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Secretary of State for Housing, Communities and Local Government
c/o Planning Casework Unit
Ministry of Housing, Communities and Local Government
Email: pcu@communities.gov.uk and Ministerial.Correspondence@communities.gov.uk

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Dear Secretary of State,

PROPOSED JUDICIAL REVIEW: PRE-ACTION PROTOCOL LETTER BEFORE CLAIM

THIS LETTER REQUIRES YOUR URGENT ATTENTION

Re: The National Planning Policy Framework (2026), Policies N1 and N2

Introduction

1. This pre-action letter concerns the lawfulness of new national planning policies concerning biodiversity net gain (“**BNG**”), introduced on 17 August 2026 into the updated National Planning Policy Framework (“**the NPPF**”).
2. This letter is sent pursuant to the Pre-Action Protocol for Judicial Review, following the taking of specialist legal advice concerning the proposed challenge. It sets out the factual (to the extent currently known) and legal basis on which any claim would likely be pursued. Please be clear in your response in identifying any areas of factual and/or

legal dispute and the basis for them so that the issues in dispute can be identified and if possible narrowed.

3. Judicial review is a remedy of last resort and this letter is sent in the hope that this matter can be resolved without recourse to legal proceedings. The steps which you are asked to take in order to avoid recourse to the Court are therefore outlined at the end of this letter. If a satisfactory response to this letter is not received, an application for judicial review may be made without further reference to you.

Party Details

4. The details of the claim are as follows:
 - 4.1. **Proposed Claimant:** The Lifescape Project Limited ("**Lifescape**") (company registration number 11334803; charity number 1191303).
 - 4.2. **Proposed Defendant:** Secretary of State for Housing, Communities and Local Government.
 - 4.3. **The proposed Claimant's legal advisers:** Estelle Dehon OBE KC and Nina Pindham at Cornerstone Chambers. Lifescape is currently managing the pre-action process directly and may, subject to the response received and the availability of funding, instruct specialist external solicitors to conduct and file any judicial review proceedings that may subsequently be required.
 - 4.4. **The Decision under Challenge:** the making of policies N1 and N2 of the NPPF.
 - 4.5. **Date of Decision:** 17 August 2026.
 - 4.6. **Potential Interested Parties:** Lifescape has identified two groups of potentially interested parties directly affected by the proposed claim:
 - 4.6.1. The Local Planning Authorities ("**LPAs**") listed in Annex 1, which have adopted or have emerging development-plan policies requiring BNG above 10%. A copy of this letter is being sent to those authorities listed in Annex 1 (using the email addresses provided in Annex 1) for information and to enable them to consider whether they wish to make representations concerning the proposed claim. Lifescape considers that the authorities identified in Annex 1 may have a direct interest in

the outcome of the proposed proceedings, particularly insofar as N1 and N2 may affect the operation or preparation of their development plans. Lifescape reserves the right to amend or supplement that list as further information becomes available.

- 4.6.2. The 47 other designated responsible bodies currently listed on the Department for Environment, Food and Rural Affairs' ("Defra") website.¹ A copy of this letter is being sent to the contact addresses given on the website, for their information and to enable them to consider whether they wish to make representations concerning the proposed claim.

Summary of Proposed Claim

5. Lifescape intends to challenge by way of judicial review the lawfulness of Policies N1 and N2 of the revised NPPF, as those policies on their face restrict the ability of LPAs to adopt and give effect to BNG requirements exceeding the statutory minimum percentage of 10%. This (i) unlawfully frustrates the effective operation of various statutes; alternatively unlawfully attempts to amend the statutory framework via planning policy; (ii) unlawfully failed to give due regard to the Environment Principles Policy Statement; (iii) unlawfully failed to take into account the adverse economic impact of the policies, which was a material consideration in making them; (iv) unlawfully failed to discharge the public sector equality duty contrary to section 149 of the Equality Act 2010, and (v) was based on an irrational justification.

Factual Background

The Proposed Claimant

6. Lifescape is a UK registered charity whose work is directly concerned with the legal and economic infrastructure that supports BNG and wider nature markets. Lifescape works across science, technology, law, economics and culture to support landscape-scale nature restoration. Its overarching mission is the creation, restoration and long-term protection of wild landscapes.

¹ <https://www.gov.uk/government/publications/conservation-covenant-agreements-designated-responsible-bodies/conservation-covenants-list-of-designated-responsible-bodies>.

7. Since October 2024, Lifescape has been a designated responsible body for conservation covenants under Part 7 of the Environment Act 2021. It has practical experience of habitat-bank projects for BNG. Lifescape holds conservation covenants over a number of habitat-bank projects, including projects at Lakenheath Fen (RSPB), Knepp and High Fen (Nattergal), together with projects operated by other habitat-bank providers. It currently has 6 completed covenants (4 on the Natural England register) with another 5 in active negotiation.
8. The effective operation of the BNG regime and associated nature markets is a matter of direct importance to Lifescape. The charity's conservation covenant work depends upon the continued viability of habitat-bank projects, confidence in the biodiversity-unit market, and the ability of LPAs to secure biodiversity gains through the planning system. BNG and associated nature markets are intended to secure private investment in nature recovery through a framework in which environmental enhancement is measured, legally secured, and capable of generating biodiversity units. The importance of that framework extends beyond environmental protection alone. Biodiversity and healthy ecosystems are essential for natural capital upon which economic activity and social wellbeing depend, including through the provision of ecosystem services that support agriculture, water management, infrastructure resilience, climate adaptation, and sustainable development. The effective functioning of the BNG regime is, therefore, of direct relevance both to environmental outcomes and to the wider public and economic interests which the BNG regime is intended to serve.
9. Through its conservation covenant activities, Lifescape receives income associated with the establishment, monitoring, and enforcement of conservation covenants. Any surplus generated from those activities is reinvested in the charity and applied towards its wider charitable purposes, including legal, policy, and practical work that advances nature recovery and environmental protection.
10. Policies N1.2 and N2.3 directly affect those interests. By restricting the circumstances in which local planning authorities may adopt, apply or give weight to development plan policies requiring biodiversity net gain in excess of the statutory minimum, these policies are highly likely to reduce demand for biodiversity units, undermine the viability of supply-side habitat-bank projects, diminish confidence in the BNG market, and adversely affect nature recovery and biodiversity. Those effects will have direct consequences for the conservation covenant projects with which Lifescape is involved and for the charitable activities that are supported through income generated from that work.

11. Lifescape's interest in the proposed claim therefore stems not just from its general commitment to environmental protection, but also from interests that will be shared by many responsible bodies, arising from Lifescape's statutory role as a responsible body under the Environment Act 2021, its direct involvement in securing and enforcing conservation covenants within the BNG framework, and the practical and financial impact that the challenged policies are likely to have on its activities and charitable functions.

