

# **Improving the implementation of Biodiversity Net Gain for minor, medium and brownfield development**

**Question 1) Which of the following statements do you most support:**

- **No changes should be made to exemptions**
- **Some changes should be made (please state which options you support with thresholds where applicable)**
- **All minor development should be exempt.**

Some changes should be made.

**Please elaborate on your answer**

Officers support the following changes which would expand or amend current BNG exemptions:

- Self/custom build replaced with single dwelling – 0.1ha limit
- Enlarged de minimis exemption – 50m<sup>2</sup> limit
- Parks/gardens/playing fields exempt - 500m<sup>2</sup> limit
- Exempt development whose sole or primary objective is to conserve or enhance biodiversity – no limit

**Question 2) 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 (please explain why)**
- **No - keep existing exemption in place (please explain why)**
- **Don't know/other (please explain)**

Yes. The current self-build exemption is open to abuse and (unlike the similar CIL exemption) lacks claw-back mechanisms, making the exemption practically unenforceable. Officers support the change to a single dwelling exemption but request that clarity on the scope of the exemption should be provided in updated PPG (e.g. would it apply to conversion proposals or mobile homes?).

**Question 3) Do you agree with the proposal for a 0.1 hectare threshold?**

- **Yes (please explain why)**
- **No - keep existing exemption in place (please explain why)**
- **Don't know/other**

Yes. Though it should be noted that in rural districts, such as South and Vale, there are examples of much larger single dwelling curtilages which would exceed the 0.1ha threshold proposed. These types of large-dwelling proposals are more likely to have notable ecological impacts and do not make up the bulk of single dwelling submissions received, so exclusion from the exemption is considered appropriate.

**Question 4) Do you agree the area de minimis threshold should be extended?**

- Yes
- No

Yes.

**Question 5) If you answered yes to the previous question, which of the following thresholds do you think is the most appropriate?**

- 50 square metres
- 100 square metres
- 250 square metres
- Other threshold

50m2

**Question 6) Please use this space to elaborate on your answer to the previous question.**

There are multiple examples of very small-scale proposals being subject to BNG which is disproportionate to the level of ecological impact caused by the development. Officers would support extending the de minimis threshold to 50m2, but not more. Using the metric, this would allow for the loss of one small individual tree (41m2 impact).

**Question 7) Do you think the BNG requirement should be removed for minor development (for example including up to 9 residential homes)**

- Yes
- No
- Don't know

No

**Question 8) Please provide evidence for your response to the previous question here**

As acknowledged in the consultation itself, minor development comprises c.84% of all planning applications submitted and would mean that significant-cumulative ecological impacts would go uncompensated. Officers feel strongly that such an approach would be environmentally regressive and fundamentally undermine the core purpose of BNG; to contribute towards nature's recovery. Furthermore, c.80% of the offsite BNG nature market to date comes from fractional purchases of units from minor schemes. A blanket exemption would hamstring this market and mean that landowners would be very unlikely to bring their land into positive conservation management for the purposes of BNG (e.g. establishing habitat banks) which would have adverse impacts on the delivery of LNRS and 30-by-30 targets.

**Question 9) 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
- No
- Don't know

Yes.

**Question 10) Please elaborate on your answer to the previous question**

**Question 11) Do you agree that parks, gardens and playing fields development, as defined above, should be partially exempt from BNG?**

- Yes
- No
- Some but not all
- Don't know

Yes.

**Question 12) Please elaborate on your answer to the previous question.**

In principle, this approach seems proportionate to the likely biodiversity impacts resultant for developments in these areas. However, clear definitions and guidance on the types of land that benefit from the exemption would need to be provided. A size threshold would be appropriate too, as larger areas of lower value grassland (including those with a short sward) can have notable value to priority species that feed on soil invertebrates (e.g. starling and song thrush foraging). Officers consider that losses greater than 500m<sup>2</sup> should not be exempt under this approach.

**Question 13) Do you agree that development whose sole or primary objective is to conserve or enhance biodiversity should be exempt from BNG?**

- Yes
- No
- Don't know

Yes.

**Question 14) If yes, do you think there should be an upper size limit?**

- Yes
- No
- Don't know

No.

