Improving the implementation of biodiversity net gain for minor, medium and brownfield development[1]

Questions

Question 1: Would you like your response to be confidential?

No.

Question 2: Do you support the following statements (yes/no):

I. No changes should be made to exemptions

No.

II. Some changes should be made (please state which options you support with thresholds were applicable)

Yes, but as the experts in the CIEEM have assessed the impact of BNG on small sites[2], taking into account the views of over 250 respondents, primarily consultant ecologists and local planning authority staff, their recommendations should be prioritised when considering the responses to this consultation. The report concluded that, whilst there have been challenges with the implementation, there are a number of 'fixes' that could be applied that would enable BNG for small sites to meet its nature recovery ambition, these are summarised as:

- Review of the de minimis threshold to avoid disproportionate burdens on very small scale developments, CIEEM suggest 0.1 hectares for site red line. And minor sites of 0.1-0.9 hectares to use adjusted Small Site Metric.
- Exemptions must never apply to irreplaceable habitats or protected sites.
- Introduction of a simple biodiversity tariff system as an optional alternative to an offsite credit. This should be on the basis that appropriate on-site gain has been considered and, where possible, delivered at least in part. Funds provided through the tariff system could be distributed by Local Nature Partnerships in support of Local Nature Recovery Strategies.
- Review of the metric to provide more flexibility in condition assessment for the baseline habitats and more recognition of the contribution wildlife-friendly gardens and ecological features can make to delivering onsite gains, especially in urban areas. Condition assessment should be removed altogether for low distinctiveness areas.
- Introduction of a simpler version of the metric for use on sites where only low distinctiveness habitats are present. This would remove the challenge of satisfying the trading rules for the provision of onsite and offsite units.
- Clarification of what is meant by a competent person in relation to use of the Small Sites Metric (SSM).

[1] https://consult.defra.gov.uk/defra-biodiversity-net-gain/improving-the-implementation-of-biodiversity-net-g/

[2] https://cieem.net/resource/biodiversity-net-gain-for-small-sites/

- Better use of pre-occupation planning conditions and post-development auditing by competent persons to confirm delivery of the required biodiversity and landscape enhancements.
- Development of local habitat banks offering small-sized biodiversity units, and fractions of units, at an affordable cost. (NB: This may become less important if a tariff system is introduced).
- More targeted training in the requirements of the small sites approach and accurate use of the metric.

III. All minor development should be exempt

Definitely No

Question 3: 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.

Question 4: Do you agree with the proposal for a 0.1 hectare threshold?

Yes, for single dwellings

Question 5: Do you agree the area de minimis threshold should be extended?

Only if any extension to the de minimis threshold is agreed with the CIEEM to ensure that there are no unintended consequences (such as high value habitats being removed without the benefits BNG brings). It may be preferable to consider digitisation of the offsite BNG unit purchase process, including the introduction of a simple biodiversity tariff system as an optional alternative to an offsite credit (as suggested by the CIEEM), to reduce the financial costs for small sites, rather than extending the threshold to be applied.

If yes, which of the following thresholds do you think is most appropriate: • 50 square metres • 100 square metres • 250 square metres • Other threshold

100 square metres is suggested by CIEEM as an appropriate compromise.

Question 6: 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.

No. Please see our response to question 5 above – to ensure there are no unintended consequences, it may be preferable to consider digitisation of the offsite BNG unit purchase process, including the introduction of a simple biodiversity tariff system as an optional alternative to an offsite credit (as suggested by the CIEEM), to reduce the financial costs for small sites.

Even very small areas of habitat matter in terms of connectivity.

Any relaxation for small sites must consider the possibility that developers will choose to parcel sites into sizes that fall below the minimum threshold. Cumulative impact will need to be covered in this case.

Question 7: 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?

No

Question 8: Do you agree that parks, gardens and playing fields development, as defined above, should be partially exempt from BNG? Please give evidence where possible.

No. Whilst we recognise the benefit of a partial exemption for the sports clubs concerned, it should not apply when the development will effectively remove the existing habitat (however low the distinctiveness) and change it to a built environment (such as constructing a changing room or converting grass pitch to an astroturf or similar pitch).

This sort of development could have a major impact on, for example, the hydrology in the area and could cause an increased risk of flooding. Even habitats with low distinctiveness can have a high biodiversity value. For example sports pitches on parks could be hometo families of moles (who regularly make their presence felt) and other underground creatures, they might be a foraging area for swifts and other red listed birds and they soak up excess water (saving surrounding homes from surface water flooding). If they were astroturfed or built on in some other way, it would cause a loss not just on the fields themselves but in the surrounding area.

With the above in mind, any exemptions should be limited to developments that do not remove existing habitats of any distinctiveness.

Question 9: 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?

No, if, on such sites, the landowner is concerned about the 30 year legal obligation for mandatory BNG, consideration should be given to compulsory purchase. Significant public money could be spent to create, restore or preserve habitats on such sites and a 30 year pay-back period is the minimum that should be required.

In terms of a size threshold, we do not believe there should be one. Some conservation areas (including sites of biological importance and sites of special scientific interest) are relatively small but provide essential habitats and are a critical part of the bird/wildlife foraging corridors.

Our preference would be for the existing exemption for biodiversity gain sites to be extended rather than the creation of a new exemption.

Question 10: 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?

No. Whilst we understand that purchases from the off-site market may increase costs for developers, this should be considered acceptable and part of the cost of development. Huge pressures and additional burdens are caused by development to nature and our natural resources and BNG is the opportunity to compensate for these demands.

