

Biodiversity net gain: considering a targeted exemption for brownfield residential development

Question

- Do you support the proposed regulatory definition of residential brownfield development?
 - Yes
 - No
 - I don't know
 - I'm not sure

No

If you do not support the proposed definition, what specific changes would you make and why?

Some aspects of the definition, such as the use of clear thresholds and the efforts made to avoid vagueness and subjectivity and the exclusion of minerals and landfill sites, are welcome. However, we do not feel that the chosen date-based cutoff is appropriate, and indeed the entire approach of backdating the definition of developed land is deeply problematic from the standpoint of a workable BNG exemption. A development that was present at the beginning of 1948, but which was subsequently immediately abandoned or actively removed, would have had 78 subsequent years of ecological succession. It is reasonable to assume that habitats of high ecological value could have developed over this period, especially when it is considered that habitats supporting built structures in 1948 were originally developed before the postwar agricultural revolution. Any prior history of these sites as agricultural land would pre-date heavy input of fertilisers, meaning that soils would have low residual nutrient levels and could readily have developed species-rich grasslands, heathland or other habitats reliant on nutrient-poor soils, following abandonment.

World War Two airfields are a good example of the latter: a large number were present across England in 1948 but most of them were cleared soon thereafter due to the postwar military rundown. Some were reverted to production agriculture, but others in more agriculturally marginal locations were not reverted, or only partly reverted, and now support semi-natural habitats. Several former airfields in our districts and wider local area support high value habitats, such as species rich grassland at Abingdon (Dalton Barracks), Harwell, Chalgrove and Upper Heyford, and heathland at Greenham Common. Many of these sites were actually in use as airfields long after 1948 and not returned to vegetation until much later, which underlines our argument that the time elapsed since 1948 is amply long enough for these sites to have developed high value habitats. Under the proposed exemption, 2.5 ha developments within these and similar historic sites would be exempt from BNG requirements, which does not seem appropriate. As proposed, the brownfield BNG exemption would allow significant ecological impacts to go uncompensated, accumulatively working against government ambitions for nature recovery.

We suggest a that a significantly later cutoff date, at least 1975 and perhaps as late as 2000, would help reduce the incidences of sites with high ecological value becoming exempt from BNG under the proposed exemption. A 2000 date would also

align with the earliest available historic aerial imagery, making assessing past site history easier.

Two alternative approaches would be (1) to restrict the definition of PDL to land that currently supports developed land types over the 75% area threshold, at the time of the planning application, or (2) to avoid in the definition any date threshold, and instead reinstate the exclusion in the final part of the NPPF definition relating to “land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape”. Either option would be much more restrictive and could exclude any sites where developed land has been reverted to vegetated habitats. However, we acknowledge that defining this could end up being very subjective, and would strongly incentivise pre-emptive site clearance, so we are not convinced that this is an acceptable alternative.

Question

- Do you agree that the proportion of the land within the planning application boundary should be $\geq 75\%$ Previously Developed Land (PDL) to qualify?
 - Yes
 - No
 - I don't know
 - I'm not sure

Yes

If no, which % PDL do you support?

- $\geq 70\%$ PDL
- $\geq 80\%$ PDL
- Other PDL% (please specify)

Please provide the rationale and any evidence supporting your response (for example case studies, data, or experience). **PLEASE NOTE THAT YOU CAN ALSO UPLOAD SUPPORTING FILES OF UNDER 25MB – EITHER PDF FOR DOCUMENTS OR EXCEL FOR DATASETS – TO HELP PROVIDE EVIDENCE IN RELATION TO THIS PART OF THE RESPONSE.**

This threshold appears to be reasonably precautionary, and sites with significant areas of previously undeveloped land would be excluded for the exemption. We do not have any particular issues with this threshold in itself.

Question

- To what extent do you agree that the proposed regulatory definition aligns with current interpretations of 'Previously Developed Land' under the NPPF glossary for planning decisions?
 - Strongly agree
 - Agree
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree
 - I do not have experience with the current interpretation of PDL
 - I don't know
 - I'm not sure

Disagree

If you disagree or strongly disagree, please identify the circumstances where you consider divergence between the definitions would occur. Information on the frequency of these circumstances and the impact of using the proposed regulatory definition for a BNG exemption would be welcome.

