here between enforcement and ecology becomes critical, with ecology leadership of ecological information and content, and enforcement being required to respond to any issues with regards both compliance with the schedule/arrangements, and the implications of ecological issues. The latter has potential complexities too, mindful the need for an ecologically and enforcement appropriate response to ecological challenges. A partnership approach will be critical, including with external interested parties. Respondents were more confident that LPAs are responsible and/or able to do monitoring if the BNG is being provided on site, but that that matters become more complex and challenging potentially in off-site scenarios – including/especially off-site out of area situations.

One LPA mentioned that they will be factoring monitoring costs into budgets so that they can recover fees; but the question was then raised considering how LPAs can build correct/accurate monitoring fees into S106 agreements without knowing how much to charge as they essentially do not know what they are (or will be) doing, especially mindful potential ecology involvement. This topic raised a lot of queries and a lot of confusion, with not many clear/confident answers from the range of enforcement professionals present.

It was discussed how the draft PPG on the government website shows that the 30-year monitoring period begins once the development is complete, landscaping included. Given development and landscaping completion can take many years, the monitoring would likely be much longer than 30 years. It was queried how LPAs would become aware that development had been completed and what the trigger would be; would developers need to confirm the completion with the LPA? A start date would seemingly be required to be provided to LPAs to provide the commencement of the 30 years.

From discussion, it emerged that there appears a flaw in that there is no timeframe for completion of works in planning, only for commencement, through the standard planning condition that requires works to commence within three years of a permission being granted. This resulted in respondents questioning what would happen if the development were never officially completed, or delivery takes a very extended duration (with possible implications for site/environment BNG conditions). It was considered that monitoring appears more onerous than just monitoring the S106 agreements. Respondents could not identify if there are new Completion Notices being provided for this. This is potentially a significant area of enforcement challenge.

There were concerns from Enforcement Officers that if the BNG mechanism is flawed, it can cause issues which will provide additional levels of complication. Procedural questions were posed, including who do you enforce against / serve notice against including if BNG is being secured off site, particularly off-site outside of the LPA area, or down the credit route? What happens if there is a large off-site credit site that for e.g. trees get diseased. Mechanics of small sites will be even more difficult to manage and navigate, and respondents noted they failed to see any upsides. For offsite contributions, there were concerns that there would be sites within sites that would relate to BNG provisions for many different applications. This would cause blurred lines and complications. Furthermore, what happens if the 10% BNG is not provided, and an infringement occurs? Or, what if a 10% uplift is ultimately not possible? What happens if the BNG provision simply doesn't develop/grow as expected? This topic posed many more questions than answers.

There is also a potentially interesting interface between enforcement as a discretionary decision-making space and BNG, particularly in scenarios of 'no fault' delivery. This returns to the point of public interest and ecological interest; an ecologically appropriate response must interface with an enforcement appropriate response, and an arguable inevitability that ultimate outcomes in some scenarios will ultimately be sub-10% delivery.

Liability

At the focus group, there was a recognition that planners understood the premise of BNG, and that it was coming. It was recognised that the public do not benefit from this understanding. The public might, potentially, be liable for its existence however. For instance, mowing lawns or trimming hedges may seem like a basic right to a homeowner, but in the event garden areas are part of a sensitive BNG scheme, how do we communicate the importance and potential liability implications of such actions? Many further queries that no respondents could provide answers to were raised, such as when development is completed, the developer moves on and homes are sold, does the homeowner then become liable for any breaches of the BNG condition?

The legal complexities involved, and potentially limited BNG value, may mean 'householder BNG' provision within developments is rare. It is a possible scenario however, particularly perhaps with 'small site' BNG situations, and this raises further questions with regards enforcement and liability. Knowledge and understanding of homeowners/tenants/landlords also becomes a critical dynamic here.

It is also increasingly common for areas of development (parks, green/blue infrastructure) to be transferred into ownership of homeowners or community groups etc. These may be identified as areas for BNG, potentially requiring enforcement action against community groups; this would inevitably bring sensitivities and also risks impacting upon the viability of such ownership/management models and again raises questions of liability, skills, and knowledge.

A related challenge concerns human interaction with BNG space; what are the implications of damage to BNG sites caused by human access? Leisure and recreation, potentially including dog walking etc, could be harmful to a BNG site. How is this managed where access is permitted? And where does liability sit? Or is public access to the sites restricted, with implications concerning both public value (health, wellbeing, equality and inclusion etc), and also 'offences' of unauthorised access?

