

## **APPENDIX 1**

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

#### 1. Improving exemptions

Consultation on options that have been identified to streamline and improve the BNG system for minor development such as changes to thresholds or making smaller developments exempt. Four areas:

- Reform of existing exemptions
- Streamlining small sites metric
- Relaxation of BNG hierarchy and disapplication or amendment to the spatial risk multiplier
- Delivery of compensation on brownfield sites with OMH

Note this sits alongside a separate consultation reforming sites thresholds where the creation of a new medium development threshold for sites of 10 – 49 dwellings up to 1 ha in size is being considered which would be subject to more relaxed requirements.

Option	description	comments
Option 1	Revisions to existing exemptions for self build and custom build development	Support this. <a href="#">I also support this</a>
Option 2	Development below the de minimis threshold includes an exemption for all single dwellings to replace self and custom build development exemption; and tests options for higher de minimis threshold so more minor development would be exempt in practice OR	Support this <a href="#">I also support this</a>
Option 3	A full exemption for all minor developments	Disagree <a href="#">I also disagree</a>

Neither options would apply to medium development although a higher de minimis threshold could be considered.

Also could introduce new exemptions for certain types of development

Option	description	comments
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Option 4	Parks, public gardens and playing fields	I do not support this
Option 5	Development to conserve or enhance BNG	I support this
Option 6	Temporary planning permissions	I do not support this

**Question: Do you support the following statements (yes/no):**

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

Response:

Some changes should be made Options 1 and 2

- I. No
- II. Yes – I support options 1 & 2
- III. No

1. Self and custom build development

**Question: 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?**

Response: yes this would greatly simplify the position.

Yes. Eligibility for the self and custom build exemption has proven impossible to adequately verify and enforce.

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

Response: agree

Yes

2. Development below the 'de minimis' threshold

**Question: Do you agree the area de minimis threshold should be extended? If yes, which of the following thresholds do you think is most appropriate:**

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

Response: ?

Yes, 100 square metres. This would allow for a limited loss of habitat, where the burdens placed on the developer are likely to be disproportionate to the minor biodiversity impact, but exclude the loss of more ecologically valuable habitats. For example, the loss of two small trees set in hard standing, which are likely to be immature and provide limited ecological niches would be exempt, but the loss of a medium sized tree, which is likely to have features such as flaking or lifted bark, knot holes and a larger canopy, providing good habitat for a variety of bird, bat and invertebrate species would not be exempt.

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

Response: No disagree. Minor development can make a significant contribution to the BNG objective.

No. Although minor developments individually only comprise small areas of habitat, the cumulative impact on biodiversity of exempting all minor developments would be too great, as they represent the vast majority of applications. The uncertainty caused by consultation on this issues is already being felt in the off-site unit market, as potential habitat banks don't feel confident in being able to sell there units and are withdrawing from discussions with local councils, making it even harder for developers to find the units they need. With improvements to the small sites metric, early consideration of BNG in the development process and an increase in the availability of biodiversity units available via a well-supported network of habitat banks, I do not believe that mandatory BNG should be a significant challenge for small sites in the long term.

**Question: 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?**

Response: possibly?

I do not believe that minor developments should be exempt, but if they were, I would agree to the de minimis exemption being applied to developments that did not meet the definition of a minor development, providing they met the de minimis conditions in all other ways, including impacting less than 100 m<sup>2</sup> of area habitat or 5 m of linear habitat.

### 3. Parks, public gardens and playing fields development

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

Response: ?

No. The ecological and environmental impact of losing large areas of even low distinctiveness grassland can be significant, especially if that habitat is not particularly abundant in the area. For example, a sports pitch might provide valuable foraging habitat for a variety of bird and mammal species, as well as habitat for soil-based organisms, which would be lost if the field was covered with astroturf.

4. Development whose sole or primary objective is to conserve or enhance biodiversity

**Question: Do you agree that development whose sole or primary objective is to conserve or enhance biodiversity should be exempt from BNG? Please provide evidence where possible, including examples of developments that you think would be exempted.**

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

Response: ?

Yes, where the development can provide clear evidence of ecological benefit and where no priority or irreplaceable habitat will be lost and no priority or protected species will be negatively impacted.

5. Temporary development

**Question: Do you agree that temporary planning permission should be exempt from BNG? Please provide evidence where possible, including examples of developments that you think would be exempted.**

**If yes, do you agree with the 5-year time limit?**

Response:

In general, no. Temporary planning permission could still result in permanent negative impacts to habitats with high biodiversity value, for example loss of mature trees or scrub. Temporary losses of habitat can also have long-term impacts on the wildlife and plant communities within the site. I would agree to temporary loss of a low distinctiveness habitat for up to 5 years, providing it could be fully reinstated after this time. and providing that any potential impacts to protected or priority species had been properly assessed and mitigated, being exempt.