The consultation document clearly states that the intention is to pivot away from the NPPF definition towards the definition used for the Building Safety Levy, and to this end the 75% area threshold and the 1948 date cutoff have been introduced. The new definition seems to be very different in the NPPF definition – if not in theory, certainly in the way it would make the exemption work. In short, the proposed definition is not consistent with the established definition in the NPPF, which is used regularly in the planning industry. Notwithstanding concerns raised, if the proposed definition were to be adopted, it would likely necessitate amendment to the NPPF itself and other planning guidance, industry standards, etc.

Question

- Overall, do you consider the proposed definition and evidential requirements to be proportionate and workable for applicants and local planning authorities?
 - Strongly agree
 - Agree
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree
 - I don't know
 - I'm not sure

Strongly disagree

If you disagree or strongly disagree, please state why it would not be proportionate and workable from either an applicant or local planning authority perspective. Information on the likely costs incurred or time taken by either would be welcome.

We are concerned about the significant extra workload the proposed exemption would place on LPAs at the application registration/validation stage, especially due to the 1948 date threshold. The current PPG actively advises LPAs to assess and verify claims to BNG exemptions made by incoming planning applications. Verifying a claim to the proposed brownfield exemption in this way would require registration officers to (among other tasks) assess whether the 75% threshold is met. Officers would need to measure the proportion of each application site that is developed footprint, by using area measurement tools on existing plans and/or aerial imagery. This is reasonably achievable for the current condition of the site using aerial imagery and plans, but could be time consuming, especially on complex sites. The challenge is dramatically increased, however, when the date threshold is brought into play. Under the proposed definition, sites that have supported more than 75% built footprint AT ANY POINT since 1948 are exempt from BNG. Therefore, the LPA's assessment against the threshold would need to be made systematically backwards through time, considering at each timepoint how much developed footprint was present. The definition also only proposes that LAWFUL built development contributes to the developed footprint, so registration officers would additionally need to determine which areas of historic footprint had planning permission and which did not. On sites with a very complex history, this would likely take hours of searching through past planning applications, available detail on which is likely to be

simply insufficient for the task. In our experience, old digitised files from before the 1990s are often lost, incomplete, poorly legible or otherwise ambiguous, and, in the case of some councils, may not be digitised at all. Supporting information on the legality of development is likely to be absent altogether. It is highly likely that registration and validation staff would be completely unable to verify claims to the exemption based on former development before c. 2000. Abuses of the exemption could become rife and would be much harder to police than abuses of the current BNG exemptions.

This concern is additional to other additional pressures that apply to officers at registration/validation stage, such as the need to assess whether Priority Habitats are present.

Question

- What impact do you think the introduction of a mandatory BNG requirement has had on brownfield residential schemes of less than 2.5 hectares?
 - No impact
 - Negative impact
 - Positive impact
 - Mixed impact
 - I don't know
 - I'm not sure

Mixed impact

Please specify specific impacts – select all the impacts that apply to your experience.

- No additional time delays or costs
- Scheme already exempt (for example schemes under the de minimis threshold)
- Increased development costs (for example due to cost of habitat delivery or additional surveys)
- Increased project timelines or delays
- Reduced development viability
- Lack of availability of ecologists
- Administrative or evidence burden
- Increased onsite habitat provision / provision of green infrastructure
- Increased benefits to local communities
- Increased sale value
- Other impact

No additional time delays or costs

Administrative or evidence burden

Increased benefits to local communities

If other, please specify:

Please provide evidence if possible. **PLEASE NOTE THAT YOU CAN ALSO UPLOAD SUPPORTING FILES OF UNDER 25MB – EITHER PDF FOR DOCUMENTS OR EXCEL FOR DATASETS – TO HELP PROVIDE EVIDENCE IN RELATION TO THIS PART OF THE RESPONSE.**

Mandatory BNG naturally presents an additional burden on all non-exempt schemes (brownfield and greenfield), compared to the pre-BNG situation. However, we argue that this is minor compared to the national benefits of properly measuring and compensating biodiversity loss. Since the introduction of mandatory BNG, we know of only one planning appeal in our districts where incorrect BNG information was a

substantive reason for refusal (as opposed to cases where lack of a finalised S.106 agreement to secure BNG was a procedural matter that was resolved during the course of appeals). We do not support the government's general view that BNG implementation has significantly delayed residential development, compared to other factors.

Furthermore, we do not have any evidence, nor has the government presented any detailed evidence, that BNG requirements (or ecological requirements in general) have disproportionately impacted viability or delayed small brownfield residential schemes. It is not clear how the costs to developers set out in Appendix 3 of the consultation document have been calculated, how they might actually impact viability or reduce housing supply, or how they relate to other costs cited in the document such as remediation. Viability modelling conducted by South and Vale District Councils as supporting evidence for the Joint Local Plan 2041 (in examination, see evidence base linked at <https://www.southandvale.gov.uk/app/uploads/2026/05/LPA65-Assessment-of-Sites-Biodiversity-Net-Gain-Potential.pdf>) found that by contrast, brownfield sites in our districts were typically able to demonstrate substantial onsite BNG well in excess of the mandatory 10% requirement.