**Question 15) Please provide evidence to your answer where possible, including examples of developments that you think would be exempted.**

Officers are supportive of this approach as biodiversity schemes brought forward by charities often struggle with the additional complexities and burdens of BNG – for example fish passes. Robust guidance and definitions need to be produced and included in PPG to ensure that such an exemption is not subject to misuse (i.e. 'sole or primary objective' needs to be well-defined). It is suggested that a list of applicant types are considered who can benefit from this exemption (much like certain bodies benefit from specific permitted development rights). These could include eNGOs, environmental charities, public bodies, conservation bodies, statutory undertakers, etc. Such an approach may encourage private landowners to engage with approved applicant types to benefit from the exemption, which will ensure high quality and informed projects.

**Question 16) Do you agree that temporary planning permission should be exempt from BNG?**

- Yes
- No
- Don't know

No.

**Question 17) Please provide evidence where possible, including examples of developments that you think would be exempted.**

The purpose of the proposed changes to BNG is to facilitate quicker development for SME housebuilders and make BNG proportionate to ecological impacts. The current policy approach to 2-year temporary impacts being accounted for as retained in the metric is appropriately flexible for most temporary schemes of low ecological impact. Such a change is unlikely to serve the purpose of the proposed amendments.

**Question 18) If yes, do you agree with the 5 year time limit?**

- Yes
- No
- Don't know

N/A

**Question 19) Please give reasons**

N/A

**Question 20) Do you think the SSM should be used for medium development?**

- Yes
- No
- Don't know

Yes.

**Please elaborate on your answer**

Officers consider that the use of the SSM, or variant 'low impact metric' (LIM), could be applied to small and medium scale developments – subject to site size limitation and the absence of priority habitats (plus the measures discussed in further questions).

**Question 21) Do you think the SSM should be able to be used on sites with European protected species present?**

- Yes
- No
- Don't know

Yes.

**Please elaborate on your answer**

EPS are their own discrete planning consideration and decision-makers have separate duties under the Habitats Regulations to discharge statutory duties. BNG uses habitats as a proxy for biodiversity value, so inclusion of a faunal species criteria is incongruent.

**Question 22) Do you think the SSM should be able to be used on sites with protected sites present?**

- Yes
- No
- Don't know

No.

**Please elaborate on your answer**

Where protected sites are present onsite, or likely to be impacted by proposals, detailed ecological advice is often needed regardless - so time or cost savings are likely to be limited. Habitats adjacent to protected sites may offer important buffering or supporting functions, so gaining a detailed valuation of those habitats is appropriate to ensure that, in accordance with the Biodiversity Gain Hierarchy, habitats of the same functional value are placed back onsite, meeting the same condition criteria.

N.B. Officers assume that for a protected site to be “present” the application site boundary would need to be directly within or otherwise in the zone of influence (e.g. close by) of a protected site.

**Question 23) 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?**

- Yes
- No
- Don't know

Don't know.

**Please state what further restrictions you think there should be on the use of the SSM, or why you believe no further restrictions are required.**

We have no strong views on this matter. If the purpose of the proposed changes to the BNG framework are to unlock housebuilding, then (much like the limitations on PIP), the use of the low impact metric could be limited to residential-led development. However, small and medium scale commercial development could have comparable ecological impacts which may be perceived as unfairly stifling commercial or employment led schemes.

**Question 24) Do you think the trading rules should be removed in the SSM (which contains only medium and low distinctiveness habitats)?**

- Yes
- No
- Don't know

No.

**Please elaborate on your answer**

A complete removal of the trading rules would allow for significant cumulative ecological impacts (across all small and medium scale developments) to trade down to lower value habitats which are cheaper and easier to create and manage. This would incentivise the poorer quality habitat creation onsite and offsite.

**Question 25) 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
- No
- Don't know

Yes.

**Please elaborate on your answer**

Officers consider that a loosening of the trading rules, to allow trading across broad habitat types, but not 'trading down' to lower distinctiveness habitats, would be unlikely to have significant adverse ecological impacts but would provide developers with greater flexibility in sourcing or providing units to meet BNG requirements.