In other developments, commercial for example, other challenges and complexities of land ownership *and* land management responsibilities may exist. In a street tree scenario, the Highways Authority could carry liability (as any LA would where the land involved is theirs). These could create associated enforcement complexities.

Respondents were concerned that there are lots of parties involved from the outset, and how there appears to be no mechanism in place to enable homeowners/residents in particular to be exempt from the liability and this raised concerns. Many homeowners may be unaware of the requirements of BNG, and it was said that this may pose further obstacles in relation to holding them liable.

Furthermore, concerns were raised with regard to liability if companies go into administration in scenarios of longer-term site stewardship; if they can no longer afford, within the 30-year period, to implement and upkeep BNG, what happens then? If the developer no longer exists, as is quite common with developers who often form companies just to develop sites, who is next in line for liability and how is it physically possible to identify whose responsibility this is? It was queried if there is any mechanism for pursuing the developer under a different company, which may solve the issues created through companies dissolving and re-emerging under different names. A further challenge is that limited liability companies are not liable once they are shut down.

The issue of liability was also noted in relation to developments that never get completed. The 30-year period for enforcement commences once a development is completed. So, if a developer doesn't complete the works as set out on the approved plans for a scheme, and especially if the developer ceases to exist at this stage, it would be

harder to enforce and serve a Breach of Condition notice. It was considered that this notice would potentially be served against the landowner because there would be no-one else to reach out to, even if they were not responsible for planting in the first place. There was speculation that enforcement runs with the land, which would potentially make these homeowners liable, at an extra cost to them, and also potentially unbeknownst to them.

Land ownership threw further queries into the mix. If the land is jointly owned, or sites are cross-council, which party is liable/responsible? How is this coordinated and managed? It was said that it has not been considered how the mechanisms in place will adapt to deal with BNG, and this would further constrain the system.

Understanding

An overwhelming 95% of respondents believed that the Government had not provided the guidance and detail to support effective delivery of the enforcement of BNG specifically with regards enforcement and enforcement service implications, and 90% of these respondents did not have confidence that this information would be brought forward in a timely manner. However, the lack of understanding was demonstrated to not only come from a lack of guidance on the systems and processes of the technicalities of how BNG should work, but also in relation to the understanding of biodiversity that enforcement teams may have. The survey results showed that 80% of respondents considered that their teams would not have the requisite skills, knowledge, and understanding to provide a BNG related enforcement service in Spring 2024. Furthermore, 87% had a lack of confidence that this skills shortage would be addressed in a timely manner.

One person within the survey stated that *'It would be really useful for someone to supply a short simple BNG guide for local authorities - the key points, what it means for us and what we need to do. Nobody has time to pick through legislation and waffly articles.'* Another requested *'An action plan created with resources to supply the service prior to new resources and what resources will come in and what responsibilities these resources will hold.'* This lack of knowledge was said to be further compounding the resourcing issue, one officer noting how *'The lack of government guidance/ secondary legislation on the enforcement of BNG is leading to delays in resource allocations as it is difficult to make a case for additional resource allocation based on assumptions.'*

Relating to the issues of a lack of knowledge on the proposed rollout, a key quote that summed up the issues well was as follows; *'I do not feel that it is the organisation that is not doing something it should be, but that there is a complete lack of information on how BNG should be monitored and enforced. All training and webinars I have attended have explored the benefits, looked at the metric, looked at how people can make money from appropriate land, etc. but none have actually said how to monitor and enforce a breach. How should we deal with a site that could be at the other end of the country? How can we understand whether 2 units of a particular habitat has actually been achieved without a dedicated ecologist being retained to go out and inspect? I expect that planning enforcement will be expected to deal with all of this on top of the ever-increasing scope and expectations of its already large remit.'*

This issue with understanding also was concerned with the knowledge of the public with regard to BNG. One respondent within the focus group posed the question, *'If there is a BNG area set aside for enhancements, how will people know about it?'* This relates to the issues around understanding and poses questions relating to whether insurance could be used if damage to areas of BNG is accidental, similar to farming and forestry for example. This also relates to the considerations around liability, as if homeowners are found to be liable, it is unlikely that they will have the knowledge around BNG to understand what is required from them. This has the potential to lead to issues relating to liability and potential major obstacles with enforcement.

