

## DEFRA consultation on Improving the implementation of Biodiversity Net Gain for minor, medium and brownfield development

### SECTION ONE: Improving exemptions

#### 5. 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

A full exemption for all minor developments (option 3) would best support Government's proposed package of measures to reduce planning burdens on small- and medium-sized developers.

Most local policies and chapters 12, 14 and 15 of the National Planning Policy Framework (NPPF) already encourage the provision of new soft landscaping, sustainable means of drainage (which can include green roofs, swales etc) and the protection of ecological features. For small scale schemes, these requirements should encourage new planting etc to achieve well designed places and ensure adequate protection for biodiversity.

#### Improving exemptions: a) Self and custom build development

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

Please elaborate on your answer here

We support this proposal in principle. However, we suggest consideration is given to raising the exemption to cover schemes of up to 10 units. This would remove the burden for a larger number of developers and help accelerate housing delivery on a variety of sites.

Guidance should be put in place to ensure developers of medium size schemes (as per MHCLG's recent Site Thresholds consultation) are unable to artificially divide a site to

avoid the BNG requirement. For example, dividing a site with the capacity for 20 houses into two separate sites.

**7. 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

Please elaborate on your answer here

No. Consideration should be given to exempting sites based on the number of units proposed rather than site area. There are already sufficient safeguards relating to density requirements at the national and local level to ensure developers achieve appropriate densities on a site rather than reducing density to increase value and avoid BNG.

**Improving exemptions: b) Development below the 'de minimis' threshold**

**8. Do you agree the area de minimis threshold should be extended?**

- Yes
- No

**9. 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

**10. Please use this space to elaborate on your answer to the previous question**

Please elaborate on your answer here

We agree with the ambition to broaden exemptions. However, we believe it would be more appropriate to remove burdens based on the number of units being provided rather than an area threshold. For example, relief could apply to schemes above the definition of minor development (e.g., 10 or more units up to 49 in line with the medium definition set out in MHCLG's recent Site Thresholds consultation).

With regard to the level of increase, the consultation provides a lack of justification for either option. The supporting text on page 19 of the consultation document indicates that data has already been captured and this is likely to be useful for determining the appropriate threshold. This data should be analysed and used to justify the level of increase.

**Improving exemptions: c) Full exemption for all minor development**

**11. 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

**12. Please provide evidence for your response to the previous question here**

Please provide evidence here

Yes. We believe exempting minor development would provide relief for a larger number of small-scale developers and accelerate the delivery of new housing.

**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
- No
- Don't know

**14. Please elaborate on your answer to the previous question**

Please elaborate here

Yes. As set out in our response to Q10, the de minimis threshold should be increased to cover developments falling within the new medium development definition (10-49 units). This would allow more small and medium size developers to benefit from reliefs and help speed up the delivery of new housing.

**Creating new exemptions for certain types of development**

**Creating new exemptions for certain types of development: a) Parks, public gardens and playing fields development**

**15. 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

**16. Please elaborate on your answer to the previous question**

Please elaborate on your answer here

We support this proposal in principle.

This is on the basis of the supporting text on page 22, which states that *"We propose that if the development only directly impacts on low distinctiveness area habitats, then it would be exempt from BNG. This would ensure that development within parks or gardens or on playing fields which are on a maintained grass field would be exempt, but if the development involved the removal of trees, shrubs or hedgerows, the development would be subject to BNG."*

This approach would BNG only applies where necessary, therefore ensuring proposals for green spaces are more carefully considered and avoid potential impacts on the most significant habitats on the site. This would allow the delivery of more recreational facilities etc, whilst ensuring a suitable level of protection for biodiversity.

**Creating new exemptions for certain types of development: b) Development whose sole or primary objective is to conserve or enhance biodiversity**

**17. 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

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

- ☐ Yes
- ☒ No
- ☐ Don't know

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

Please provide evidence here

We consider this to be an unnecessary requirement where schemes have a particular conservation objective. Examples of this should include nature reserve development and habitat improvement schemes.

