No more loopholes: Making BNG work better for nature

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This briefing is on behalf of nature and animal welfare coalition Wildlife and Countryside Link (Link) and wider organisations across sector.

Executive summary :

The Government's proposed changes to Biodiversity Net Gain (BNG), including a new 0.2-hectare exemption and a possible brownfield exemption, come at a critical moment for nature recovery. Evidence from BNG's first year already shows that the system is being widely undermined by the existing **de minimis loophole**, which allows developers to self-declare "minimal impact" with no evidence. As a result, 86% of planning applications have avoided BNG, with over half using de minimis, including many large sites where minimal impact is not credible.

For BNG to remain a functional policy delivering for nature's recovery, **the de minimis exemption must be closed**, not retained alongside new thresholds. If the new 0.2-hectare exemption is added without removing de minimis, over 90% of all eligible developments could become exempt, a development area approximately twice the size of Bristol, gutting the policy and destabilising the BNG market. Any exemption that remains must be evidence-based, with developers required to provide habitat data, metric calculations, mapping and confirmation that no priority habitats have been affected. Compliance with BNG must be easier than avoiding it.

Furthermore, a blanket brownfield exemption risks the loss of ecologically valuable brownfield sites and removes a major source of BNG delivery and investment for urban areas, worsening potential access to nature and urban greening efforts, despite brownfield sites being some of the most successful examples of green urban development. Instead, targeted support should help brownfield and SME developers access the BNG system rather than bypass it.

Finally, we call on the Government to protect local authority ambition and ensure that large projects, including NSIPs and marine developments, are held to high and consistent BNG standards. Together, these measures are essential to ensure BNG delivers real, measurable nature recovery rather than becoming a paper exercise.

Introduction:

At the close of 2025, the Government announced the introduction of a new exemption for Biodiversity Net gain (BNG), exempting smaller developments below 0.2 hectares from having to deliver associated habitat enhancements. It also indicated plans to consult on a further residential brownfield exemption, including appropriate definitions and exemption sizes up to 2.5 hectares. A full consultation response and implementation timeline are expected to be published in early 2026, alongside a separate consultation response on extending BNG requirements to Nationally Significant Infrastructure Projects (NSIPs).[1]

Any steps to weaken and dilute the policy of BNG are of significant concern. Reducing the strength of existing nature recovery policies actively runs counter to the Government's stated commitments, including goals for supporting private finance for nature recovery, achieving Environment Act targets, and its manifesto pledge to end the nature crisis. Likewise, the Government had previously stressed its commitment to BNG, and that it should apply to 'most' development.[2] The policy is a world-leading example of how development delivers and funds tangible habitat enhancements, creating greener, more sustainable places while supporting nature recovery.

The forthcoming consultation is therefore a key test for the Government to demonstrate its commitment to BNG and nature recovery more widely. It is a crucial opportunity to shape how it delivers meaningful, measurable gains for biodiversity across England's landscapes, and ensure it is not diluted further.

Fulfilling the promise of BNG

To ensure BNG fulfils its full potential as a genuine "win-win" and the Government's promises for nature recovery, private investment in nature and high-quality development, while remaining proportionate, the Government must implement the following measures.

1. Close the de minimis loophole

The introduction of a clear, area-based 0.2-hectare exemption now fulfils the Government's stated policy intention of making the BNG system simpler and more proportionate for genuinely small developments. A size-based threshold provides clarity, consistency and legal certainty, removing ambiguity about what constitutes a "small" or "low impact" site.

[1] https://defraenvironment.blog.gov.uk/2025/12/17/planning-reforms-delivering-homes-supporting-farmers-and-protecting-nature/

[2] https://www.staffs-wildlife.org.uk/news/biodiversity-net-gain-government-announcement ; https://questions-statements.parliament.uk/written-questions/detail/2024-08-30/2864/ https://questions-statements.parliament.uk/written-questions/detail/2024-10-04/5924

In this context, the continued existence of the impact-based de minimis exemption is no longer justified. Rather than supporting proportionality, it has become an avenue for unfair practice, enabling developers to self-declare minimal impact without evidence and avoid BNG requirements altogether. The de minimis exemption therefore no longer serves a legitimate policy purpose and instead actively weakens the system by undermining compliance, distorting incentives, and eroding confidence in BNG as a credible mechanism for nature recovery.

The new 0.2-hectare exemption should replace de minimis in full. Retaining both would not simplify the system; it would entrench loopholes and create a dual exemption regime that rewards avoidance of BNG over delivery. If de minimis is retained and the new 0.2 ha exemption is introduced, initial analysis indicates that it will result in over 90% of all applications being exempt, meaning an area around twice the size of Bristol (approx. 22 000 ha) could be built on with **no requirement to create or enhance habitats**. By contrast, if the other exemptions were closed, an area around the size of the Isle of Wight (over 38 000 ha) would be subject to BNG, much closer to the original intention for the policy to apply to most development.