## 2. Streamlining the BNG Metric Process

### **Question: Do you think the SSM should be used for medium development?**

Response:

No. I do not believe that the benefits of offering the use of the SSM outweigh the potential negative impacts of miscategorising, and/or under or over-valuing habitats at this scale. These inaccuracies may lead to undercompensating for the more ecologically valuable and complex habitats that might be found on a site of this size, or it may lead to developers paying significantly more than they need to, as the impact of overvaluing habitats at this scale would also be multiplied.

An ecologist should be engaged to conduct a preliminary ecological appraisal for a development of this scale anyway, and should be able to carry out a BNG habitat survey and condition assessment at the same time. Any costs or delays associated with employing an ecologist to complete the metric should therefore not be too much higher than engaging a competent person to complete the SSM, while the potential cost to the developer or to biodiversity from mis-valuing habitat the habitats using the SSM could be significant.

Checking applications using the SSM is also often currently taking a lot more time for local planning authorities due to multiple inaccuracies and missing information in many of the submitted small sites metrics. I have found that those filling out the small sites metric have not always read or understood the existing guidance that it available. While some of the proposed changes and additional guidance on competency and completing the SSM will assist with inaccuracies in the SSM, I suspect it will not eliminate the issue entirely, so expanding the use of the SSM may increase burdens on local planning authorities and cause extra delays in planning application validation and Gain Plan approval.

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

Response:

No. Again, an ecologist should be assessing the site anyway in this situation, so the benefits of using the small sites metric would not outweigh the potential costs.

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

Response:

No. These sites are likely to include valuable and or complex habitats, which would not be properly assessed using the small sites metric, potentially leading to inadequate or unsuitable compensation.

**Question: 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?**

Response:

No. I do not support any of the above changes being taken forward.

1. Removal of the trading rules

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

**If 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)?**

Response:

No. Removal of the trading rules, even without protection against trading down, risks a loss of habitat and structural diversity, ecological functionality and habitat connectivity as developers would likely often opt to deliver the cheapest or easiest habitat, rather than the most ecologically appropriate. Even low distinctiveness habitats can have valuable ecological functions whose loss may have significant impacts on local wildlife populations.

2. Changing how habitat condition is fixed

**Question: 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?**

Response:

No. In my experience, most small sites contain some habitats in moderate or good condition and this approach will result in these sites achieving less than the mandatory 10% net gain. This will not resolve the issue of the SSM and the statutory metric producing different results, but instead tip the balance so that sites tend to be under, rather than over-valued. The current best practice of taking a precautionary approach where habitat condition is not known and assuming a higher value rather than lower value should be maintained to ensure the appropriate level of gain for biodiversity is being achieved.

**Question: 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?**

Response:

Improved guidance should be provided, particularly regarding the skills and experience required to be considered a competent person to complete the SSM; how to ensure that the site area, baseline area and post development areas add up; and selecting the appropriate habitat type.

### 3. Simplifying and amalgamating SSM habitats

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

Response:

No. Habitats of the same broad habitat type can have completely different distinctiveness scores, with very different structure, complexity, species assemblages and ecological functions. While it could perhaps be appropriate to group habitats of a medium distinctiveness or lower (where compensation within the same broad type is already allowed), the individual completing the metric would then still need to be able to identify between these and higher distinctiveness habitats. This change would also increase compatibility problems between the SSM and statutory metric. It would therefore be better to ensure that the SSM is being completed by individuals who are competent to differentiate between habitats and that they have sufficient guidance to assist them in doing this.

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

Response:

No. I think this would risk misclassification and loss of rare and important habitats. I think it should be ensured that the SSM is being completed by individuals who are competent to differentiate between habitats and that these individuals have sufficient guidance, training and support available to assist them in doing this.

**Question: 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?**

Response:

I think developments within the riparian zone of watercourse habitats use the main metric tool. Watercourse habitats are very varied, complex and sensitive, with high

ecological value. Impacts to even small sections of a watercourse can have negative impacts to large stretches of downstream habitat, so it is important that these impacts are accurately captured. A robust approach to watercourse mitigation and enhancement is critical to tackling the massive decline in freshwater species and huge increases in pollution that is currently impacting our freshwater system.

### Competency, habitat identification and guidance

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

Response:

Yes. This would be particularly helpful for less common habitats or those that are more challenging to identify. I would expect a competent person, such as a land manager or landscape architect, to be able to identify the more common habitat types and appropriate management prescriptions. Accurate habitat identification and achievable habitat creation and management targets are crucial to achieving a net gain for biodiversity.