Biodiversity and BNG

12. The UK has the lowest level of original biodiversity (via the Biodiversity Intactness Index or "BII") in Europe and is in the bottom quartile globally.² There has been clear evidence, for a number of years, about the state of the UK's biodiversity and the interaction of this with climate and the economy.
13. In July 2022, the Environment Agency published its Working with Nature report.³ Sir James Bevan, then Chief Executive of the Agency, stated that the biodiversity crisis, like the climate crisis, is "an existential risk to our survival".⁴ He identified nature-based solutions (of which BNG is one) to be a major part of the UK's response to protect the essentials while rebuilding the natural world.
14. The 2023 UK State of Nature report, released on 27 September 2023,⁵ is a result of the combined efforts of 66 organisations and is a comprehensive survey of the UK, its Crown Dependencies, and Overseas Territories. It found that, since 1970, species studied in the UK have, on average, declined by 19%. Specific categories fare even worse, with bird populations down by 43%, amphibians and reptiles by 31%, and fungi and lichen by a concerning 28%. Nearly one in six of the over 10,000 species surveyed faces the risk of disappearing from Great Britain altogether.

² <https://biodb.com/table/biodiversity-intactness-index/>. The BII is produced by the Natural History Museum: <https://www.nhm.ac.uk/our-science/services/data/biodiversity-intactness-index.html>.

³ <https://www.gov.uk/government/publications/working-with-nature>.

⁴ <https://www.theplanner.co.uk/news/biodiversity-crisis-is-an-existential-risk-to-human-survival>.

⁵ <https://stateofnature.org.uk/>.

15. The latest Environment, climate and nature insights, UK (9 July 2026), released by the Environmental Economy Division of the Office for National Statistics,⁶ stated:
 - 15.1. Climate change and factors such as land-use change and pollution continue to place pressure on biodiversity. Substantial long-term declines are observed in several UK species abundance indicators published by Defra and the Joint Nature Conservation Committee (“JNCC”). According to the JNCC's Status of priority species indicators, in 2023, the indicator for priority species abundance was around 62% lower than its 1970 baseline, although it has remained broadly stable in recent years.
 - 15.2. Long-term declines are also evident across several UK breeding bird indicators shown in Defra's Wild bird populations in the UK and England, 1970 to 2024 report.⁷
 - 15.3. The annual value of ecosystem services (i.e. the contribution of biotic (living) and abiotic (non-living) aspects of nature to the economy and society, in either physical volume or monetary value) to the UK economy and society across all habitats is around £41 billion in 2023 (in 2024 prices), with a total asset value of £1.6 trillion.⁸
 - 15.4. With ongoing degradation to biodiversity in the UK, estimates are of a 6-12% drop in UK GDP in the coming 5-10 years. This will be felt most by businesses facing higher input and operational costs in rural areas including the agricultural sector, and consumers by higher prices.
 - 15.5. When asked between 15 June to 28 June 2026, around 23% of businesses expressed concern about the impact nature or biodiversity risks may have on their business.
16. There is also extensive evidence that BNG can help to mitigate and adapt to climate change. Just three examples suffice:

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<https://www.ons.gov.uk/economy/environmentalaccounts/articles/environmentclimateandnatureinsightsuk/2026>.

⁷ <https://www.gov.uk/government/statistics/wild-bird-populations-in-the-uk/wild-bird-populations-in-the-uk-and-england-1970-to-2024>.

⁸ <https://www.ons.gov.uk/economy/environmentalaccounts/bulletins/uknaturalcapitalaccounts/2025>.

- 16.1. Defra and DESNZ jointly published a policy paper in July 2025 (based on evidence provided by the JNCC and the Climate Change Committee), which recognised that climate change and biodiversity loss are “deeply interconnected, and so too must be our response”, and which also recognised the increased cost of delaying action on climate change and biodiversity loss.
- 16.2. The Climate Change Committee’s Seventh Carbon Budget Report makes clear that: “Delivering Net Zero will require rapid deployment of a range of new infrastructure and assets. How these interact with the communities in which they will be located is an important consideration, but it is also important that the planning system gives appropriate priority to the national importance of cutting emissions, adapting to climate change, and enhancing biodiversity.”
- 16.3. The BNG Planning Practice Guidance (still) provides that onsite habitat enhancements to support the biodiversity gain objective may have positive implications for other policy objectives which may need to be taken into account as part of the determination of the planning application, including delivering climate change adaptation.

Legal Background

- 17. The background to the enactment of statutory provisions for BNG is well known to the Secretary of State and not repeated here. In short, prior to the Environment Act 2021, amendments to section 40 of the Natural Environment and Rural Communities Act 2006 (“**the NERC Act**”) required that every public authority “must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.” This requires that all public bodies and statutory undertakers, when carrying out their regular duties, need to consider the conservation of biodiversity. The purpose is to ensure that the conservation of biodiversity becomes an integral part of policy and decision-making throughout the public sector. That remains the case.
- 18. Earlier iterations of the NPPF provided protection for biodiversity in both plan-making and decision-taking, including requiring policy-making and decision-taking to “contribute to and enhance the local environment” by “minimising impacts on and providing for net gains for biodiversity”. While this led to some requirements to enhance biodiversity, it was interpreted as having a low threshold, especially where there was no local development plan policy requiring a minimum percentage of net gain.⁹

⁹ “Paragraph 174 of the Framework simply seeks a net gain in biodiversity. It does not specify a specific percentage.... A ‘net gain’, of any percentage, is all that is therefore required” APP/M2270/W/21/3273022.

19. Growing concern about the decline in biodiversity in the UK led to a significant range of new provisions in the Environment Act 2021 (“**EA 2021**”). Section 1 requires the Secretary of State to set at least one long-term target on biodiversity, and section 3 additionally requires a species abundance target for 31 December 2030. As a result, three outcome-based targets have been set for species:
- 19.1. halt the decline in species abundance by 2030;
 - 19.2. increase species abundance so that by 2042 it is greater than in 2022, and at least 10% greater than 2030; and
 - 19.3. improve the Red List Index for England for species extinction risk by 2042, compared to 2022 levels.

There are also four interim biodiversity targets, one of which is to restore or create a total of 250,000 hectares (ha) of a range of wildlife-rich habitats outside of protected sites by December 2030.

20. The Environmental Improvement Plan 2025 (“**EIP**”), made pursuant to Chapter 1 of the EA 2021, sets out the Government’s commitments to improving the natural environment in the next 15 years.¹⁰ The EIP sets out the following relevant commitments, in summary:
- 20.1. Commitment 1: Mobilise private investment and finance to restore and protect nature in England by (among other things) increasing private investment through blended finance approaches including £30 million investment in the Big Nature Impact Fund to support woodland creation, peatland restoration and BNG habitat bank projects (p.18);
 - 20.2. Commitment 2: Publish Local Nature Recovery Strategies (“**LNRS**”) to cover the whole of England by the end of 2025. LNRS are “*targeted locally led spatial strategies that map where habitat should be created or improved to most effectively meet national and local targets and commitments*”. To achieve this, planning decision makers will have a legal duty to take LNRS into account (p.19); and
 - 20.3. Commitment 6: Address barriers to sustainable choices across society recognises by (among other things) developing BNG to ensure it works effectively for nature, is user friendly for developers and supports the emerging private sector nature market (p.24).