Current rules perversely make non-compliance with BNG easier than compliance: claiming a de minimis exemption requires only that an applicant states they "believe" it applies, with no evidence or scrutiny, whereas complying with BNG triggers extensive mandatory evidence requirements, creating incentives to avoid compliance and wrongly assert that the site is "de minimis" or even degrade habitats before applying. In other words, de minimis allow developers to "self-declare" whether an application would have a minimum 'impact' on nature (de minimis) with no requirement to provide any evidence.

In the first year, 69,500 out of 80,400 approved planning applications for large and small new domestic and commercial developments (86%) claimed exemptions from BNG requirements.[3] 56% of (total) applications used this self-declaratory 'impact' de minimis exemption.[4]

A very small (de minimis) impact on nature at a relatively large development site is not credible in more than a tiny number of exceptional circumstances. However, de minimis is being claimed by approx. 35% of developments over 0.5 ha in size, including those covering several hectares.[5] This is much higher than expected and suggests there may be a widespread compliance failure within the BNG system. Furthermore, a watercourse is considered a linear feature for BNG and can as such fall under the de minimis exemption if it's a non-priority habitat, and the impact is less than 5 linear metres. As a result, there have been a great many lost opportunities for watercourse enhancement by the exempting of these small reaches throughout a degraded catchment.

[3] https://private-url--lifescape.netlify.app/uploads/BNG%20Market%20Report,%20eftec,%20260625.pdf
[4] https://private-url--lifescape.netlify.app/uploads/BNG%20Market%20Report,%20eftec,%20260625.pdf
[5] https://private-url--lifescape.netlify.app/uploads/BNG%20Market%20Report,%20eftec,%20260625.pdf

The Government and LPAs must make compliance with BNG easier than non-compliance [claiming exemptions], and everyone claiming exemptions must prove they are doing so legitimately. To address this, applications for use of all exemptions (including the proposed 0.2 ha), should include:

- Robust evidence of site size/ threshold eligibility [via GIS / spatial tools]
- The pre-development biodiversity value of the site
- A completed metric sheet – for sites claiming de minimis over 0.2 ha
- A habitat plan
- Confirmation that no priority habitats are impacted onsite or within 500 m & GIS evidence that priority habitats have not been impacted
- Confirmation that the right metric sheet has been used
- Confirmation that there has been no degradation of habitats

2. No brownfield exemption

The Government has announced it intends to consult on a new brownfield residential exemption. Brownfield can be valuable for biodiversity, particularly via open mosaic habitats that are host to vulnerable species. Brownfield sites are also vital for sustaining the BNG system, for example, 54% of all new homes in 2021/22 were built on brownfield land.[6] For redevelopments of brownfield land of low environmental value, the BNG costs are minimal, and can support bringing nature into our urban areas - and thus the wider health and wellbeing benefits for people are maximised. Indeed, brownfield sites have become flagship examples of what ambitious development can achieve, as seen in Berkeley Group's Kidbrooke Village and Landsec's brownfield urban regeneration projects and commitments to go beyond minimum 10% net gain to embed nature into urban places.[7]

A brownfield exemption runs the risk of further accelerating the loss of wildlife-rich brownfields, including open mosaic habitats, with important habitats being lost and biodiversity losses allowed without being uncompensated. Cumulatively, there is a risk that a brownfield exemption, plus the others, would also fundamentally compromise the BNG policy system, making the BNG market unviable. Other mechanisms to support SMEs and brownfield developers to access the offsite BNG market and/or deliver BNG onsite should be the priority: not a blanket exemption.

3. Preserve Local authority autonomy and ambition

[6] https://www.gov.uk/government/publications/new-homes-fact-sheet-7-homes-and-different-land-types/fact-sheet-7-homes-and-different-land-types?
Ashford Borough Council notes that where it's unclear whether an exemption applies (for example, *de minimis*), the council *may request additional supporting evidence* such as a *completed biodiversity metric and habitat plans* to justify an exemption claim. https://www.ashford.gov.uk/planning-and-development/our-planning-policies/environmental-matters/biodiversity-net-gain/when-does-bng-apply/
[7] https://www.berkeleygroup.co.uk/news-and-insights/news-and-features/2023/biodiversity-net-gain-at-kidbrooke-village ; https://www.landsec.com/en/media-insights/press-releases/third-uk-city-dwellers-plan-leave-next-decade-access-more-nature-and

The parallel National Planning Policy Framework consultation also raises serious concerns, as it proposes restricting the ability of local authorities to set more ambitious Biodiversity Net Gain requirements. Under the proposed approach, Local Planning Authorities would only be able to require higher levels of BNG in very limited, tightly defined circumstances, linked to specific site allocations, and even then only where those requirements are judged to be "fully justified and deliverable". More broadly, the proposals would prevent Local Planning Authorities from applying higher standards to whole categories of development, particularly where national exemptions apply. This would undermine local authorities' ability to deliver on local ecological priorities, emergency declarations and inhibit their abilities to deliver Local Nature Recovery Strategies (LNRSs) in their areas.