We do not believe an upper size limit is necessary where it can be demonstrated that the scheme will result in conservation improvements.

**Creating new exemptions for certain types of development: c) Temporary development'**

**20. Do you agree that temporary planning permission should be exempt from BNG?**

- ☒ Yes

- No
- Don't know

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

Please provide evidence here

We support this proposal in principle. However, the consultation is not clear on why a five-year time limit is considered appropriate. Further evidence should be prepared setting out the pros and cons of different time limits.

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

- Yes
- No
- Don't know

**23. Please give reasons**

Please add text

Further evidence should be prepared setting out the benefits of different time limits - the consultation is not clear on why a five-year time limit is considered appropriate.

## SECTION TWO: Streamlining the BNG metric process

**24. Do you think the SSM should be used for medium development?**

- Yes
- No
- Don't know

Please elaborate on your answer here

Given the previous questions relating to exemptions etc, we consider it appropriate to apply the SSM to medium-sized developments (10-49 units).

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

- Yes
- No
- Don't know

Please elaborate on your answer here

No. The proposal on page 28 of the consultation document states that:

"If all the above options were taken forwards, the criteria for using the SSM would be:

- <1ha site
- No priority habitats present (excluding some hedgerows and arable field margins)"

We consider these criteria to be appropriate.

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

- Yes
- No
- Don't know

Please elaborate on your answer here

If the reference to 'sites' in the question is intended to be 'species', then the answer could be yes. But it's important to ensure that it is made clear that ecological surveys are still necessary to ensure there aren't any adverse impacts on the protected species.

**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?**

- Yes
- No
- 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

No. If these changes are to have the desired effect, the criteria for applying the SSM/low impact metric needs to be clear. Making the criteria too complicated by adding in additional restrictions could lead to greater room for interpretation and variability in decision-making amongst local councils. Clear guidance should also be introduced regarding the types of hedgerows and field margins intended to be excluded.

**Streamlining the BNG metric process - SSM removal of the trading rules)**

**28. 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

Please elaborate on your answer here

The suggested approach appears to be proportionate for small scale schemes. However, there is a lack of detail within the consultation. Input from qualified ecologists needs to be provided to better understand the impacts of the proposed change.

**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
- No
- Don't know

Please state why you think the trading rules should or shouldn't be amended in the SSM

### **Streamlining the BNG metric process - SSM changing how habitat condition is fixed**

**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?**

- Yes
- No
- Don't know

Please elaborate on your answer here

The suggested approach appears to be proportionate for small scale schemes, especially as the supporting text on page 31 indicates most small-scale developments take place on poor condition habitats. Therefore, the proposed approach would remove the burden for small and medium size developers and increase the incentive for building small scale schemes.

**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?**

Add answer here

### **Streamlining the BNG metric process - Simplifying and amalgamating SSM habitats**

**32. 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

Please elaborate on your answer here

Yes. This appears to be a reasonable approach that should help simplify the process for small and medium size developers.

**33. 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

Please elaborate on your answer here

Yes, as above, this is likely to help simplify the process for small and medium size developers.

**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?**

- Yes
- No
- Don't know

Please elaborate on your answer here

We consider that the main metric tool should be used where developments fall within the riparian zone of a watercourse. This approach should reduce the potential for significant impacts on the water environment.

**Streamlining the BNG metric process - Competency, habitat identification and guidance**

**35. 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

**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?**

- Yes
- No
- Don't know

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



### **Streamlining the BNG metric process - Watercourse metric**

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

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

Please elaborate on your answer here

We favour the suggested approach where a developer is able to agree with the local authority that they do not need to complete the watercourse module. This is on the basis that there remains a requirement for an ecologist to determine whether the proposal has an impact on the riparian zone or direct encroachment on the watercourse (as set out on pages 35-36 of the supporting text).

**38. 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

Please elaborate on your answer here

See our response to Q37.

