

Improving the implementation of Biodiversity Net Gain for minor, medium and brownfield development: Consultation response

Qs 1-4 relate to LPA details only

Part 1: Improving Exemptions

Question 5: Which of the following statements do you most support:

Some changes should be made.

Support:

Option 1 - Targeted revisions to the existing exemptions for self and custom build development

Option 2 - Targeted revisions to the existing exemptions for development below the de minimis threshold

Option 4 – New exemptions for parks, public gardens and playing fields development.

Option 5 – New exemptions for development whose primary objective is to conserve or enhance biodiversity.

Question 6: Do you agree that the self and custom-building exemption should be removed and that it should be replaced with an exemption for a single dwelling house?

Yes - Many applications for single dwellings are now being applied for as self-build development schemes. The increase in self-build exemptions adds time and resource implications for assessing and securing these sites as self-build development. An exemption for single dwellings will allow support for small-scale development which is less likely to have a significant impact on biodiversity.

Question 7: Do you agree with the proposal for a 0.1 hectare threshold?

Yes - This will ensure only small scale sites are exempt. It is reasonable to consider that sites below this size are unlikely to provide any significant contribution to BNG.

Question 8: Do you agree the area de minimis threshold should be extended?

Yes

Question 9: If yes, which of the following thresholds do you think is most appropriate:

100 square metres most appropriate

Question 10: Please use this space to elaborate on your answer to the previous question:

The existing *de minimus* threshold of 25 square metres results in some applications being subject to the BNG condition that are unlikely to provide significant Biodiversity Net Gain due to the small area of habitat affected. This has implications in relation to time and resource for planning departments. An increase in the minimum threshold would also reflect the other changes proposed within this consultation.

Question 11: Do you think the BNG requirement should be removed for minor development (for example including up to 9 residential homes) you provide evidence for your response where possible.

No

Question 12: Please provide evidence for your response to the previous question here:

While smaller scale sites, such as those for one unit as discussed elsewhere in this consultation, would only provide a minimal contribution to BNG, sites for greater numbers of houses (in this case up to 9), particularly on existing undeveloped land, would have the potential to have a significant impact on existing biodiversity and so the opportunity to provide appropriate enhancements in accordance with the aims of BNG should not be lost. Cumulatively, minor developments such as those for up to 9 dwellings can make a significant contribution to BNG and support the use of local Habitat Banks as such sites are less likely to be able to provide sufficient BNG on site.

Question 13: if minor development were to be exempted from BNG, do you agree that the de minimis threshold should be extended to cover other types of development outside of the minor development category having little or no impact on biodiversity?

Yes

Question 14: Please elaborate on your answer to the previous question:

For the reasons given above we would not support the inclusion of all minor development as an exemption from BNG. However, if all minor development is proposed to be exempt from BNG then an extension to the *de minimus* threshold to include other types of development that would have little or no impact on biodiversity may be reasonable.

Question 15: Do you agree that parks, gardens and playing fields development, as defined above, should be partially exempt from BNG? Please give evidence where possible.

Yes

Question 16: Please elaborate on your answer to the previous question:

As this relates to development at existing parks, gardens and playing fields where they will continue in their existing use, this will support wider community uses or, if in private ownership, continue to support sports and recreation. Meeting the requirements of BNG can present a significant barrier, particularly for smaller organisations and interest groups.

Question 17: Do you agree that development whose sole or primary objective is to conserve or enhance biodiversity should be exempt from BNG?

Yes

Question 18: If yes, do you think there should be an upper size limit?

No - the same issues are likely to apply to all scales of development with the sole or primary objective to conserve or enhance biodiversity.

Question 19: Please provide evidence where possible, including examples of developments that you think would be exempted.

On balance, the aims of these schemes should be supported and it is likely that meeting the requirements of the BNG condition, including legal agreements to secure 30 year provision may act as a barrier to some projects that would otherwise provide biodiversity enhancements.

Question 20: Do you agree that temporary planning permission should be exempt from BNG?

No

Question 21: Please provide evidence where possible, including examples of developments that you think would be exempted:

It is not uncommon for a temporary permission to subsequently be applied for to become permanent and in those cases, to then establish a baseline would be difficult. If the use continues but no application is applied for then this would fall to the Planning Enforcement process to resolve which, again, would be difficult in relation to establishing the baseline position.

Question: If yes, do you agree with the 5-year time limit? Please give reasons.

No comment given.

Answer 23: Please give reasons:

No comment given.

Part 2: Streamlining the BNG metric process

Question 24: Do you think the SSM should be used for medium development (schemes up to 49 units and on 1ha sites)?

No – Such sites will be larger and therefore likely to include a broader range of habitat types or complexity. The input of a qualified ecologist would therefore be important to ensure that the full baseline position is properly captured. In addition, such sites are usually brought forward by experienced, multi-disciplinary teams that would be likely to already include ecology advice. Advice in providing on-site BNG as a contribution to high quality place making would also be more likely through the involvement of an Ecologist.

Question 25: Do you think the SSM should be able to be used on sites with European protected species present?

No – The presence of European Protected Species on site will involve an ecologist in the development proposals and so the use of Statutory Metric would be appropriate.

Question 26: Do you think the SSM should be able to be used on sites with protected sites present?

No – the presence of protected sites will involve an ecologist in the development proposals and so the use of Statutory Metric would be appropriate. The involvement of an ecologist would also provide opportunities to identify the most appropriate on-site enhancements.

Question 27: If these changes are taken forward, and the SSM is re-badged as a low impact metric. Do you think there should be any other restrictions on use of the SSM?

No – subject to the responses above, no further restrictions appear necessary on this basis.