¹⁰ <https://www.gov.uk/government/publications/environmental-improvement-plan-2025/environmental-improvement-plan-eip-2025>.

21. The regulatory landscape on biodiversity and land recovery is complex and interwoven. It is clear, however, that the EIP is a key delivery plan for environmental action within the country. The Office for Environmental Protection, in response to the Government's revised 2025 EIP, however, opined that, at that point in time, "government was largely off track to meet its environmental targets and obligations including biodiversity targets under the Environment Act and the UK's 30 by 30 commitment".¹¹
22. LNRs are critical to devolved delivery of these commitments, with 48 responsible bodies having been appointed to lead on preparing their local strategy tailored to their area. LNRs are based on local level consultation under the Environment (Local Nature Recovery Strategies) (Procedure) Regulations 2023¹² ("**the LNR Regulations**") with organisations and partners explicitly acknowledged by the Government to "know and understand" their areas (including landowners, local communities and businesses, government organisations such as the Environment Agency and environmental charities), and "provide local leadership to draw together knowledge, expertise and best available information and data".¹³ A key objective for a LNR is to "help people see where action to recover nature in their area would be most effective." Local authorities must "have regard" to LNRs, which contain a written statement of local biodiversity objectives, as part of the duty to conserve and enhance biodiversity described below.
23. Part 6 of the EA 2021 further addresses Nature and Biodiversity. It contains the BNG provisions, and inserted schedule 7A to the Town and Country Planning Act 1990 ("**TCPA 1990**"), establishing the statutory biodiversity gain framework for qualifying development. The "biodiversity gain objective" is defined as being 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" (emphasis added). The "relevant percentage" was specified as 10%, but is adjustable by regulations set by the Secretary of State. This minimum 10% gain is required to be calculated using the Biodiversity Metric and approval of a biodiversity gain plan. 10% was set as the

¹¹ <https://www.theoep.org.uk/news/oep-statement-revised-eip> and <https://www.theoep.org.uk/index.php/news/actions-now-will-determine-whether-key-2030-environmental-targets-are-met-says-oep-report-eip>.

¹² The Environment (Local Nature Recovery Strategies) (Procedure) Regulations 2023, SI No. 341.

¹³ <https://www.gov.uk/government/publications/local-nature-recovery-strategies/local-nature-recovery-strategies>.

minimum threshold following the 2019 consultation.¹⁴ The habitat must be secured for at least 30 years via planning obligations or conservation covenants. Accordingly, the statutory scheme provides a floor: a minimum biodiversity gain objective of at least 10%.

24. Nothing in that statutory framework establishes 10% as a maximum level of biodiversity gain which an LPA may seek through its development plan.
25. The revised NPPF now constrains both the plan-making and decision-making stages in relation to such policies. It provides:

NPPF N1.2 – Plan Making

“Development plans should only set local standards for biodiversity net gain which are in excess of the statutory net gain requirement where this is for specific site allocations, and is fully justified and deliverable. Local standards should not extend to categories of development which are exempt from statutory biodiversity net gain.”

NPPF N2.3 – Decision-Making

“Development proposals may incorporate biodiversity enhancements which exceed the statutory objective for biodiversity net gain, but this should only be a requirement where it is set out in up-to-date development plan policies for specific site allocations. Decisionmakers should not give weight to other development plan policies which require biodiversity gains which go beyond the statutory framework, including where a policy requires gains for development proposals which are exempt.”

26. The Government described these policies in its consultation response on the NPPF update as “targeted amendments to improve clarity and consistency”.
27. A number of LPAs have already adopted policies requiring BNG above 10%, reflecting local circumstances, evidence showing what is needed to deliver genuine biodiversity gains, and biodiversity objectives (such as those under s.40 of the NERC Act and the

¹⁴ <https://www.gov.uk/government/consultations/biodiversity-net-gain-updating-planning-requirements>. Notably, DEFRA’s impact assessment at the time of the consultation stated that 10% was the lowest level of net gain that the department could confidently guarantee “at least no net loss”, or a minor true gain: https://consult.defra.gov.uk/land-use/net-gain/supporting_documents/181121%20%20Biodiversity%20Net%20Gain%20Consultation%20IA%20FINAL%20for%20publication.pdf (21 November 2018, pp.19-20).

Environmental Improvement Plan 2025). These LPAs include Guildford Borough Council, Maidstone Borough Council, Mole Valley District Council and Worthing Borough Council. A substantially larger number of LPAs have proposed or are actively developing policies seeking BNG above 10% (see Annex 1).

28. BNG policies have been developed and adopted through the statutory development-plan process and have informed development decisions and investment, including investment by habitat-bank operators and other participants in the emerging BNG market.
29. The Government has previously recognised that “BNG incentivises nature positive choices on development sites, with a developing private marketplace for off-site biodiversity units which the government continues to fully support.”¹⁵

Potential Grounds of Challenge

30. Each of the potential grounds of challenge is addressed below. Please note that we reserve the right, as potential Claimant, to amend the grounds, or to add/remove grounds of challenge, based on your response and any further matters which come to light, and may do so without further recourse to the potential Defendant.

Potential Ground 1: Unlawfully frustrating the effective operation of various statutory obligations; alternatively unlawfully attempting to amend the statutory framework via planning policy

31. Policies N1.2 and N2.3 NPPF address two areas of planning which are subject to statutory powers and duties:
 - 31.1. For plan-making, section 19 of the Planning and Compulsory Purchase Act 2004 (“**PCPA 2004**”) requires LPAs to prepare development plan documents which must include policies designed to contribute to the mitigation of, and adaptation to, climate change in accordance with s.19(1A) of the PCPA 2004.
 - 31.2. For decision-making, s.38(6) of the PCPA 2004 sets out that where a decision maker is required to have regard to the development plan, the decision must

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https://assets.publishing.service.gov.uk/media/675db3f7cfbf84c3b2bcf9f3/Planning_Reform_Working_Paper_-_Development_and_Nature_Recovery.pdf.

be made in accordance with the plan unless material considerations indicate otherwise. In dealing with an application, the LPA shall have regard to *inter alia* the (i) provisions of the development plan, so far as material to the application, and (ii) any other material considerations (s.70(2) TCPA 1990).