**Question: 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?**

Response:

Yes. We have been receiving SSMs completed by individuals who have either not read or not understood the user guide and are not able to correctly identify common habitats within their site. This has caused delays in processing the planning application and taken considerable time for us in reviewing and responding to repeated submissions of inaccurate SSMs.

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

Response:

A competent person should have read and understood all relevant guidance documentation relating to the SSM and should be able to confidently identify the habitats within their site, with the assistance of relevant guidance documents if required. They should also be able to determine what habitat creation and enhancement can realistically be achieved on their site, taking into account any site-specific constraints, and what actions are required to achieve and maintain the desired habitat. Formal training and accreditation should be made available to assist those who wish to complete the SSMs in acquiring the necessary level of competence.

Minor development using the main metric tool

Watercourse metric – condition surveying and when to complete for minor development

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

Response:

Yes. I would support a condition survey approach proportionate to the distinctiveness of the watercourse type in question in the case of minor developments, with priority habitats still being subject to a full RCA.

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

Response:

Yes. Again, I believe this approach should also be proportionate to the distinctiveness of the watercourse type in question

**Question: 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?**

Response:

No. Even where no direct impact to the watercourse and riparian zone is immediately obvious, indirect impacts, for example from polluted runoff into the watercourse, or unforeseen direct impacts to the watercourse are still possible and a professional assessment should be undertaken to identify these potential impacts. Where the impact is determined to be negligible following appropriate assessment, the level of compensation could then be adjusted appropriately for minor developments.

All Development

Improving the tool

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

Response:

- Incorporate GIS mapping, with the facility for LPAs to download mapping data.
- Ensure GIS mapping data can be easily imported into the metric
- Integrate/link condition assessments with specific habitat parcels in the metric

- Ensure the tool is compatible with the planning portal and that data can be easily exported and uploaded to common BNG planning systems.
- Provide integrated help and guidance tools, particularly for the small sites metric
- The facility to automatically populate relevant fields of the Gain Plan from the metric.

#### Incentivising the inclusion of biodiverse features

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

**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?**

Response:

No. I think the current system fairly reflects the mixture of more and less biodiverse gardens that tend to result in most developments. Even if developers create more biodiverse gardens, homeowners will modify their gardens to suit their aesthetic, amenity, security and safety needs and their level of ecological interest. A proportion of any ponds, trees and hedges provided are likely to be removed, with some being replaced by paving, astroturf etc, while other homeowners would have added these features themselves anyway.

#### 4. Increasing flexibility to go off-site for minor development

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

Response: Yes. Due to the limitations on opportunities for on-site delivery, I agree that the hierarchy should be updated to provide flexibility where on-site gains cannot realistically be achieved, but should still incentivise on-site delivery where at all practicable.

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

Response:

Yes

**Question: 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.**

Response:

No. While strategic off-site delivery provides many benefits for biodiversity, maintaining green spaces in our urban environments is important for maintaining local wildlife populations and ecosystem services, maintaining connectivity and green corridors across development sites, flood management, heat management, air pollution management and improved human mental and physical wellbeing. Given the limited opportunities to achieve on-site gains on small sites, these should be incentivised where they can be achieved.

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

Response:

No. Given the large proportion of planning applications and total area represented by minor developments, disincentivising local delivery could see some areas becoming significantly more nature-depleted while gains associated with habitat loss through development in those areas is delivered elsewhere. I would support an approach where the multiplier was removed for units delivered within the same LNRS area, however.

**Question: 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?**

Response:

Yes. This approach would help support local nature recovery at a landscape scale and encourage developers to purchase units more locally to their site when units within the same or neighbouring LPA are not available, while easing the financial burden on developers struggling to find habitat units within their LPA.

#### 5. Brownfield developments with Open Mosaic Habitat

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

Response:

Yes. Additional guidance would be beneficial to avoid the misidentification of this habitat type

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

Response:

Under limited circumstances, yes. This is a very scarce and valuable priority habitat. Its loss should be avoided wherever possible and appropriately compensated when it is not. Other functionally similar mosaic habitats may be appropriate compensation in some circumstances, but which type of mosaic habitats might be able to deliver this will vary between sites. Any proposed alternative compensation should be based on a thorough ecological assessment and justification to ensure no loss of habitat features.

**Question: 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?**

Response:

Any compensatory habitat should deliver all the features of any OMH that must be lost.

**Question: 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?**

Response:

Provide a standardised approach to assessing OMH, as well as a detailed approach to assessing, mitigating and compensating for development impacts on this type of habitat. Support schemes which seek to explore OMH creation and management techniques and education.