**Question 26) 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?**

- Yes
- No
- Don't know

No

**Please elaborate on your answer**

Officers consider that if developments are benefitting from a simplified 'fast track' BNG approach, using the SSM/LIM, then a degree of precautionary assessment needs to be adopted to ensure that true biodiversity value is not being lost. It is recommended that, if this approach is taken forward, baseline condition could be fixed at 'medium' and proposed enhancements fixed at 'fairly good' – where appropriate. It may be appropriate for the SSM/LIM to only allow for the retention of habitats and not enhancement. If enhancement measures are proposed, then the full metric would need to be used to ensure that developers are aware of the specific condition criteria that they are agreeing to provide onsite.

**Question 27) 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?**

**Question 28) Do you think some habitats of the same broad type with the same value should be amalgamated in the SSM?**

- Yes
- No
- Don't know

Yes.

**Please elaborate on your answer**

This approach could save time in both preparation and review of planning applications (i.e. less back-and-forth liaison between officers and agents, as there should be fewer errors in the baseline habitat assessment). Similar to the answer provided for 14 above, a simplified approach should ensure that integrity of the national policy is not undermined by undervaluing habitats. If this approach is progressed, it is recommended that mid-point values (distinctiveness and condition) be used for each broad habitat type to ensure that habitats are not undervalued.

**Question 29) Do you think the habitats in the SSM should be reviewed, to ensure they are easily identified by non-ecologists?**

- Yes
- No
- Don't know

Yes.

**Please elaborate on your answer**

If broad habitat types are grouped, this would make habitat identification simpler for non-ecologists. Non-ecologists (e.g. planning agents) will use the options available to them as presented in any metric. If the SSM omits certain types of habitat, these habitats may exist onsite but will not be recorded as such as users will try to make their scheme fit the SSM – not the other way around.

**Question 30) 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?**

- Yes
- No
- Don't know

Yes.

**Please elaborate on your answer**

The SSM should allow for the accounting of ditches, but any development within or adjacent to other watercourse types should require the use of the full metric.

**Question 31) Do you think providing additional guidance on the identification and management of habitats in the small site metric would be helpful?**

- Yes
- No
- Don't know

Yes.

**Question 32) 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?**

- Yes
- No
- Don't know

Yes.

**If yes, do you have any suggestions as to how competency could be defined for the SSM?**

It is recommended that non-ecologist users of the SSM have competency safeguards put in place through clear and robust supporting guidance documents, which contain examples of habitats and how they have been appropriately accounted for in the metric – including mosaics. Natural England may wish to consider some type of accreditation scheme whereby a simple distance-learning course is attended and an accreditation number provided. The LPA could then check accreditation numbers against a public register. This may bolster the quality of submissions coming forward but also seek to ensure the integrity of a simplified SSM approach by making users accountable. Should it be established that users are repeatedly and intentionally misusing the SSM for gain, user accreditation could be revoked until attending the distance learning course again. The SSM could be amended to make the input of photographs of each habitat parcel compulsory (e.g. generates an error message) to aid with review.

**Question 33) Should a different watercourse condition survey be employed for minor development using the watercourse metric?**

- Yes
- No
- Don't know

Yes.

**Please elaborate on your answer**

Officers support moving away from the RCA methodology for the purposes of the statutory biodiversity metric. The approach could be adapted and made consistent with other habitat condition assessment sheets, for different types of watercourses, but without the need for third-party software and accreditation. Such an approach would make assessments easier and more accessible for developers and LPAs.

**Question 34) Should a different watercourse condition survey be employed for minor development using the watercourse metric when there is no impact?**

- Yes
- No
- Don't know

Yes.

**Please elaborate on your answer**

See answer to the question above.

**Question 35) 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
- No
- Don't know

Yes.

**Please elaborate on your answer**

Officers support the view, that for minor schemes only, where there is no impact on the watercourse there would be no need to complete the watercourse module or seek a 10% uplift in watercourse units. The difficulty in securing onsite BNG for watercourses on small sites, the shortage of watercourse units, and the expense of off-site units are all factors which contribute to it not being proportionate or practical to require the completion of the watercourse module of the metric when there is no impact. Where any impacts occur, then watercourse BNG would be enacted.

**Question 36) What specific features or improvements would you like to see in a digital version of the metric tools?**

Options for this digitisation include that the excel metric retains computing functionality, but the user interface is amended to a webpage or portal. Officers would support a digital online tool or portal where the LPA is able to review iterations of metrics for any given development. Such a portal or system could include its own online habitat mapping resource (i.e. a web-based GIS module), which would standardise habitat mapping, and make habitat mapping more accessible generally.

