

East Herts Council Non-Key Decision Report

Date: 26 June 2025

Report by: Councillor Vicky Glover-Ward – Executive Member for Planning and Growth

Report title: Improving the implementation of Biodiversity Net Gain - response to consultation

Ward(s) affected: All

Summary

- This report proposes East Herts Council's response to the Government's consultation 'Improving the implementation of Biodiversity Net Gain for minor, medium and brownfield development' (May 2025).

RECOMMENDATIONS FOR DECISION: that the Department for Environment, Food and Rural Affairs be informed that East Herts Council:

- A. Welcomes the opportunity to comment on the consultation about improving the implementation of Biodiversity Net Gain for minor, medium and brownfield development'; and**
- B. Submits the responses to the consultation questions included at Appendix A to this report as its detailed response to the consultation 'Improving the Implementation of Biodiversity Net Gain for minor, medium and brownfield development'.**

1.0 Proposal(s)

- 1.1 The purpose of this report is to advise Members of the Government's proposals to reform how Biodiversity Net Gain is implemented for minor, medium and brownfield developments, and to agree this Council's response to the consultation.

2.0 Background

- 2.1 Introduced by the Environment Act 2021, through an amendment to the Town and County Planning Act, Biodiversity Net Gain (BNG) is a way of creating and improving natural habitats. All planning permissions in England (with a few exemptions) have to deliver a minimum 10% increase in biodiversity value compared to pre-development conditions. It is important to recognise that this approach focusses on habitats, as opposed to species, on the basis that they are needed to support species, and that this system sits alongside existing approaches for protected species.
- 2.2 For major developments BNG applied from February 2024 and for smaller sites from April 2024. This is achieved through a combination of habitat avoidance, on-site mitigation, and off-site compensation, with habitat enhancements secured for at least 30 years. The process involves using the Biodiversity Metric to quantify biodiversity value and a Biodiversity Gain Plan to outline how the required gain will be achieved.
- 2.3 Planning officers assess the submitted information as part of the planning application process. For major applications or ecologically sensitive sites, the Council consults Herts Ecology for advice, as part of Hertfordshire's shared service. However, in order to prioritise resources, planning officers assess the technical BNG information for minor sites (approximately 70% of relevant planning applications), which has resource implications in terms of time and skill requirements.
- 2.4 The current principles and requirements of mandatory BNG are summarised below:

Legislation and Government guidance¹ sets out key components of mandatory BNG:

- The statutory BNG metric is a **habitat-based** approach to determining a proxy biodiversity value. It measures the 'biodiversity units' of existing habitats on site, taking into account habitat quality (e.g. condition and distinctiveness), size, location and type and then calculates how many units are needed post-development to replace the units of habitat lost and to achieve 10% BNG.

¹ Collection Biodiversity Net Gain- range of Government guidance documents on BNG, signposts the relevant legislation: [Biodiversity net gain - GOV.UK](https://www.gov.uk/guidance/biodiversity-net-gain)

- The 10% BNG is secured (on relevant sites) through a deemed/general condition automatically attached to all grants of planning permission. Other conditions or legal agreements are sometimes necessary to secure other elements of BNG, such as funds for monitoring implementation.
- Minor development is permitted to use the 'small sites metric' which is a simplified version of the metric (unless important priority habitat is within site), that can be completed by a 'competent' person rather than an ecologist.
- 'Significant' on-site habitats and all 'off-site' habitats need to be secured and monitored for at least 30 years via conditions or S106.
- There are three ways that developers can achieve BNG:
 - On-site restoration and enhancement (within red line boundary)
 - Off-site – either on developer's own land or by purchasing off-site units on the market from habitat banks. These sites must be registered on the Biodiversity Gain Site Register, which is managed by Natural England.
 - via new statutory biodiversity credits scheme (last resort if 10% cannot be achieved on or off site).
- This approach is the biodiversity gain hierarchy (which planning authorities must take account of when considering if the BNG objective has been met and when determining if the Biodiversity Gain Plan should be approved).
- The discharge of the biodiversity gain condition is the mechanism for meeting the 10% BNG objective, not the grant of planning permission. However, at the planning application stage, officers need to consider BNG and decide if the general condition is capable of being discharged. This means any on-site provision must be confirmed pre-determination.
- Importantly, mandatory BNG does not change existing legal and policy protections for important habitats (statutory protected sites and irreplaceable and priority habitats) or protected species. The mitigation hierarchy (avoid, mitigate

and compensate as a last resort) in the NPPF remains. BNG will be considered in addition to existing protections, and landscape and design considerations.