The Statutory Decision-Taking Framework and Policy N2.3

32. Footnote 1 of the 2026 NPPF refers to both sections 38(6) and 70(2), and footnote 2 states that the NPPF “does not displace the statutory obligations placed on decision-makers by virtue of, among other things, section 38(6)”.
33. This is, however, undermined by the language and directive approach of policy N2.3. On its face, policy N2.3 directs decision-makers not to give weight to certain development-plan policies requiring gains above the statutory framework. This aims to control, immediately, the operation and weight of existing adopted development-plan policies requiring BNG above 10%.
34. The language used is stark and directive, and will be understood by LPAs as a conscious change in position. In particular, policy N2.3 deliberately goes further than Annex A to the NPPF. This sets out that the policies in the NPPF are a “material consideration which must be taken into account in decision-making from the day of its publication” (§1). Annex A goes on to explain that “[d]evelopment plan policies which are materially inconsistent with national decision-making policies in this Framework should be given very limited weight” (§2) (emphasis added). Policy N2.3, by contrast, directs that decision makers should “not give weight” to development plan policies which require BNG above the statutory minimum 10%. N2.3 is the only policy in the NPPF that directs decision-makers to give **no weight** to a particular consideration.
35. By formulating the policies in this way and using such directive language, the Secretary of State is unlawfully frustrating the effective operation of section 38(6) and 70; alternatively she is unlawfully attempting to amend the statutory framework for planning decision-making via planning policy.
36. The case law is very clear. National planning policy cannot achieve that end. The NPPF is guidance which forms one of the material considerations which a decision-maker must have regard to; it does not displace the primacy given by s.38(6) of the PCPA 2004 to the statutory development plan (*Mead Realisations Ltd v SSLHC* [2024] EWHC 279 (Admin); [2024] P.T.S.R. 1093 (“**Mead Realisations**”) at §59). As Holgate J (as he then was) emphasised: “[n]either the NPPF nor the PPG has the force of statute.

Neither has a binding legal effect” and the “NPPF does not have some special legal status” (Mead Realisations at §62).

37. The weight to be attached to conflict or compliance with the NPPF (and conflict or compliance with the adopted development plan) is a matter for the decision-maker exercising their planning judgement, which may only be interfered with by the courts on public law grounds (Gladman Developments Ltd v Secretary of State for Housing, Communities and Local Government [2021] EWCA Civ 104; [2021] PTSR 1450, at §33(3)).
38. In Cawrey Limited v Secretary of State for Communities and Local Government [2016] EWHC 1198 (Admin) (“Cawrey”), the Claimant argued that the decision to dismiss their appeal against the refusal of planning permission should be quashed on the basis that *inter alia* that the Inspector had failed to address the weight properly to be applied to development plan policies in the light of NPPF (§4(2)). Mr Justice Gilbart set out at §50:

“There is in my judgment nothing at all in NPPF which requires an Inspector to give no or little weight to extant policies in the Development Plan. Were it to do so, it would be incompatible with the statutory basis of development control in s 38(6) PCPA 2004 and s 70 TCPA 1990.”
39. In the case of R (West Berkshire DC) v SSCLG [2016] 1 WLR 3923; [2016] EWCA Civ 441 (“West Berkshire”), the Court of Appeal considered an appeal against the quashing by the High Court of a Written Ministerial Statement (“WMS”) on affordable housing which purported to exclude from affordable housing levies and tariff-based contributions developments of ten units or 1,000 m² or less. A key reason that the WMS was found by the High Court to be unlawful was that the language constituted “an instruction to planning decision-makers to depart from established local plan policies” (see §14), which was held to conflict with section 38(6) of PCPA 2004 and section 70(2) of the TCPA 1990.
40. The Court of Appeal held that the articulation of planning policy in unqualified or absolute terms is lawful (§21), but that the Secretary of State is “not entitled to seek by his policy to countermand or frustrate the effective operation of sections 38(6) and 70(2)”, even though he could express the policy in absolute terms (§22).
41. Accordingly, the Secretary of State is asked to confirm, in clear terms in her PAP response to this potential ground of challenge, that:

- 41.1. Section 38(6) of the PCPA 2004 applies in relation to all extant development plan policies which require BNG above 10%;
 - 41.2. The weight that LPAs give to such policies is a matter for them and, despite the language of policy N2.3, they are entitled to give weight to such policies;
 - 41.3. The NPPF, and policy N2.3, is an important material consideration in planning decision-making, but does not have greater weight than other material considerations and can be departed from.
 - 41.4. The NPPF does not alter local authorities' duties or obligations under section 40 of the NERC Act and the LNRS Regulations.
42. If the Secretary of State is not willing to give such a confirmation, or if the Secretary of State in fact intends policy N2.3 to operate to require LPAs to give no weight to adopted development plan policies that require more than 10% BNG, then the Secretary of State's position is plainly unlawful. It would amount to an amendment of the statutory planning decision-making scheme in sections 38(6) and 70(2). The Secretary of State cannot lawfully achieve that effect through national planning policy. National planning policy cannot lawfully be used to require decision-makers to disregard otherwise operative development-plan policies, where Parliament has not imposed such a restriction.

The Statutory Planning Policy Making Framework and Policy N1.2

- 43. In relation to plan-making, policy N1.2 uses marginally less directive language than policy N2.3, but its purpose is still to exclude a specific category of BNG policies from being brought forward by LPAs through their local plans and/or from being found sound.
- 44. This is despite the fact that nothing in the EA 2021 or the TCPA 1990 or any other statutory scheme prevents LPAs from bringing such policies forward. Instead, there is a statutory duty that positively supports such policies being brought forward: section 19(1A) of the PCPA 2004, given the intersection of nature recovery and climate mitigation and adaptation.
- 45. Policy N1.2 of the NPPF cannot seek to countermand or frustrate the effective operation of sections 19 and 19(1A) of the PCPA 2004. For all the reasons given above in the case law there cited, it cannot remove, effectively remove or frustrate the statutory power given to LPAs in those sections. It also cannot remove or frustrate LPAs' duties under section 40 of the NERC Act and the LNRS Regulations. The Secretary

of State is therefore asked to confirm, in clear terms in her PAP responses, that policy N1.2 is not intended to do so, nor does it in fact do so.

46. Failing this confirmation, the policy is unlawful in light of the case law set out above; alternatively it is an unlawful attempt to amend the statutory scheme for plan making via planning policy.

Potential Ground 2: Failed to give due regard to the Environmental Principles Policy Statement

47. The Secretary of State has a duty, pursuant to s.19 of the Environment Act 2021 (“**the 2021 Act**”) to have “due regard” to the Environmental Principles Policy Statement (“**EPPS**”) when making policy (“**the EPPS Duty**”). In *R (Rights Community Action Ltd) v SSHCLG* [2025] EWCA Civ 990; [2026] P.T.S.R. 864 Holgate LJ set out that the EPPS Duty: applies to a number of different stages of decision-making which includes developing, adopting or revisiting policy pursuant to s.47 of the 2021 Act (§84); applies when a policy is being developed and not simply at the point when a policy is adopted (§85); applies when policy is being formulated and different options are being considered (§85); and it must be carried out in substance, with rigour and with an open mind (§93).
48. The EPPS Duty thus applied to the amendment of the NPPF, and to the introduction of policies N1.2 and 2.3 when those policies were being formulated and different options were being considered (so both before and after the consultation was undertaken); and when the policies were finalised and when they were adopted.
49. The EPPS emphasises the purpose of the principles being “to guide ministers and policymakers towards opportunities to prevent environmental damage and enhance the environment”. The EPPS is also clear that its purpose is to “help policymakers to protect and enhance our environment and preserve England’s unique natural assets, all within the context of building resilience to biodiversity loss and the effects of our changing climate.” The BNG policies sit at the intersection of these things – preventing biodiversity loss and addressing climate mitigation and adaptation.
50. The EPPS provides that “policymakers” (i.e. Ministers, their officials and “others developing policy on [Ministers’] behalf”) should “consider and use the principles iteratively from the outset and during subsequent stages in policy development”. Policymakers “should identify potential environmental effects (positive or negative) and use the principles to inform and influence the design of the policy”, informed by

the overall purpose of the EPPS to contribute to improving environmental protection and achieving sustainable development in the context of building resilience to biodiversity loss and the effects of our changing climate.