Notwithstanding this, officers are concerned that there will be significant archiving and compatibility issues with schemes that have used the excel metric historically. This matter needs to be considered further if/when moving towards digitisation of BNG.



**Question 37) Do you think we should allow biodiverse features to be counted within vegetated gardens being created as part of a development?**

- Yes
- No
- Don't know

No

**If yes, do you have any suggestions of how we should account for biodiverse features in vegetated gardens being created as part of a development?**

N/A

**Question 38) Do you agree the biodiversity gain hierarchy should be updated for minor development?**

- Yes
- No
- Don't know

Yes

**Please elaborate on your answer**

Minor schemes often provide small piecemeal areas of habitat where long-term maintenance (for BNG purposes) can be disproportionate. By allowing minor development to preferentially opt for purchasing offsite units, this will stimulate the offsite market further and create greater incentive for landowner to bring land into positive conservation management in a coherent and strategic way – in conjunction with LNRS.

**Question 39) Would relaxing the biodiversity gain hierarchy for minor development support small developers to deliver BNG more easily?**

- Yes
- No
- Don't know

Yes.

**Please elaborate on your answer**

By not requiring that onsite delivery is preferentially secured, compared to offsite measures, the developer will be better able to choose the solution which is best for them. In many cases, this will be the default purchase of units from offsite providers for speed, simplicity and overall cost. The metric already disincentives allocation of units from further afield.

**Question 40) 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.**

- Yes
- No
- Don't know

Yes

**Please elaborate on your answer**

By stimulating the offsite market further, by allowing for more and earlier reliance on offsite providers, it will grow demand for offsite units and make the market grow. If landowners opt to establish habitat banks, particularly in areas of the LNRS, then this will have strategic benefits for nature – as the original national policy intended.

**Question 41) Should the Spatial Risk Multiplier be disapplied for minor development purchasing off-site units?**

- Yes
- No
- Don't know

No

**Please elaborate on your answer**

If the Biodiversity Gain Hierarchy is being loosened, there should still remain an incentive to source offsite units as local as possible. This would align areas (on an authority scale) of development pressure with habitat creation.

**Question 42) 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
- No
- Don't know

No

**Please elaborate on your answer**

It is recommended that NCAs are omitted as elements of spatial risk. However, it should not be a straight swap for LNRS. It is recommended that the hierarchy should first be LPA where it overlaps with the adopted LNRS (1.1 multiplier), then wider LNRS (1.0 multiplier), then wider landscape finally (0.5-0.75 multipliers). There are other Strategic Significance multipliers to further incentivise delivery within an LNRS. This seeks to ensure that areas with development pressure also remain attractive for habitat creation, which is palatable to local authorities.

**Question 43) Should we review the metric habitat definition, condition assessment criteria and guidance to assist with the correct identification and classification of OMH?**

- Yes
- No
- Don't know

No

**Please elaborate on your answer**

The priority habitat description is sufficiently clear to be utilised when interpreted by an ecologist. Any revision to the SSM and associated guidance documents should enable non-ecologists to identify when OMH may be present, to avoid under-recording the habitat's presence. Natural England may wish to consider a project to identify OMH parcels, considering pressures to bring simplify BNG processes and focus development on grey belt.

**Question 44) Should we allow alternative habitat delivery for the loss of Open Mosaic Habitat?**

- **Yes**
- **No**
- **Don't know**

Yes.

**Please elaborate on your answer**

If development of brownfield land is a government priority, then the loss of OMH habitats is likely to increase and therefore a range of species (many of which are of conservation concern) would be under threat, if there is no delivery of appropriate compensatory habitat. However, officers consider that where an offsite habitat creation body is looking to create a habitat analogous for OMH, that the strict requirement that the site has been subject to previous development is loosened. This could bring forward habitats that are structurally and ecologically identical, and of the same value, of OMH – but without the need to develop land beforehand. Such sites should be appropriately located though.

**Question 45) 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?**

See answer to the question above.

**Question 46) 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?**

Natural England may wish to consider a strategic approach to identifying land suitable for OMH creation or enhancement to ensure supply of OMH units. This may be through partnership with certain suitable bodies or landowners, such as the DIO, mineral extraction companies, etc.