- There are specific **exemptions** from biodiversity net gain for certain types of development set out in paragraph 17 of Schedule 7A of the Town and Country Planning Act 1990, the Biodiversity Gain Requirements (Exemptions) Regulations [2024]:
 - Householder development
 - Permitted development
 - Development subject to the de minimis exemption - development that does not impact a priority habitat and impacts less than 25m² (e.g. 5m by 5m) of habitat, or 5 metres of linear habitats such as hedgerows.
 - Self-build and custom build development (no more than 9 dwellings)
 - Urgent Crown development
 - Development of a biodiversity gain site
 - Development related to high-speed railway transport network
 - Irreplaceable habitats (Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations [2024])- Ancient woodland and veteran trees in East Herts

2.5 Now that mandatory BNG has been implemented for over a year, the Government is considering if changes should be made to the BNG process to encourage new development by reducing burdens on small and medium sized developers, while still ensuring meaningful gains for nature. This consultation seeks views on the Government's proposals to simplify how Biodiversity Net Gain (BNG) is implemented for minor, medium and brownfield developments.

2.6 The Department for Environment, Food and Rural Affairs (DEFRA) is seeking views on different options, with 37 specific questions, which are detailed in the consultation document (see background papers).

2.7 The consultation began on the 28 May 2025 and closes on the 24 July 2025. Following the consultation, the Government will publish their response to the consultation, but there is no timescale as

yet. Depending on the options taken forward, there will need to be changes to the legislation and guidance in due course.

3.0 Reason(s)

- 3.1 This consultation seeks views on options to improve the implementation of BNG for relevant developments, including extending exemptions, simplifying the small sites metric and making it easier to access the off-site market. It also addresses specific challenges for brownfield developments.
- 3.2 The key proposals upon which views are sought are outlined below under topic headings. **Appendix A** to this report contains the Council's response to the 37 specific consultation questions raised and an explanation of the proposed response.

Changes to exemptions from BNG

- 3.3 The consultation explores different exemption options to ease BNG obligations for small-scale or lower-impact developments. These include two core option packages and additional proposals:
- The most significant option is to exempt all minor development²;
 - A second more targeted option replaces the self-build and custom-build exemption with a single-dwelling exemption and increases the de minimis exemption from 25 sqm of affected habitat to 50, 100 or 200 sqm
 - Additional potential proposals include introducing a new exemption for temporary development and exempting parks/playing fields and developments where the primary objective is to conserve and enhance biodiversity.

Changes to how the small sites metric operates

- 3.4 The consultation proposes several changes to simplify the Small Sites Metric (SSM), which does not need to be completed by an ecologist. The consultation document identifies concern that the SSM is too complex to use so is not always applied effectively and also that it has led to high costs for some small and medium

² Residential development of 1 -9 dwellings or non-residential development where floorspace is less than 1,000sqm or the site area less than one hectare

developers relative to perceived biodiversity benefits. In response a number of technical proposals are suggested, with the premise that they will make the metric more accessible, reduce costs and delays for small developers, and ensure that ecological outcomes remain robust. These include the following:

- Extend the use of the Small Sites Metric (SSM) beyond minor developments to include a new category of “medium” developments (10–49 dwellings on less than 1 hectare).
- Merge habitat categories to reduce complexity in habitat classification.
- Downgrade the automated “condition” (quality) of habitats in the SSM, so that all habitats in this metric are categorised as low quality, resulting in fewer biodiversity units (e.g. value) being assigned to them.
- Amend or remove trading rules, which currently restrict how biodiversity units can be exchanged between habitat types or distinctiveness. This creates more flexibility, for example, allowing a medium distinctiveness habitat to be replaced with a lower distinctiveness habitat, or the replacement of a medium distinctiveness habitat with an off-site medium distinctiveness habitat of a different type.
- Digitise the SSM, moving away from a Microsoft Excel spreadsheet to a more user-friendly digital platform.
- Improve guidance and competency requirements, making it easier for non-specialists to use the tool correctly.
- Giving local authorities discretion to disapply the requirement to deliver BNG for watercourses for minor development if there is no impact.