Given the low baseline value of many smaller brownfield sites, in our experience net gains can often be delivered without provision of Significant Onsite Enhancements, i.e. relying on low distinctiveness habitats such as vegetated gardens and modified grassland in public open space. Therefore, the burden on developers in terms of the 30-year monitoring requirement is often avoided and, if anything, BNG requirements cause less cost to developers of small brownfield sites than greenfield sites.

The administrative BNG burden on a small/medium developer at the application stage is relatively minor (instructing a habitat survey and metric completion) and does not prejudice viability in our experience.

Question

- Do you support a targeted area based exemption for residential brownfield development? *(We are also consulting on a proposed definition of "brownfield development", including the threshold for the proportion of previously developed land (%PDL). For this question, please answer on the basis that the proposed definition will be taken forward).*
 - Yes
 - No
 - I don't know
 - I'm not sure

No

Please explain your reason.

We feel that there are numerous problems with the proposed exemption, summarised as follows:

- The administrative time burden to LPAs of assessing eligibility for this exemption (particularly at the registration/validation stage) would significantly outweigh any current time burden to the LPA of assessing these applications as BNG liable. This is in large part due to the definition of PDL being backdated to 1948 (which we discuss in detail our response to the question about the PDL definition), but another contributing factor is the proposed exclusion of sites with Priority

Habitats present. It is not reasonable to require registration officers, who are usually not ecologically qualified or experienced, to exercise substantial ecological judgement, careful reading of lengthy reports and often nuanced arguments with respect to written definitions of priority habitats. It is not an efficient use of specialist (ecology) officer time to get involved substantially in supporting registration colleagues in making these judgements, when they are also required to review reports again as part of normal consultations: applications will be double handled. Mistakes will inevitably be made at validation stage, and abuses would be possible. Both would lead to an increased number of cases being identified as invalid (i.e. BNG liable, missing minimum information) during the course of the application, causing more of the sort of delays that the Government is trying to avoid.

- **While the Priority Habitat exclusion causes a significant time burden at registration stage, we additionally feel that (although ecologically welcome in principle) it fails to capture much of the high value present in some smaller brownfield sites. Many smaller brownfield sites in our districts do have low ecological value, but where sites do support more established habitats, these are often good examples of Medium distinctiveness habitats that do not quite qualify as Priority Habitats (or for which the evidence is ambiguous due to the atypical ecological history). “Other Calcareous Grassland”, Other Broadleaved Woodland”, “Ponds -non priority habitat” etc are typical examples regularly encountered in our districts. Cumulatively, piecemeal loss of these medium distinctiveness habitats without compensation under the proposed exemption is likely to be significant at the district and national scales.**
- **The backdating of the definition of PDL to 1948, as well as being administratively unworkable, removes sites from BNG liability that may have had more than 75% developed footprint in or since 1948, but which have subsequently been abandoned. Such sites could have had up to 78 years of subsequent re-vegetation and ecological succession. We discuss this in detail in our response to the question about the PDL definition. It is these sites that are most likely to have higher ecological value, and critically, we note that the modelling presented in Appendix 3 of the consultation document completely excludes these historic sites, because the modelling was only based on the current proportions of urban habitats in the sample BNG metrics assessed. For example, a <2.5 ha site developed in (say) the 1960s and returned to vegetated habitats in (say) the 1990s, would be exempt from BNG under the proposed exemption, but would not have been considered in the modelling exercise if its current proportion of built footprint is under 75%. In our view, this represents a major methodological flaw with the modelling as presented. The opportunity cost estimates presented in Table 3 (particularly the number of sites now not subject to BNG, and the number of otherwise secured BNG units now lost) are likely to be major underestimates. The proposed exemption would bring far more sites, and much higher cumulative biodiversity value, outside the scope of BNG than the modelling suggests.**
- **Particularly considering the above, we echo the concern of CIEEM that the cumulative effect of this exemption, together with the previously announced exemptions (particularly the 0.2 ha small sites exemption) will dramatically undermine the effectiveness of BNG at a national scale and endanger the emerging biodiversity unit nature market that the Environment Act set out to create. Table 3 estimates that cumulatively, between 60 and 64% of sites currently in scope of BNG will become exempt with the proposed and already confirmed changes to BNG. The text of Appendix 3 acknowledges that this could represent a major adverse impact on biodiversity at a national scale. As noted above, this is**

likely to be an underestimate due to the assumptions made in the modelling. Given the absence of any compelling, quantitative evidence that the associated costs and time commitments of the existing BNG regime are delaying national housing delivery, we do not believe there is any acceptable justification for this further erosion of the Government's commitment to nature recovery.

