

East Herts Council: Consultation Response

Improving the implementation of biodiversity net gain for minor, medium and brownfield development – Appendix A – proposed answers to consultation



Improving the implementation of Biodiversity Net Gain (BNG) for minor, medium and brownfield development

[Consultation on improving the implementation of BNG for minor medium and brownfield development .pdf](#)

External deadline – 24 July 2025

We want to know what you think about the implementation of biodiversity net gain (BNG) for minor, medium and brownfield development.

Part 1: Improving Exemptions

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) See answers below.
- III. All minor development should be exempt

Answer: Some changes. See below for more detail but effectively, Option 1, Option 2, Option 4 and Option 5.

Explanation: Currently, some forms of development are exempt from needing to provide BNG. The relevant exemptions for this consultation are:

- Householder development – the most frequent exemption, not proposed to be changed.
- Exemptions for Custom and Self-build developments (up to 9 units / "minor" development) – proposed to be extended – an option of extending to all proposals for single dwellings (Option 1) or all minor residential proposals (Option 3) is being consulted on.
- *De minimus* exemption. Currently development which only affects very small amounts of existing habitats is exempt. This relates to where less than 25m² of area habitat or 5m of linear habitat are affected. It is also limited to where non-priority habitats only are present on site. A number of increases to the *de minimus* threshold are proposed (50 m², 100 m² and 200 m²).
- Exemptions for proposals for biodiversity net gain habitat banks. These schemes, which provide habitat which can then be "allocated" to schemes which cannot provide all of their net gain on site, are exempt from needing to provide the uplift for

themselves. The consultation proposes expanding this approach to other schemes supporting biodiversity.

- Exemptions for temporary development, where the site can be returned to its previous state within 2 years. It is proposed to expand this to 5 years.

Officers propose to support a number of the proposed changes as set out in the consultation response below.

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?

Answer: YES. This will be a simpler way of supporting small-scale development, which is less likely to have significant biodiversity impacts.

Explanation: The current exemption has led to an increase in applications being submitted as Custom and Self-build applications, when it has not been clear that the criteria for this type of housing has been met, which has often led to the refusal of these applications. Assessing whether applications meet the Custom and Self-build criteria is relatively time consuming for the scale of the development and, whilst the importance of supporting this form of housing delivery is recognised, the ecological impact of such a home is the same as a non-Custom or Self-build home.

Small housing schemes of individual homes can almost always not provide their BNG on-site (due to government guidance on the enforceability of BNG in private gardens) and the difficulties for the applicant in providing the necessary information can be high, as applicants are less likely to comprise multi-disciplinary professional teams. As such the difficulty for such schemes is recognised. This also translates into more EHDC officer-time being spent on such schemes as they work with applicants to try to resolve issues. At the same time the amount of biodiversity generally secured through such schemes is low and, whilst exempting them from BNG would have a cumulative impact, officers still support this, when set against the savings in terms of barriers to these types of applications and that small schemes such as these, in general terms, are delivered more quickly than larger schemes, helping meet housing need in the District.

We do not believe the threshold should be set higher for the reasons given below regarding exempting all minor schemes.

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

Answer: YES, to ensure only small-scale schemes are exempt.

Explanation: Some individual housing schemes, especially on more rural sites, may have a larger site area, resulting in potentially greater impact on biodiversity. As such, an area-based size limit is appropriate.

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

Answer: We support an increased threshold to 100 square metres. This is broadly analogous to the footprint of a small to medium house.

Explanation: The existing *de minimus* threshold is low and sometimes results in schemes with very little biodiversity impact being required to provide BNG. As BNG is a % gain, this results in some schemes delivering very marginal increases, for significant procedural requirements. If other thresholds are increased, as consulted on above, an increase in the *de minimus* threshold for non-residential development would mean that schemes with a broadly similar biodiversity impact (i.e. taking up an approximately similar build footprint) also being exempted.

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.