51. The EPPS Duty must, however, ultimately be discharged personally by the relevant minister. Angela Rayner was Secretary of State for Housing, Communities and Local Government from July 2025 to September 2025, during which period it is likely that the policies were being formulated. Steve Reed was Secretary of State from September 2025 to July 2026, during which period the policies were published for consultation (16 December 2025) and were reassessed in light of the consultation responses (from 10 March 2026 onwards). Angela Rayner was re-appointed Secretary of State on 20 July 2026, during which time the policies were still being finalised before publication on 17 August 2026. At each point, the Minister was required to understand the substance of the EPPS and the policies and, with rigour and with an open mind, consider the matters specified in the EPPS relevant to making the policies in the form proposed, or in some other form.
52. The EPPS is relevant in at least the following ways:
 - 52.1. **The Proportionality Principle**, which provides that: “Environmental, social and economic factors are interlinked. Nature, and the biodiversity that underpins it, ultimately sustains our economies, livelihoods and well-being, and so our decisions must take into account the true value of the goods and services we derive from it. After consideration of these factors, ministers may decide that the public interest is best served by taking forward a policy option that includes associated negative environmental effects. In these cases, the issues should be recorded, and policy teams should consider the issues in the round.” None of this is reflected in the Government’s justification for policies N1.2 and 2.3.
 - 52.2. **The Prevention Principle**, which “underpins many aspects of environmental policy to ensure that environmental damage, such as CO2 emissions, pollution or biodiversity loss, is avoided.” BNG seeks to prevent and rectify the current loss of biodiversity and reduction in species abundance in the UK. Where LPAs have set policies requiring above 10% BNG, this is on the basis of evidence evaluated through the local plan process that this is the level required to achieve that aim in their area. BNG is also part of preventing climate change through mitigating emissions and assisting with adaptation to climate change.

None of this is reflected in the Government’s justification for policies N1.2 and 2.3.

- 52.3. **The Integration Principle**, which requires that policymakers should look for opportunities to embed environmental protection into policy. Policies N1.2 and 2.3 do the opposite, and seek to roll back opportunities for the environmental protection that BNG provides. None of this is reflected in the Government’s justification for policies N1.2 and 2.3; to the contrary, in June of this year, the Office for Environmental Protection has explicitly raised concerns that the plethora of “early post-implementation changes” are being brought in before the full BNG regime has had a chance to “bed-in”.¹⁶
53. There is no evidence that the EPPS Duty has been complied with, either in the design or in the making of policies N1.2 and N2.3. In the absence of such evidence (see below in relation to requested disclosure), Lifescape contends that the EPPS Duty has been breached.

Potential Ground 3: Failed to take into account the adverse economic impact of the policies, which was a material consideration in making them

54. As DEFRA’s Net Gain Consultation proposal (2018)¹⁷ recognised, “habitats delivered for wildlife through biodiversity net gain could deliver wider social and economic benefits” (p.4). DEFRA’s Net Gain Impact Assessment (2019)¹⁸ set out that, as transactions costs and information asymmetries fall, economic theory suggests that market efficiency will improve and there may be non-monetised indirect benefits such as reduced delays and uncertainty (p.51). Further, it was anticipated that mandating BNG with the option of offset would create: demand for habitats to be created by third parties; biodiversity banks and others who are cost-effective at creating habitat would be able to sell excess habitat at a price that would make a profit; incentives for environmentally proactive developers to produce habitat greater than required; and the sale and purchase of biodiversity units between developers (p.51).

¹⁶ <https://www.theoep.org.uk/report/bng-rules-need-take-effect-further-changes-are-made-says-oep>.

¹⁷ https://consult.defra.gov.uk/land-use/net-gain/supporting_documents/netgainconsultationdocument.pdf.

¹⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839610/net-gain-ia.pdf.

55. As the Environment Act established a system whereby off-site biodiversity units can be sold, a market in these units has developed, including through Habitat Banks or Habitat Land Banks. For example, the Environment Bank, a nationwide supplier of biodiversity units, raised £200 million to put a habitat bank piece of land in every local authority area. It defines a “Habitat Bank” as a parcel of land where a significant uplift in biodiversity can be created, typically upwards of 20 hectares in size, which can incorporate multiple smaller parcels of land across one site.¹⁹ A number of other suppliers have also entered this market. The majority of Wildlife Trusts across England offer BNG services to developers, from strategic consultancy to off-site biodiversity units, and have 75 sites either on the Biodiversity Gains Register, in development, or proposed across England.²⁰ In addition, certain large private consultancies have also entered the market, for example RSK Wilding, which is also a Responsible Body and is able to carry out compliance monitoring of others’ habitat banks and to enter into conservation covenants.²¹
56. As set out above, Lifescape is also part of this market.
57. The economic short-term and long-term benefits anticipated by the Government have begun to be realised. In short, this market is both growing and maturing. The Biodiversity Units UK Pricing Report (1 July 2026)²² sets out that:
 - 57.1. Since their previous estimate in their June 2025 report of a market value for BNG of around £33 million annually for 2025, just twelve months later their estimate had risen to approximately £93 million for 2026, an increase of almost three times over the space of 1 year; and
 - 57.2. Long-term analysis shows that the BNG market has the potential to exceed £500 million annually by 2035.
58. As set out above, BNG policies developed and adopted through the statutory development-plan process have informed demand-side development decisions and investment, supply-side investment by habitat-bank operators, and decision-making by

¹⁹ <https://environmentbank.com/habitat-bank-creation/habitat-bank-q-a/what-is-a-habitat-bank>.

²⁰ <https://www.wildlifetrusts.org/nature-based-solutions/biodiversity-net-gain>.

²¹ <https://www.rskwilding.com/services/biodiversity-net-gain/>.

²² <https://www.biodiversityunits.com/news-insights/july-2026-bng-pricing-report>.

other participants in the emerging BNG market. Habitat-bank operators make substantial upfront investments in land acquisition, habitat creation and long-term management which is often on the basis of anticipated demand for biodiversity units over extended periods.