Section 106 Agreements/bonds

Many raised queries in relation to how payments would work through S106 agreements. One stated that they felt money for contingencies needed to be taken from developers at the outset of the process and held as a 'bond' or

similar. There were many questions raised with regard to this, with a consensus that it could cause issues if developers do not pay upfront for the BNG, as they may not fully deliver. One stated that this may differ depending on which route is chosen for delivery of net gain but was unsure how bonds could be taken from developers at the start of schemes. One officer felt that this may come under the realms of the Council's Legal teams, however, they do not have the capacity to increase the extent and realm of their work alongside mitigation, habitats regulations that were mentioned in one authority where S106 agreements were said to take around 6 weeks at present.

Conclusions

The findings of this research are as clear as they were predictable in some respects; fundamentally, planning enforcement is under-resourced, and operates within local authority planning services which are themselves under-resourced. Aligned with this is the simple fact that in the absence of clear and effective guidance, enforcement officers understandably lack both clarity and confidence in the expectations associated with BNG.

Sophus zu Ermgassen (2022) provided Parliamentary Committee evidence on the subject of BNG, commenting within this that: *"The government proposes that these can be monitored and enforced by local authorities through the existing planning enforcement system. But the government's own guidance to local authorities advises them not to take enforcement action unless the violation of the relevant planning condition constitutes a 'serious harm to a local public amenity'. Under the current system, it is highly unlikely that a developer's failure to deliver a habitat of a given quality that was consented when the development was approved years ago will trigger this threshold – leaving these biodiversity gains unenforceable"*

Lessons from elsewhere also merit consideration; Sophus zu Ermgassen et al (2021) note that in France and Australia challenges concerning enforcement specifically, and guidance and skills/capacity more widely, have been impactful upon the implication and successes of ecological compensation systems. Their paper further comments: *"...the current reactive nature of English planning enforcement is poorly suited to guaranteeing the delivery of high-quality habitats within approved developments"* (ibid); a critical consideration here is therefore the implications of enforcement upon the ultimate success of BNG.

The requirement for BNG is new and as such some challenges with operationalisation are inevitable. However, if implementation is ultimately to be effective and successful it is critical that both the resource and knowledge requirements are addressed. Experience will bring new learning and development opportunities, but proactive action is required. Clear and detailed guidance is required, training and support are required, and new sustained resources are vital to ensure effective enforcement service provisions.

As will all aspects of planning practice, enforcement is critical to credible service delivery. Without investment in enforcement services, BNG risks falling short of the aspirations associated with it.

Recommendations

This research has been instrumental in continuing to understand the issues that Enforcement Officers within local authorities are facing as BNG is rolled out. One overwhelming observation to be drawn from this research is that there are still many questions that need answered in order for councils to be able to effectively operationalise meaningful biodiversity gains.

The key recommendations that have been generated from this research are as follows.

Government:



1. **CLARITY** - To produce a BNG enforcement action plan with clarity on (2), (3), (4), (5), (6), and (7) below.
2. **SPECIFICITY** – A process to address, through engagement with RTPi NAPE members, critical knowledge/legal requirements. These will inform (3), (4), and (5) below.
3. **GUIDANCE** – A need for *enforcement specific* guidance, and advice wider process requirements.
4. **TOOLS** – Provision of *enforcement specific* materials for reference and use (templates etc) in association with (3).
5. **SKILLS RESOURCING** - Dedicated funding from central government to provide *enforcement specific* training and CPD for current staff
6. **RESOURCE** - Increased and sustained (ringfenced) funding for planning and ecology services to enable an increase in the number of posts within enforcement and ecology at each council
7. **RESPONSIBILITY** - Clarity required from government regarding liability and responsibilities, including queries relating to business insolvency, homeowners, and community organisation with regards their liability. Plus, off-site and out of area / credit-based enforcement.

Local councils / RTPI NAPE:

8. Make internal training and staffing for BNG related work a priority where budgets allow, with a specific focus upon enforcement
9. Formation and continuation of use of support groups between local authorities / stakeholders to share best practice.

Planning agents and developers:

10. Ensure their teams have knowledge and training on their requirements in this role to reduce onus on councils.

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