Answer: No. A residential scheme of 9 units on a non-brownfield location could have significant impact in terms of loss of biodiversity. A 0.9ha site comprising of biodiversity of poor quality could constitute 3.6Habitat Units (HUs). Assuming a 75% loss of habitat this would result

in a loss of 2.7HUs. If replicated at a national level this would have a significant cumulative impact and result in significant loss of habitat.

Were this approach to be taken, we would suggest that the percentage net gain for large sites (majors outside the medium category – possibly limited to where the majority of existing habitat doesn't fall within the "urban" Broad Habitat type) be increased to 20%. Anecdotal evidence seems clear that the majority of such sites can generally provide more than 20% on site.

It is also important to note that minor schemes tend to rely on off-site BNG more than larger schemes, where there is more opportunity to deliver BNG on-site. Making all minor development exempt could undermine the delivery of local habitat banks and the habitat improvements they propose.

Explanation: As set out above, officers are concerned that exempting such sites could lead to a significant cumulative loss of habitat and missed opportunity in securing additional habitat. Generally, these types of schemes provide detailed technical information on other subjects (such as heating, cooling, energy and embodied carbon calculations), so the need for specialists to input to scheme preparation for applicants is already established.

Habitat Units are a measure of biodiversity on a site of an area habitat type – i.e. it is a numerical value given to biodiversity on a site based on the type of habitat, its characteristics and the size of the habitat.

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?

Answer: Taking the logical premise of the question yes but as we do not support the removal of the minor development category the same issues would apply so we do not support this measure.

Explanation: Residential and non-residential schemes do not intrinsically have different impacts on biodiversity so if the threshold for one is increased, it would be equitable for it to be increased for the

other. However, we would reiterate that since we do not support the exemption of minor development overall this measure is not supported

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.

Answer: YES. In our experience, the barriers that BNG presents for this type of scheme tend to be relatively high while the biodiversity uplift is relatively low, due to the nature of the types of sites and that applicants are often charities or have little funding, whereas the public benefit from such schemes tends to be significant.

Explanation: Whilst it is acknowledged that these types of schemes could have impacts on existing biodiversity so exempting them from BNG would result in a reduction in BNG being secured, overall this should be supported for the significant benefits such schemes bring. The detailed consultation limits the types of applications which could benefit from these to only those which affect habitats of low value (generally grass playing fields).

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.

Answer: YES, on balance we do although it should be recognised that this would in some instances lead to a reduction in biodiversity. However, the benefits of supporting such schemes are recognised. This would result in a subjective assessment being required by the LPA as to the objectives of a scheme – guidance should be provided on this process.

Explanation: Some of these schemes could be beneficial for biodiversity as a whole but result in a net direct loss on site, such as a flood risk alleviation scheme which included planting, or a river restoration project. These could result in the destruction of habitats on-site. Overall, the benefits of such scheme are however recognised.

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?

Answer: NO. In our experience, the majority of temporary sites do not end up being returned to their previous (baseline) position and the majority of temporary permissions probably get extended. The ability to then retrospectively assess a baseline position and secure an uplift would be very difficult. These schemes generally also have red line boundaries that are tight to the operational development, resulting in off-site enhancements being appropriate, which can be easier to deliver.

Explanation: There is an existing exemption for temporary planning permission for two years. It is often the case that temporary planning permissions get extended, or an alternative use is proposed for the site at the end of their permission. If information is not provided at the time of the temporary permission being granted on the existing baseline condition of the biodiversity of the site, at the expiry of a permission 5 years later, it can be very difficult to establish the original level of biodiversity on the site and therefore the standard required for restoration.

Part 2: Streamlining the BNG metric process

Question: Do you think the Small Sites Metric (SSM) should be used for medium development (schemes up to 49 units and on 1ha sites)?

Answer: NO. A 1ha site could hold substantial amounts of biodiversity units, even if only considering sites with biodiversity of up to medium distinctiveness. In our experience these sites tend to be rural (due to the geography of East Herts) or semi-rural and so have more complicated habitats. As such, input from an ecologist is normally appropriate. Additionally, in our experience, these types of sites are brought forward by professional multi-disciplinary teams for whom bringing on board ecological advice would not be unusual, and many SMEs recognise the value that on-site habitat or biodiversity can bring in placemaking and quality of development terms.