**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**
- No
- Don't know

Please elaborate on your answer here

See our response to Q37.

### **Streamlining the BNG metric process - all development (improving the tool)**

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

Please add text here

We support the principle of an online platform. The format should be simplified for small and medium size developments to make it more user friendly. The current layout includes

a range of options and menus which may be confusing for small and medium size developers (they are better suited to professional ecologists for major schemes).

### ***Streamlining the BNG metric process - all development (incentivising the inclusion of biodiverse features)***

#### ***41. 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

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?

We agree that biodiverse features in gardens should be counted. However, we suggest allowing a reduced score for these features on the basis that they are within private ownership. Consideration should also be given to introducing standard conditions requiring the replacement of such features if they are removed or die within five years of the completion of the development. This would be in line with current landscaping conditions often imposed by local authorities and would ensure a gain for a longer period post development.

### **SECTION THREE: Increasing flexibility to go off-site for minor development**

#### ***42. Do you agree the biodiversity gain hierarchy should be updated for minor development?***

- Yes
- No
- Don't know

Please elaborate on your answer here

Yes. We agree with this in principle. For small and medium size sites, there shouldn't be any difference between the value of on-site and off-site. This approach will help strike a balance between the provision of BNG, incentivising small and medium size developers and speeding up the delivery of new housing.

#### ***43. Would relaxing the biodiversity gain hierarchy for minor development support small developers to deliver BNG more easily?***

- Yes
- No
- Don't know

Please elaborate on your answer here

Yes. The suggested simplified approach should make it easier for small developers to deliver BNG.

**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.**

- Yes
- No
- Don't know

Please elaborate on your answer here (with evidence where possible)

The contribution to BNG is likely to be much more limited for small scale schemes than on larger scale schemes, which will have larger levels of open space, more comprehensive landscaping schemes and greater opportunity to achieve BNG. As set out in our responses to Q41-43, these changes should help strike a balance between BNG and the delivery of housing.

#### ***Increasing flexibility to go off-site for minor development - disapplying spatial risk multiplier***

**45. Should the Spatial Risk Multiplier be disappplied for minor development purchasing off-site units?**

- Yes
- No
- Don't know

Please elaborate on your answer here

We support the removal of the spatial risk multiplier. This is on the basis that the supporting text on page 39 indicates that most commonly required habitats are now available locally. As stated in previous responses, the NPPF and local policies already make sufficient provisions for protected species and the delivery of soft planting for all schemes including minor developments. Other proposals within this consultation also include safeguards for sites involving protected species. Most minor developments will therefore make a small (unquantified) contribution on site, through planting etc, and an off-site contribution through credits. The more meaningful contribution will be made by larger scale developments which will ensure that biodiversity does not migrate away from areas with less habitat provision.

#### ***Increasing flexibility to go off-site for minor development - spatial risk multiplier amendment***

**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
- No
- Don't know

Please elaborate on your answer here

We consider this to be a reasonable proposal.

#### SECTION FOUR: Brownfield developments with Open Mosaic Habitat

***47. 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

Please elaborate on your answer here

Yes. Based on the evidence provided in the consultation, it seems as though there are issues with identifying the habitat and assessing its condition. A review of the criteria together with clear guidance would help make it easier to assess and therefore deliver suitable compensation.

***48. Should we allow alternative habitat delivery for the loss of Open Mosaic Habitat?***

- Yes
- No
- Don't know

Please elaborate on your answer here

While this has the potential to be acceptable, the consultation lacks sufficient detail to provide an informed response. Any alternative should be of sufficient biodiversity value in order to be of most benefit.

***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?***

Please state suggestions and considerations

The consultation lacks sufficient detail on this point. Advice should be provided by a suitably qualified ecologist.

If you are happy to be contacted to discuss, please provide your email

charles.glover-short@southernhousing.org.uk

***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?***

Please provide suggestions

The consultation lacks sufficient detail on this point. Advice should be provided by a suitably qualified ecologist.
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