Question 28: Do you think the trading rules should be removed in the SSM (which contains only medium and low distinctiveness habitats)?

No – while removing the trading rules would be unlikely to reduce the number of BNG units provided, it would be likely to result in a reduction in the distinctiveness of habitats compared with those to be lost which would not be in keeping with the aims of the BNG provisions.

Question 29: If you answered no, do you think the trading rules should be amended in the SSM to allow the losses of any medium distinctiveness habitat to be compensated for with any other medium distinctiveness habitat (but not with low distinctiveness habitats)?

Yes – this approach would seem reasonable.

Question 30: Do you think habitat condition should be fixed at 'poor' for baseline habitats, and 'moderate' for the target condition of enhanced habitat in the SSM?

No – there is a potential, by fixing all baselines at 'poor' that many sites would be downgraded to the detriment of BNG provision. If the applicant knows that their site baseline is 'poor' then this is likely to be supported by input from an ecologist and so this information can be provided with their application.

Question 31: Are there any other changes to the SSM or metric process for minor and medium development that should be considered to overcome challenges or streamline the process?

No comment given.

Question 32: Do you think some habitats of the same broad type with the same value should be amalgamated in the SSM?

Yes – this seems to be a proportionate approach to simplify the process for the use of the SSM which still supporting BNG enhancements.

Question 33: Do you think the habitats in the SSM should be reviewed, to ensure they are easily identified by non-ecologists?

Yes – this seems to be a proportionate approach to simplify the process for the use of the SSM which still supporting BNG enhancements.

Question 34: Do you think there should be a watercourse module in the SSM, or should all developments within the riparian zone of watercourse habitats use the main metric tool?

No response [Officers do not have any comments to offer, given the technical nature of this environment. Hertfordshire County Council are expected to provide a response with input from County Ecologists on this issue].

Question 35: Do you think providing additional guidance on the identification and management of habitats in the small site metric would be helpful?

Yes

Question 36: Do you think more clarity is required within the definition of a competent person undertaking a BNG assessment using the SSM, and reviewing the completed SSM?

No

Question 37: Should a different watercourse condition survey be employed for minor development using the watercourse metric?

No response [Officers do not have any comments to offer, given the technical nature of this environment. Hertfordshire County Council are expected to provide a response with input from County Ecologists on this issue].

Question 38: Should a different watercourse condition survey be employed for minor development using the watercourse metric when there is no impact?

No response [Officers do not have any comments to offer, given the technical nature of this environment. Hertfordshire County Council are expected to provide a response with input from County Ecologists on this issue].

Question 39: Do you think that minor developments should be able to agree with the relevant planning authority that they do not need to complete the watercourse module of the metric when there is no impact?

Yes – The parameters that define no impact would need to be clearly set out.

Question 40: What specific features or improvements would you like to see in a digital version of the metric tools?

Digital improvements would be welcomed, however any changes would need to be compatible with the LPA's validation processes and be able to be uploaded to the website and appropriately interrogated to establish the integrity of the information submitted as is possible with the current excel format.

Question 40: Do you think we should allow biodiverse features to be counted within vegetated gardens being created as part of a development?

No

Part 3: Increasing flexibility to go off-site for minor development

Question 42: Do you agree the biodiversity gain hierarchy should be updated for minor development?

No – The hierarchy supports effective BNG provision. Larger sites for minor development may be able to provide some on-site provision and retention of the hierarchy would support this approach over off-site provision. The BNG uplift to be provided will be proportionate to the existing on-site provision and so this should reduce any barrier that this may provide.

Question 43: Would relaxing the biodiversity gain hierarchy for minor development support small developers to deliver BNG more easily?

No – see above.

Question 44: Do you think placing off-site habitat enhancements with the same preference as onsite habitat enhancements for minor development would deliver better outcomes for nature? Please provide evidence to support your answer where possible.

No – providing the BNG uplift on site provides greater benefits for placemaking and would more effectively compensate for biodiversity lost on site.

Question 45: Should the Spatial Risk Multiplier be disapplied for minor development purchasing off-site units?

No – the spatial risk multiplier supports on-site delivery of the BNG uplift and this should be encouraged.

Question 46: Should the Spatial Risk Multiplier assessment methodology be amended, so that it is based on Local Nature Recovery Strategy and National Character areas rather than Local Planning Authority and National Character areas?

Yes – given the important role of the LNRS to provide a comprehensive plan for nature recovery in Hertfordshire. However where a LPA does not have a LNRS in place, there should be support for more local provision to enhance biodiversity provision in the LPA area.

Part 4. Brownfield developments with Open Mosaic Habitat

Question 47: Should we review the metric habitat definition, condition assessment criteria and guidance to assist with the correct identification and classification of OMH?

No response [Officers do not have any comments to offer, given the technical nature of this habitat. Hertfordshire County Council are expected to provide a response with input from County Ecologists on this issue].

Question 48: Should we allow alternative habitat delivery for the loss of Open Mosaic Habitat?

No response [Officers do not have any comments to offer, given the technical nature of this habitat. Hertfordshire County Council are expected to provide a response with input from County Ecologists on this issue].

Question 49: Do you have any suggestions as to the habitat mosaic which may provide the same ecological benefits as OMH or the key considerations we should be incorporating?

No response [Officers do not have any comments to offer, given the technical nature of this habitat. Hertfordshire County Council are expected to provide a response with input from County Ecologists on this issue].

Question 50: Do you have any further suggestions of how we could improve the viability of brownfield sites with Open Mosaic Habitat present, in relation to their BNG requirement?

No response [Officers do not have any comments to offer, given the technical nature of this habitat. Hertfordshire County Council are expected to provide a response with input from County Ecologists on this issue].