Explanation: The Statutory Metric and Small Sites Metric are the two calculators used to assess biodiversity on a site at the time of an application to establish a “baseline” biodiversity value of a site (expressed in Biodiversity Units) so that a 10% uplift can be calculated. “Distinctiveness” is a measure of the distinctiveness or “interest” (in biodiversity terms) of different habitats. The Metrics set the distinctiveness of different habitat types, and they are assigned greater or lesser numerical values resulting in more or less Biodiversity Units. Therefore a 100 m² area of woodland, which has a higher distinctiveness value, would result in more Biodiversity Units than the same area of vegetated garden in the Metrics. The Small Sites Metric is designed to be used by non-ecologists and so has more pre-set values and can currently be used on “minor” schemes where they do not have Priority Habitats (certain specific very valuable habitats such as Ancient Woodland) on-site.

A 1ha site could include a considerable amount of biodiversity which needs to be carefully integrated into the scheme development process, requiring professional ecological input, similar to other built environment disciplines.

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

Answer: NO. The presence of protected species will result in input from an ecologist (in almost all instances) so the rationale for using the SSM seems limited. Additionally, the risk of BNG interventions not being coordinated with the need to protect habitats of protected species is high, unless there has been ecological input into the BNG works.

Explanation: As set out above, we believe that these types of sites need input from an ecologist to secure suitable outcomes for nature.

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

Answer: NO. The presence of protected sites will result in input from an ecologist (in almost all instances) so the rationale for using the SSM seems limited. Additionally, the risk of BNG interventions not being coordinated with the need to protect designated sites is high, unless

there has been ecological input into the BNG works. Opportunities to tailor on-site BNG interventions to support the protected site at no additional “cost” to the development could also be lost.

Explanation: As set out above, we believe that these types of sites need input from an ecologist to secure suitable outcomes for nature.

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?

Answer: NO.

Explanation: No further restrictions seem appropriate.

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

Answer: NO. While removing the trading rules would not result in a net reduction of biodiversity units, it is likely that it would result in a proliferation of low distinctiveness habitats. Overall this would result in a reduction of diversity of habitats and species.

Explanation: The “Trading Rules” are rules within the Metrics which govern what types of habitat can be provided to replace existing habitats on site. Currently the rules require the BNG to compose of habitats of the same distinctiveness as the existing habitats and the same “broad habitat type”.

The trading rules ensure that the same types of habitat are provided in the post-development scenario as were on the site before development. If they are removed or relaxed, it is likely that the diversity of habitats will decline over time as developers focus on providing habitats that are easiest to implement and/or with lower cost impacts whilst providing a certain number of biodiversity units. This may result in reduction in overall biodiversity as habitat types are concentrated into a minimal variation of types of habitat.

Question: 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)?

Answer: YES – whilst this would result in some changes and likely reductions in the diversity of habitats, this seems a reasonable stance given that less land would be available for biodiversity post-development.

Explanation: This seems a reasonable stance given that it would still support the provision of different habitat types, whilst giving developers some flexibility, so that replacement habitat types, whilst needing to be the same or better distinctiveness, can be different broad habitat types.

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?

Answer: NO. Our opinion as a local planning authority is that a fair number of sites have a baseline that surpasses ‘poor quality’ baseline habitats. Were this to be coupled with some other proposed changes, such as the increased use of the SSM on medium development, this would result in a significant decrease in baseline biodiversity - for example a 0.9ha site of BNG could have 7.2 BU at “moderate” condition but half that at “poor”. There is already a solution to the issue of discrepancy between SSM and Full Metric – the Full Metric can be used by applicants if they choose. If they have the knowledge to know that their site contains poor condition habitat then they likely already have had input from an ecologist.