59. Accordingly, the impact of Policies N1.2 and N2.3 in the NPPF on public and private investors and BNG operators is potentially stark. Purporting to prevent LPAs from putting forward local policies which are above the minimum 10% BNG (except for specific site allocations), and purporting to prevent decision-makers from giving any weight to extant development plan policies which require BNG of above 10% with *immediate* effect will likely reduce demand in the emerging BNG market and reduce long-term investment.
60. The Government recognised when making the minimum 10% BNG requirement a mandatory planning condition that BNG would have a positive impact on the economy; for example through investment in biodiversity banks, incentivising green development, and reducing process delays and investment uncertainty. This is further recognised in the EIP in which the Government has committed to mobilising private investment and finance through among other things, BNG habitat bank projects. In making Policies N1.2 and N2.3, the Secretary of State was required to take into account the adverse economic impact of these Policies, which was a material consideration in making them.
61. There is no evidence that adverse economic impacts were considered in the making of Policies N1.2 and N2.3. The Government's Consultation Response does not address the issue. In the absence of such evidence (see request below for disclosure), Lifescape contends that the Secretary of State has not considered the adverse economic impacts of Policies N1.2 and N2.3. It was an obviously material consideration to the exercise of the discretion to make the policies. Accordingly, the failure was unlawful.

Potential Ground 4: Breach of the Public Sector Equality Duty

62. Section 149 of the Equality Act 2010 ("**EA 2010**") imposes the public sector equality duty ("**PSED**") in the following terms:
"149. Public sector equality duty
(1) A public authority must, in the exercise of its functions, have due regard to the need to—
(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
 - (2) [...]
 - (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.”
63. The relevant protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation (s.149(7) EA 2010).
64. The general principles that must be followed lawfully to discharge the PSED are well-established: see *R (Bracking) v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 at §25. In particular:
- 64.1. The duty is upon the Minister personally; what matters is what he or she took into account and what he or she knew. The minister “cannot be taken to know what his or her officials know or what may have been in the minds of officials in proffering their advice”: §25(3).
 - 64.2. The decisionmaker must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy, and not merely as a “rearguard action” following a concluded decision: §25(4).
 - 64.3. The duty must be exercised “in substance, with rigour, and with an open mind”: §25(5)(iii).

- 64.4. General regard to issues of equality is not the same as having “specific regard, by way of conscious approach to the statutory criteria”: §25(6).
65. There is clear evidence that undermining BNG disproportionately affects deprived communities. For example, a recent report by Wildlife and Countryside Link shows how changes to BNG will fall hardest on people in the most deprived areas, and, in doing so, cause further damage to the physical and mental health of communities around England.²³ Evidence from Natural England already shows that people in the most socially deprived areas are less likely to have easy access to nature and the benefits it brings.²⁴
66. MHCLG produced an equality analysis which informed the Secretary of State’s decision to make the policies (“**the Equality Analysis**”).²⁵ To some extent, it acknowledged this risk:
- "While the BNG policy provides a clearer position on when biodiversity enhancements above the statutory minimum should be sought, some respondents were concerned that this approach may reduce the scale of additional biodiversity enhancements in certain locations. We note that this could have potential to reduce opportunities to target enhanced provision in areas with the greatest need, including locations where communities with protected characteristics currently experience poorer access to nature" (p.37)
67. This failed to provide the Minister with any relevant detail (including the specific impacts on different protected characteristics and any intersectional impacts), or to draw to the Minister’s attention to the evidence, including from Natural England.
68. Furthermore, even the paucity of recognition of the harmful impact of the BNG policies on those with protected characteristics was not reflected in the conclusion or the decision-making sections of the Equality Analysis (pp.47-48). The “Summary of Analysis” summarises the positive impacts on people with protected characteristics (arising from other policies), and then states:

²³ https://www.wcl.org.uk/docs/green_gap_report.pdf.

²⁴ <https://naturalengland.blog.gov.uk/2026/03/09/how-biodiversity-net-gain-helps-people-and-places-thrive/>.

²⁵ https://assets.publishing.service.gov.uk/media/6a82fb130ad4bc475be7df36/Public_Sector_Equality_Duty_Assessment_on_changes_to_the_NPPF.pdf

“There remain some ongoing risks of differential treatment relating to traveller sites, as set out in section 2.2, as well as some areas which may negatively impact older people or disabled people, such as the digitisation of planning. Through the mitigations identified in this PSED assessment and the aims of NPPF policies as read as a whole, we would assess that, on balance, the planning system would deliver more positive benefits for individuals with protected characteristics and on society overall.”

69. There follows a table which fails to differentiate between positive and negative impacts, and then an overall conclusion, in the “Decision Making” section:

“We anticipate the changes will promote advancement of opportunity (e.g. through increased home ownership, better environmental outcomes, the provision of infrastructure, and improved opportunities for people across the country). We have determined that the proposed policy changes may disproportionately impact those with protected characteristics. Where potentially negative impacts on people with protected characteristics may arise, we are satisfied with the mitigations which have been built into the policy during development.”

70. It is entirely unclear how this conclusion was reached, given that there are no mitigations identified for the acknowledged negative impact of the BNG policies which effectively disappears from the analysis. Accordingly, the Secretary of State failed to comply with the PSED, as the Equality Analysis:

- 70.1. Fails to evidence a proper understanding of the extent of the negative impacts of the BNG policies on those with protected characteristics, including intersectional impacts;
- 70.2. Fails to provide adequate evidence to the Secretary of State in order for her to exercise her duty in substance and with rigour; and so
- 70.3. Fails to evidence the Minister complied with the PSED.

Potential Ground 5: The Decision was based on an irrational justification

71. In *R (Law Society) v Lord Chancellor* [2019] 1 WLR 1649 (“***Law Society***”) the Court held that where the justification for, and rationality of, a policy or guidance depends on an assessment which is not rational, then the policy will be unlawful: §99 and §§115-124.

72. The Government's Response to the NPPF Consultation ²⁶ ("the **Consultation Response**") recognised that there were "*differing views*" on BNG Policy N1, with similar comments relating to N2 (pp.122-23). The Consultation Response goes on to say:

"Some respondents supported limiting local requirements above the statutory 10% minimum, citing impacts on cost, viability and consistency. Others argued this could constrain local ambition and reduce the effectiveness of Biodiversity Net Gain (BNG) in supporting wider nature recovery. Some respondents suggested that higher requirements may be appropriate where supported by local evidence, including through Local Nature Recovery Strategies, particularly on larger or strategically important sites and where this would support habitat connectivity and wider nature recovery."

73. It is clear, therefore, that consultation responses highlighted the need for "*consistency*" and the risk that the Policies "*could constrain local ambition*". The Government's justification for Policy N1 as set out in the Consultation Response is that it is purported to "*improve clarity and consistency*". The Government's justification for Policy N2.3 is unclear from the Consultation Response; the only explicit reference is "*A footnote (number 69 in the consultation draft) has been moved into the policy itself as new paragraph N2(3)*" (p.124).