Already 4 local authorities (Guildford Borough Council, Maidstone Borough Council, Mole Valley Council & Worthing Borough Council) have adopted policies that require 20% Biodiversity Net Gain (Worthing requires this only for previously developed sites). 30 local authorities have upcoming policies which, if adopted, will require more than the minimum mandatory 10% net gain. [8]

WC Link has long supported the ability of local authorities to set more BNG ambitious requirements to meet local nature recovery targets and ecological emergency commitments. The original 2018 impact assessment described 10% as the 'lowest level of net gain that the department could confidently expect to deliver genuine net gain, or at least no net loss, of biodiversity and thereby meet its policy objectives,' with advice received that a level of net gain above 10% gives greater confidence in halting biodiversity losses.[9]

In addition, Local Authorities should retain the autonomy in local policy to set BNG policies and priorities such as stricter thresholds for exemptions i.e. the ability to set size thresholds that are smaller than the proposed 0.2ha threshold and insist on BNG / override an exemption is undertaken if a development is within 500m of a priority site. For example, how Guildford and Richmond upon Thames require additional evidence to justify exemption use, and Ribble valley requires habitat plans.[10]

4. Big ambition for big projects – high expectations for NSIPs and Marine Net Gain

While Nationally Significant Infrastructure Projects (NSIPs) and Marine Net Gain are not within the scope of the imminent consultation, WC Link is clear that large-scale projects must be held to the same, and in many cases higher, standards of ambition. NSIPs and major marine developments often

[8] https://www.wcl.org.uk/biodiversity-net-gain-one-year-on.asp
[9] https://consult.defra.gov.uk/land-use/net-gain/supporting_documents/181121%20%20Biodiversity%20Net%20Gain%20Consultation%20IA%20FINAL%20for%20publication.pdf
[10] The **London Borough of Richmond upon Thames** – expects that even where exemptions are claimed, applicants *provide a biodiversity statement including evidence to support why an exemption applies https://www.richmond.gov.uk/services/planning/make_a_planning_application/biodiversity_net_gain*

have the greatest and most irreversible impacts on biodiversity, landscapes and ecosystems, and therefore represent the greatest opportunity to deliver meaningful, strategic nature recovery.

Any future approach to BNG for NSIPs and Marine Net Gain must avoid exemptions, dilution or "light-touch" alternatives that undermine outcomes. Instead, these projects should be required to deliver clear, measurable net gains, aligned with Local Nature Recovery Strategies, marine plans and wider environmental targets. With robust evidence and assessment requirements. High expectations for major projects are essential to maintaining public confidence in the planning system, ensuring fairness between sectors, and delivering nature recovery at the scale required to halt and reverse biodiversity loss.

Key Points: The following key points set out the priority actions and practical changes needed to ensure Biodiversity Net Gain delivers real, measurable benefits for nature.

- **Close the de minimis loophole**
  Current rules make it easier to avoid Biodiversity Net Gain than to comply. Developers can self-declare a "minimal impact" with no evidence, whilst proper compliance requires paperwork. This loophole must be closed.

- **Most development is falsely avoiding BNG**
  In the first year, **86% of eligible planning applications claimed exemptions**, with over half relying on the de minimis route, including many large sites where "minimal impact" is not credible. This is not sustainable, or compatible with BNG's original and intended purpose. The de minimis loophole must be closed.

- **Don't stack exemptions, because it will gut the policy**
  Introducing a new 0.2ha exemption must *replace* de minimis, not sit alongside it. Otherwise, **over 90% of applications could be exempt,** an eligible development area approximately twice the size of Bristol, undermining the policy and the market entirely. To have both together risks killing the policy.

- **Make compliance easier than avoidance**
  Compliance with BNG requirements must be easier than avoidance of BNG, by requiring robust evidence for all exemptions. **Anyone claiming an exemption must prove they are doing so legitimately.**

- **Protect local ambition**
  Local Planning Authorities must retain the freedom to go beyond the 10% minimum. Several already require **20% BNG**, and many more plan to, in line with local ecological emergency declarations and nature recovery ambitions.

- **No brownfield exemption**
  Brownfield sites can be valuable for biodiversity but can also deliver significant development and have been at the forefront of demonstrating BNG through flagship projects and successfully delivering high biodiversity outcomes. Exempting them would weaken nature recovery and destabilise the BNG market.

The following organisations endorse this briefing:

The Wildlife Trusts
Freshwater Habitats Trust
Campaign for National Parks
Mammal Society
PTES
The Landscape Institute
Plantlife
Chartered Institute of Ecology and Environmental Management (CIEEM)
Institution of Environmental Sciences (IES)
RSPB
Buglife
UK100
Seal Research Trust
Woodland Trust
UK Green Building Council (UKGBC)

Wildlife and Countryside Link (Link) is the largest nature coalition in England, bringing together 90 organisations to use their joint voice for the protection of the natural world and animals.

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