- As noted in the consultation document, as well as harm to biodiversity value, notably widening exemptions (as proposed) will additionally lead to a reduction in quality and quantity of green space available to residents. This imposes a social cost which has not been considered in the modelling in Appendix 3, and which is unjustified against the absence of any clear adverse impacts on housing delivery.

Question

- If you support a targeted area-based exemption for residential brownfield development, which exemption threshold for a residential brownfield development do you support?
 - 0.5 hectare
 - 1 hectare
 - 1.5 hectare
 - 2 hectare
 - 2.5 hectare
 - No preference
 - Other
 - Do not support
 - I don't know
 - I'm not sure

If other, please specify:

Do Not Support

Question

- Do you think there is a case for an area-based exemption for residential brownfield development that is greater than 2.5 hectares?
 - Yes
 - No
 - I don't know
 - I'm not sure

No

Please explain why or why not.

Given that we consider the exemption for 2.5 hectares to have unacceptable adverse ecological consequences, increasing the threshold further would exacerbate these.

Question

- Do you foresee any unintended consequences arising from a targeted exemption for brownfield residential development?
 - Yes
 - No
 - I don't know
 - I'm not sure

Yes

If yes, please outline the types of risks or unintended consequences you consider most likely (for example ecological, administrative, market based or behavioural).

Unintended consequences could include the following:

- **Increased incentive for applicants to split larger sites above the 2.5 ha threshold up into smaller applications to evade BNG requirements for otherwise liable cases. This could interact with the 0.5 ha minimum area for a parcel of land to constitute Open Mosaic Habitats on Previously Developed Land (in the Priority Habitat definition) – a large brownfield site supporting this Priority habitat could be brought forward as several smaller applications, all of which do not feature enough habitat to constitute OMH and which would be exempt from BNG.**
- **Increased incentive for applicants to clear previously developed sites to remove re-establishing vegetation. This would be discouraged by the degradation provisions under Section 6/6A of Schedule 7a of the TCPA, but establishing degradation may be more difficult for LPAs where structurally complex brownfield sites are involved.**

Question

- How easy or difficult do you think it would be for applicants and LPAs to apply this exemption in practice?
 - Very Easy
 - Easy
 - Neither
 - Difficult
 - Very Difficult
 - I don't know
 - I'm not sure

Very Difficult

Please indicate any specific areas where clarity or further guidance would be required.

This exemption will place unacceptable burdens on the registration and validation process, stemming from the need for officers without specialist ecology training to make complex judgements about whether Priority Habitats are present, and measure percentages of land covered by developed footprint against the 75% threshold, backdating this through previous applications to 1948. These officers are already experiencing elevated workload due to processing the existing claims to BNG exemptions. The additional time spent by ecology officers in supporting registration colleagues through this process is likely to be comparable to, or even exceed, the time spent to review BNG baseline information had these applications been BNG liable. More validation appeals will result, bogging down more planning applications in delays and also requiring higher demands on specialist appeal officers. This will apply to South Oxfordshire and Vale of White Horse Districts, which are well staffed with ecology officers and which has a productive relationship between Registration, Development Management and technical specialists. These problems and abuses of the system are likely to be far worse at poorly resourced authorities with inadequate staffing levels.

Question

- Do you think any additional measures are needed to ensure that the exemption is appropriately targeted in relation to potential ecological impacts?
 - Yes
 - No
 - I don't know
 - I'm not sure

Yes

If yes, please outline what additional measures you consider necessary.

We suggest amendments to the exemption that would (1) exclude sites supporting Medium Distinctiveness habitats (in addition to Priority Habitats) and which (2) sets the cutoff date for former developments to 2000 or later. Both would reduce the ecological harm caused by the exemption, although collectively they are unlikely to eliminate the additional administrative costs for LPAs.

Question

- If you have any further evidence about the administrative, viability, biodiversity or nature market impacts for this exemption that you have not provided in previous responses, please provide it below. *(Any evidence submitted will be reviewed by the department but will not be analysed, summarised, or included in the published government response).*

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