74. The justification for Policies N1.2 and N2.3 is irrational, and/or depended on an assessment which was irrational, for the following three reasons:

74.1. Firstly, the effect of Policy N2 is to undermine consistency and clarity in decision-making. The effect of Policies N2 is to direct decision-makers to give *no weight* to extant policies in development plans which require BNG above 10%, in conflict with their statutory obligation in s.38(6) of the 2004 Act, and with Annex A (§§1-2) in the NPPF which requires decision-makers to give "*very limited weight*" to development plan policies which are "*materially inconsistent with national decision-making policies*" (§2). The effect of Policy N2.3 therefore undermines consistency and clarity in decision-making, contrary to the Government's justification for implementing the policy.

74.2. Secondly, the Secretary of State has a number of statutory obligations and has made a number of commitments in relation to BNG pursuant to (among other

²⁶

https://assets.publishing.service.gov.uk/media/6a82fcec3bd75b81e2329a89/National_Planning_Policy_Framework_consultation_-_government_response.pdf.

things) the targets in ss.1-3 of the Environment Act 2021 and Sch.7A of the TCPA 1990 and the milestones associated with the EIP. The Government's justification for implementing the policy, contained in the Consultation Response, does not set out how the Secretary of State considers that Policies N1.2 and N2.3 are consistent with those statutory obligations and commitments, despite consultation responses emphasising that the policies could "*reduce the effectiveness of Biodiversity Net Gain (BNG) in supporting wider nature recovery*" (p.122 of the Consultation Response). The Secretary of State is invited to confirm what evidence she took into account in making Policies N1.2 and N2.3 that the effective cap of 10% BNG which has the effect of limiting LPAs ability to set local targets for BNG was based on a rational justification taking into account her relevant statutory obligations and commitments.

- 74.3. Thirdly, the available evidence suggests that in actuality 10% BNG is the absolute minimum necessary to achieve no biodiversity 'net loss'. As the DEFRA set out in their Impact Assessment in 2018 (p.20),²⁷ 10% "*is the lowest level of net gain that the department could confidently expect to deliver genuine net gain, **or at least no net loss**, of biodiversity and thereby meet its policy objectives*" (p.20) (emphasis added). Therefore, in purporting to cap the percentage of BNG at 10% (except in relation to specific site allocations), the Secretary of State's assessment appears to lack a rational justification. The Secretary of State is invited to confirm what evidence she took into account/ what assessment she undertook when making Policies N1.2 and N2.3 that a cap of 10% BNG was sufficient to achieve the BNG.
75. A further issue arises with LNRS. The 2026 update embeds LNRS much more clearly within planning consideration than was previously the case. Among other references, policy N1.1 addresses LNRS in plan-making and N2.1 integrates LNRS into decision-taking. Since their inception, the Government has envisaged that BNG and LNRS would operate together,²⁸ and DEFRA's LNRS Statutory Guidance makes it clear that

²⁷

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/839610/net-gain-ia.pdf.

²⁸

<https://www.gov.uk/government/publications/local-nature-recovery-strategies/local-nature-recovery-strategies>.

mandatory BNG is one of the two statutory mechanisms to support LNRS.²⁹ The “strategic significance” multiplier, built into the BNG metric, means that developers delivering habitat in a location identified as a priority area in a LNRS earn 15% more biodiversity units than the same habitat created elsewhere. That aims to drive delivery of BNG within LNRS. It is unclear to what extent the Secretary of State gave any consideration to the specific impact of policies N1.2 and N2.3 on diminishing the effectiveness of BNG to support LNRS. While the Consultation Response refers to the potential impact on “supporting wider nature recovery”, and also refers to LNRS being supported by the NPPF amendments, it never grapples with the contradiction in supporting LNRS but introducing an artificial ceiling on the ability of BNG to drive habitat delivery in priority areas. Either the Secretary of State failed to take into account a material consideration or fell foul of a logical inconsistency between the approaches, which is irrational per *Law Society* at §98.

76. Additionally, the Government has explicitly identified environment and climate change as key areas for devolution to the local level: the English Devolution and Community Empowerment Bill (which is sponsored by the Secretary of State for Housing, Communities and Local Government and is currently before Parliament) aims to deliver on the Government’s commitment to widen and deepen devolution across England and identifies environment and climate change as one of seven areas of competence for Strategic Authorities.³⁰ The English Devolution White Paper³¹ explains that LNRS are a central part of this; the LNRS responsible authority role will be aligned and enhanced to be at the heart of this function. Given that (as set out above), BNG is one of the two statutory mechanisms to support LNRS, this plainly dovetails with LPAs engaging with and setting their own, area-specific mandatory BNG level through the local plan process – bringing fully to the local level the BNG mechanism that the

²⁹

https://assets.publishing.service.gov.uk/media/6421a4bdfe97a8001379ecf1/Local_nature_recovery_strategy_statutory_guidance.pdf, paragraph 7.

³⁰ <https://bills.parliament.uk/bills/4002>. See also the Government’s response to recommendation 3 in its Response to the OEP’s Review of LNRS and their role in contributing to nature recovery commitments in England describing the purpose of the Bill: <https://www.gov.uk/government/publications/government-response-to-the-oep-review-local-nature-recovery-strategies-and-their-role-in-contributing-to-nature-recovery-commitments-in-england/government-response-to-the-office-for-environmental-protection-review-of-local-nature-recovery-strategies-and-their-role-in-contributing-to-nature-rec>.

³¹ <https://www.gov.uk/government/publications/english-devolution-white-paper-power-and-partnership-foundations-for-growth/english-devolution-white-paper>.

Government has identified as supporting the delivery of LNRS.³² The approach taken by NPPF policies N1.2 and 2.3 cut across this and threatens to undermine an important element of devolving competence on climate and environment to the local level. It does not appear that the Secretary of State has taken this obviously material consideration into account either, or recognised the logical contradiction her approach entails.

Relief sought

77. Lifescape invites the Secretary of State to:
 - 77.1. Provide the confirmations requested at §41 above concerning policy N1.2;
 - 77.2. Provide the confirmations requested at §45 above concerning policy N2.3;
 - 77.3. Withdraw, amend or clarify policies N1.2 and N2.3 accordingly; and
 - 77.4. Confirm that the Government will not seek to rely on N1.2 or N2.3 as requiring LPAs to disregard otherwise lawful development-plan policies.
78. If the Secretary of State maintains that N1.2 and/or N2.3 have the restrictive effect identified above, Lifescape intends to seek declaratory and/or quashing relief from the High Court.

Information and documents requested

79. The Secretary of State is reminded that she should comply with proportionate requests for information and documents at the pre-action stage in accordance with the Pre-Action Protocol for Judicial Review §13 and the Administrative Court Guide (2025) §15.3.2. In order for Lifescape to understand the basis on which the challenged policies were formulated and adopted, and to identify and narrow the issues in dispute, please provide:
 - 79.1. All ministerial submissions and non-privileged advice concerning N1 and N2 insofar as they relate to BNG above 10%;
 - 79.2. Any analysis undertaken concerning the legal effect of the proposed restrictions on existing development-plan policies;

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https://assets.publishing.service.gov.uk/media/6421a4bdf97a8001379ecf1/Local_nature_recovery_strategy_statutory_guidance.pdf.