Explanation: The SSM, being designed for use by non-ecologists, automatically classifies the “condition” (quality) of habitats as being moderate, removing the need for an ecologist to carry out a site survey. The condition of habitats affects how many Biodiversity Units an area of habitat equates to. The Full Metric, being designed for use by ecologists, allows the condition of habitat to be set, if evidence in the form of field notes from a site survey are provided. As such, there can be situations where using the Full Metric results in a lower on-site biodiversity baseline than using the SSM (if the habitat on site is lower than moderate condition).

As set out above, many rural sites have moderate condition habitats and so changing the SSM to record all of these as “poor” would run the risk of under-counting existing biodiversity, and hence the cumulative amount of biodiversity which needs to be present post-development across sites significantly. An optional solution to this potential problem is available as developers may choose to use the Full Metric and the services of an ecologist if they believe that extant habitats do not meet the moderate condition.

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?

Answer: NO

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

Answer: YES, this is considered a proportionate approach to help simply the process, whilst still delivering BNG.

Explanation: The SSM is designed to be used by non-ecologists and so is simpler than the Full Metric. However, it is still quite complex with, for example, five different types of “scrub” of similar biodiversity value. As such, it could be simplified without having a significant impact on BNG.

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

Answer: YES, this is considered a proportionate approach to help simply the process, whilst still delivering BNG.

Explanation: Whilst simplified, the SSM is still complex, for officers and applicants, so attempts to make it easier to use, and easier to correctly identify habitats, are welcomed.

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?

Answer: NO RESPONSE

Explanation: Watercourses tend to be home to complex habitats and are not found particularly frequently in development sites in East Herts. As such, officers do not have any comments to offer, given the technical nature of this environment. Hertfordshire County Council are expected to provide a response with input from County Ecologists on this issue.

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

Answer: YES, additional clarity will help both the applicants completing the metric and the LPA officers assessing the metric.

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?

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

Answer: NO. It is hard to think of an alternative definition of a Competent Person. In practice, our experience is that planning officers focus on checking whether the Metric has been appropriately completed and if not, this suggests that the person is not competent. However, we have always been able to resolve this more practically through revisions to the Metric as opposed to focussing on the competency of the assessor. Many SSMs are reviewed by DM planning case officers as opposed to ecologists and so have a comparable level of knowledge to a Competent Person.

Explanation: The SSM must be completed by a “Competent Person” which is defined as someone with the knowledge and experience of the site and habitats present to be able to complete the Metric accurately.

The need for SSMs to be completed by non-ecologists is recognised and agreed with. Whilst the definition of Competent Person is somewhat circular, in practice it is not a main focus of the assessment process.

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

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

Answer: NO RESPONSE

Explanation: Watercourses tend to be home to complex habitats and are not found particularly frequently in development sites in East Herts. As such, officers do not have any comments to offer, given the technical nature of this environment. Hertfordshire County Council are expected to provide a response with input from County Ecologists on this issue.

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?

Answer: Yes. We would also suggest that there may be merit in considering this approach more widely – and in other circumstances potentially agreeing that non-impacted habitat could be excluded from baseline Metrics.

Explanation: This consultation question suggests that where proposals do not impact on watercourses which are nevertheless within a development site, it could be possible to agree to exempt them from BNG requirements. This addresses an issue where, as a 10% uplift is required, works to a watercourse may be required in order to provide the 10% uplift when no works would be proposed to the watercourse otherwise, and no harm would occur to the watercourse habitats. Given the very technical nature of working on watercourses, this approach seems practical.

There may be scenarios, such as when considering small developments in larger site settings (such as Country Parks or mature habitats) where a similar approach could be taken to avoid proposals having to provide significant biodiversity improvements due to a high baseline biodiversity value, when proposals do not significantly impact on these habitats.

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

Answer: Digital improvements are welcomed, but any digital version needs to be compatible with LPA validation processes. This includes generating a document which can be submitted / uploaded via the Planning Portal or similar websites.

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

Answer: NO. Whilst the improved take-up of on-site biodiversity features is noted and agreed with, this approach does not resolve the issue of enforcement difficulties within private gardens.