Increased flexibility for off-site provision

3.5 The Biodiversity Gain Hierarchy requires developers to deliver onsite habitat improvements in the first instance, followed by off-site gains and finally government statutory credits as a last resort. The consultation document reports that most allocations (80%) of off-site BNG are for minor sites. Some developers have cited challenges with finding fractional units (as they only need a small amount) and state costs are disproportionately high for minor development. As a result, the consultation explores ways to make it easier for minor developments to meet their BNG obligations by using off-site solutions.

3.6 Potential changes proposed include the following proposals:

- Relaxing the biodiversity gain hierarchy by treating on-site and off-site gains equally for minor developments, giving developers more flexibility.
- Removing the Spatial Risk Multiplier (SRM), which increases the number of biodiversity units required when off-site compensation is sourced from outside the local area. The government is considering removing or reducing this penalty for minor developments to make off-site options more viable.
- Given that Local Nature Recovery Strategies (LNRS) are locally led strategies to guide nature recovery, it is suggested that the methodology be amended so it is based on LNRS and National Character Areas rather than Local Planning Authority and National Character Areas.

Brownfield Developments

- 3.7 This section of the consultation is applicable to all development and focuses on brownfield sites with open mosaic habitat (OMH). OMH is a priority habitat that exists on previously disturbed brownfield sites. The Government is concerned that the delivery of housing on brownfield sites is challenging due to the presence of OMH. Therefore, the consultation proposes some technical measures to ensure there is a viable compensation route with OMH present. Proposed measures include updating definitions and guidance to help ecologists identify OMH and when there is not off-site OMH available, allowing the loss of OMH habitats to be compensated with an alternative habitat mosaic.

The Council's response to the consultation

- 3.8 **Appendix A** to this report contains the Council's response to the 37 specific consultation questions raised. East Herts Council welcomes the opportunity to comment on the potential changes to the implementation of BNG. The Council understands that BNG can be complex for smaller sites for both developers and planning officers, so supports some of the more minor proposals, including simplification of the small sites metric to ensure it is used more efficiently, amendments to the self-build/ custom build exemption and a relaxation of requirements for green infrastructure and biodiversity enhancement that provide significant community or ecological benefits. Importantly, proposed changes only relate to the Small Sites Metric, which does not affect protected sites and species or highly distinctive habitats with high biodiversity value.

However, the Council does not support the more significant proposed changes (e.g. exemption of all minor developments) as, whilst they would notably simplify the process for officers and applicants, they would have a significant negative impact on local biodiversity because cumulative biodiversity benefits across many minor sites would be lost. The mandatory BNG process has only been implemented for just over a year and new processes take time to embed. It is too soon to contemplate radical reform.

Next Steps

3.9 The Council will submit the response in **Appendix A** to the Department for Environment Food and Rural Affairs before the consultation closes on 24 July 2025.

4.0 Options

4.1 The Council could choose not to respond to the consultation.

5.0 Risks

5.1 Not responding to the consultation will mean that the Council misses the opportunity to respond to the Government in relation to key concerns about some of the options proposed.

6.0 Implications/Consultations

6.1 This report sets out the Council's response to the Government's consultation on proposed reforms to the implementation of BNG for minor, medium and brownfield development.

Community Safety

There are no community safety implications arising from this report.

Data Protection

There are no data protection implications arising from this report.

Equalities

There are no direct equality, diversity, or inclusion implications in this report.

Environmental Sustainability

The consultation document impacts biodiversity because the different options will affect the type and scale of habitats delivered locally. However, as the consultation response only supports minor changes (not significant reform), which would simply the BNG process for smaller sites, whilst having a limited impact on biodiversity (due to the small-scale nature of proposals or the low distinctiveness of the habitat), it is not considered this response would be detrimental to local biodiversity.

Financial

There are no financial implications of responding to the consultation.

Health and Safety

There are no health and safety implications arising from this report.

Human Resources

There are no human resources implications arising from this report.

Human Rights

There are no human rights implications arising from this report.

Legal

There are no legal implications arising from this report.

Specific Wards

All

7.0 Background papers, appendices and other relevant material

7.1 The consultation document is available to view here: [Consultation on improving the implementation of BNG for minor medium and brownfield development .pdf](#)

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