- 79.3. Any advice obtained concerning the compatibility of N1 and N2 with the EA 2021, the TCPA 1990 and the statutory development-plan framework;
 - 79.4. Any impact assessment, cost-benefit analysis, economic appraisal or other assessment undertaken concerning the potential effects of N1 and N2 on the BNG market, including biodiversity-unit demand, habitat-bank investment, project viability and market confidence;
 - 79.5. Any analysis undertaken concerning the number, geographical distribution and content of existing adopted or emerging development-plan policies requiring BNG above 10%;
 - 79.6. Any Environmental Principles Assessment or equivalent analysis undertaken pursuant to section 19 of the Environment Act 2021 in connection with N1 and N2, together with any ministerial submission or other document recording the consideration of that assessment;
 - 79.7. The evidence and analysis relied upon in determining that the policy approach adopted in N1 and N2 was justified and deliverable;
 - 79.8. Any analysis undertaken of the potential environmental consequences of restricting or reducing the effect of local BNG requirements above 10%, and in particular any analysis of the likely impact on LNRS; and
 - 79.9. All Equality Impact Assessments (other than the Public Equality analysis referred to above) and any other information or evidence that was considered by the Minister in fulfilling the duties under s149 of the Equality Act 2010.
80. These requests are made to assist in properly identifying and narrowing the issues in dispute. Lifescape reserves the right to amend, supplement and/or refine the grounds of challenge in light of the Defendant's response to this letter and any documents or information provided in response to the requests above. In particular, Lifescape reserves the right to raise additional grounds arising from material disclosed by the Defendant, insofar as permitted by the applicable procedural rules and any relevant statutory or procedural time limits.

Aarhus Convention and costs protection

- 81. The proposed claim is an environmental claim that falls within the scope of the Aarhus Convention. Lifescape is a small registered charity, with a Board of Trustees, and is required to use restricted funds only for the restricted purposes and to have a reserves policy. The large majority of our funding is restricted (78% in 2024/25), meaning it

must be used towards specific purposes under funding agreements with charitable funders.

82. Our latest audited Annual Report and Accounts are available from the Charity Commission's website. They differentiate between restricted and unrestricted funds. Our total unrestricted financial reserves as at 30 April 2025 were £127,610 (meaning that most of Lifescape's cash balance is restricted). The unrestricted funds are subject to the reserves policy, because it is essential for charities to maintain sufficient unrestricted reserves to ensure that they remain financially sustainable, to manage future income uncertainty from donors and grant funders, to meet unexpected costs, and to address short-term cash flow pressures. Trustees therefore have a responsibility to ensure that sufficient unrestricted reserves are maintained to support the Charity's ongoing operations, meet legal and financial obligations, and manage funding uncertainty. Our Annual Report sets out that as a young Charity we are still in the process of building up unrestricted reserves to a point where we hold funds sufficient to cover operating costs for a 12-week period, in line with standard Charity Commission guidance and our financial reserves policy. As at 30 April 2025, our unrestricted reserves provided approximately 6 weeks of operating cost cover.
83. Please confirm in your response that you will not contest that: (i) the Aarhus Convention applies; (ii) any claim will benefit from the costs capping in CPR r. 45.43; and (iii) the proposed Claimants' costs liability will be capped at £10,000 inclusive of VAT owing to both the subjective and objective limbs of the prohibitive expense test.

Response

84. Lifescape requests a substantive response within 14 days of receipt of this letter, by **4pm on 29 September 2026.**
85. Lifescape requests that all correspondence and the Defendant's response be sent by email to both Nola Donachie, Managing Lawyer - Litigation (nola.donachie@lifescapeproject.org) and Stephanie Smith, Managing Lawyer - Rewilding Law (stephanie.smith@lifescapeproject.org). No hard copy response is required unless the Defendant considers this necessary for procedural or formal service purposes.
86. Lifescape intends to act promptly and will not delay commencing proceedings where necessary to protect its position.

87. If a satisfactory response is not received within that period, Lifescape reserves the right to commence judicial review proceedings without further notice.
88. Lifescape remains willing to consider any proposal for clarification, amendment or other resolution which avoids the need for proceedings.

Yours faithfully,

A handwritten signature in dark ink, appearing to be 'Adam Eagle', written in a cursive style.

Adam Eagle, CEO
For and on behalf of The Lifescape Project
Copies to Annex 1 LPAs and other Responsible Bodies (by email)

Annex 1

Local Authorities with Adopted Area-Wide BNG Policies Above 10%

- Guildford Borough Council (20%): Ezra.wallace@guildford.gov.uk
- Maidstone Borough Council (20%): planningsupport@midkent.gov.uk
- Mole Valley (20%): Tom.penlington@molevalley.gov.uk
- Uttlesford District Council (20%): legal@uttlesford.gov.uk
- Worthing Borough Council (20%): legal.mail@adur-worthing.gov.uk

Local Authorities with Emerging BNG Policies

- Cambridge (20%): emma.duncan@cambridgeshire.gov.uk
- Canterbury (20% on major development): an.guyler@canterbury.gov.uk
- Ealing (20%): LegalSupport@ealing.gov.uk
- East Devon (20%): gsalter@eastdevon.gov.uk
- Enfield (20%): legalsupport.requests@enfield.gov.uk
- Herefordshire (20%): Philippa.Wride@herefordshire.gov.uk
- Portsmouth (20%): peter.baulf@portsmouthcc.gov.uk
- Sevenoaks (20%): Martin.Goodman@sevenoaks.gov.uk
- South Oxfordshire (20%):
nick.bennett@southandvale.gov.uk; anne.ricketts@southandvale.gov.uk
- Surrey Heath (20%): nathalie.boateng@surreyheath.gov.uk
- Swale (20%): timothy.pyant@midkent.gov.uk
- Vale of White Horse (20%):
nick.bennett@southandvale.gov.uk; anne.ricketts@southandvale.gov.uk
- Wealden (20%): legalservices@wealden.gov.uk
- Castle Point (20%): planning@castlepoint.gov.uk
- Chelmsford (20%): w.butcher@chelmsford.gov.uk
- Cherwell (20%): shiraz.sheikh@cherwell-dc.gov.uk
- Great Yarmouth (20%): plan@great-yarmouth.gov.uk
- Kingston upon Thames (30%): funda.djafer@rbk.kingston.gov.uk
- Lewes (20%): PlanningFirst@lewes-eastbourne.gov.uk
- Mid Sussex (20%): julie.galvin@midsussex.gov.uk
- Rother (20%): planning@rother.gov.uk
- Stockport (20%): vicki.bates@stockport.gov.uk
- Tower Hamlets (30% or 2.5 biodiversity units per hectare, whichever is higher):
jill.bayley@towerhamlets.gov.uk
- Wokingham (20%): sharedlegalsolutions@wokingham.gov.uk