Explanation: Government guidance, and existing Planning Enforcement caselaw makes clear that it is not possible to secure on-site biodiversity features in private gardens as enforcement is not reasonably practicable. This approach doesn't pose problems on larger sites where a site-wide approach to BNG is taken with parts of the site given over to biodiversity improvements. However, for small schemes, typically of one or two sites, it causes problems as there are often no communal areas where biodiversity can be usefully provided.

The proposed change to allow private garden biodiversity features to be counted towards the overall provision of biodiversity would increase the amount of biodiversity that could be recorded in a Metric as being present on site. However, given that this could not be reasonably enforced in planning terms it is unlikely to result in a practical increase in biodiversity on sites.

Part 3: Increasing flexibility to go off-site for minor development

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

Answer: NO. In practice, we do not consider that the hierarchy is an inappropriate barrier. Case officers make a reasonable assessment of whether on-site opportunities have been taken, and the existing

hierarchy followed. Other barriers appear to be easing as the off-site biodiversity market matures.

Explanation: The biodiversity gain hierarchy sets out that certain approaches to biodiversity are preferable to others and should be exhausted before less preferable ones are taken. This promotes improving existing habitats and providing BNG on-site before looking at off-site solutions. This consultation question suggests that for minor developments, off-site provision should be given the same priority as on-site provision.

Some difficulties with on-site provision are noted, as set out above. However, where these are well-founded, such as due to the difficulty of taking Enforcement action or where on-site opportunities are not reasonably practical or desirable, planning officers support taking an off-site approach. As such, in our experience this is not a genuine barrier to BNG provision and should not be changed as the benefits of on-site BNG are well established.

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

Answer: NO – as above, this does not appear to be a significant barrier for delivering BNG in our experience. On-site delivery is most likely to be the most cost-effective way of delivering BNG in any case.

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.

Answer: NO. Critical consensus appears to be that local small-scale interventions are no less valuable than larger less localised interventions. They also provide real benefits in terms of placemaking and quality of developments by connecting future residents more easily to nature.

Explanation: There is significant evidence amongst ecologists and BNG practitioners that providing on-site BNG has a wide range of benefits.

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

Answer: NO – as above. Local habitat improvement and enhancement should continue to be encouraged.

Question: Should the Spatial Risk Multiplier assessment methodology be amended, so that it is based on Local Nature Recovery Strategy (LNRS) and National Character areas rather than Local Planning Authority and National Character areas?

Answer: YES, given the role of the LNRS to provide a comprehensive plan for nature recovery in Hertfordshire, we support this change. Transition arrangements need to be made for when LNRS are not present or out of date and more guidance may be required as to the content of LNRS to make sure all can meet these requirements.

Explanation: The “Spatial Risk Multiplier” is a device within the Metrics which gives more value to off-site habitats where they are provided nearer to the site, to promote biodiversity implementation near to development sites so as not to result in BNG being moved to other parts of the Country. Currently, more value is assigned if the off-site works are within the Local Authority area or the National Character Area (a very wide area definition which is given less increased value than the Local Authority area). This proposal suggests focussing on LNRS areas and National Character Areas.

LNRS are being prepared as County-level documents, to ensure that a joined-up approach to nature can be taken and so that opportunities to promote biodiversity and habitats at a landscape scale can be taken. This change could result in an increase in off-site BNG being located beyond East Herts’ boundary, but an increase in it being provided within the County. This is considered to be appropriate given the wider opportunities to align with other biodiversity improvement measures.

Part 4. 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 Open Mosaic Habitat (OMH)?

Answer: No response

Explanation: Open Mosaic Habitat is a very specific habitat site which is sometimes found in abandoned urban settings – primarily redundant and dilapidated industrial buildings. They can be very valuable for supporting invertebrates, which often favour these forms of habitat in an urban setting. They are however very complicated to assess and generally occur as a result of a lack of management of an urban environment. As such, they are an important habitat but can be very difficult to actively create or enhance.

Officers are proposing to offer no response to questions on OMH given that it rarely occurs, is complex and has yet to be recorded on a site in East Herts.

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

Answer: No response.

Explanation: See above.

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?

Answer: No response.

Explanation: See above.

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?

Answer: No response.

Explanation: See above.