If the government decides to implement such an exemption, we think the 5 year period is too long. A maximum of 3 years would be appropriate. It should be recognised that these habitats are an indicator of biodiversity. They are home to plants, birds and wildlife, providing food and water foraging corridors and many other natural capital ecosystem services, which may be permanently disturbed even by temporary development.

Question 11: Do you think the SSM should be used for medium development?

No.

Question 12: Do you think the SSM should be able to be used on sites with European protected species present?

No.

Question 13: Do you think the SSM should be able to be used on sites with protected sites present?

No.

Question 14: 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?

No. This is not correct, small is not the same as low impact. Small sites can be high impact.

Hedgerows and arable field margins.

Potential impact on adjacent habitats, including irreplaceable habitats.

Question 15: Do you think the trading rules should be removed in the SSM (which contains only medium and low distinctiveness habitats)?

No. Whilst we understand that your aim is to make it easier for developers, flexibility in site design does not compensate for loss of habitat. This will result in losses (of woodland, for example) for local communities, of both humans and wildlife, without the benefits BNG brings.

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)?

No. You recognise in your document that "*Developers may opt for the delivery of cheaper habitats or those with better unit outputs (due to their reduced 'time to target condition' or difficulty of creation). This could mean habitats which species rely on locally are not replaced*". The rules should be fit for purpose to enable BNG for small sites to meet its nature recovery ambition.

Question 16: 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?

No. Whilst BNG for small sites has barely been in place for a year, we agree with the suggestions from the CIEEM, that a simpler version of the metric could be introduced for sites where only low distinctiveness habitats are present, and that the metric should be reviewed to provide more flexibility in the condition assessments for baseline habitats.

Whilst developers should not be penalised for using the SSM, nature should not be penalised by development undervaluing biodiversity and undercompensating for the losses incurred.

Question 17: 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?

More automation/digitisation should be introduced to make it easier to assess the variety of habitat conditions on smaller sites.

As suggested by the CIEEM, the introduction of a simple biodiversity tariff system as an optional alternative to an offsite credit and the development of local habitat banks offering small-sized biodiversity units, and fractions of units, at an affordable cost.

A better definition of competent person is required to maintain consistency and faith in the assessment process.

Question 18: Do you think some habitats of the same broad type with the same value should be amalgamated in the SSM?

No. More use of digital technologies and better training should enable improved recognition of habitats. There should be monitoring of biodiversity losses from development. This would not be possible if various habitats are merged.

Question 19: Do you think the habitats in the SSM should be reviewed, to ensure they are easily identified by non-ecologists?

No, but with the introduction of digital technologies in mind to support easier identification by non-ecologists so their input can be taken into account.

Question 20: 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?

It would be beneficial if all developments within the riparian zone of watercourse habitats used the main metric tool.

Question 21: Do you think providing additional guidance on the identification and management of habitats in the small site metric would be helpful?

Yes. This guidance should include pictorial examples of the habitats.

Question 22: 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.

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

Whilst others will have more knowledge to respond about the definition of competency requirements, another option would be for LPAs to provide a form of shared services for SME builders to enable ecologist skills to be more easily engaged at a reasonable cost. Such services could also be utilised by the LPA themselves, where necessary.

Question 23: Should a different watercourse condition survey be employed for minor development using the watercourse metric?

Others will be better informed to consider this question.

Question 24: Should a different watercourse condition survey be employed for minor development using the watercourse metric when there is no impact?

Others will be better informed to consider this question.

Question 25: 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?

No. The advice of the CIEEM should be sought. The impact of hydrology changes can be felt some distance from the site itself.

Question 26: What specific features or improvements would you like to see in a digital version of the metric tools?

The tool should be open access, which allows the public to view the calculations. Modelling should be possible to demonstrate how alternative sites may result in lower levels of harm to biodiversity. The suggestions of the CIEEM should be introduced and included in the tool.

Question 27: Do you think we should allow biodiverse features to be counted within vegetated gardens being created as part of a development?

No. Developers, including SME builders, should be encouraged to include street trees, community orchards and community allotments into the design of their sites (along with other green spaces, where appropriate). These must not be destroyed, astroturfed or tarmacked by future homeowners.

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?

Such features should only be accounted for if there is a purchasing condition on the homes that they must be retained. And there must be a means of monitoring and policing any changes by homeowners that might remove or damage the biodiverse features originally created.

Question 28: Do you agree the biodiversity gain hierarchy should be updated for minor development?

Whilst we understand the challenges for SME builders, it should be ensured that BNG for minor development does not become meaningless. The consultation document states (page 12) that "*Although these minor developments subject to BNG cover only a small area as minor development, the cumulative impact of the large number of these developments is significant, and the habitat enhancements delivered through BNG make an important contribution to halting the decline of nature*".

Updating the hierarchy should not remove the need to consider onsite gains as a priority. A surge in minor development in a small area could result in communities losing access to significant green spaces with the benefits of BNG being delivered in unconnected locations some distance away.

Whilst there are more constraints on small sites, there is a need (and an opportunity) to provide widespread foraging corridors for wildlife and birds, otherwise we will be left with islands of high biodiversity and no means to connect them.

Question 29: Would relaxing the biodiversity gain hierarchy for minor development support small developers to deliver BNG more easily?

Whilst we are sure it would, that should not be the aim for the reasons set out above. There is a cost to all aspects of development. Delivering BNG is just one of them. The aim should be to enable BNG for small sites to meet its nature recovery ambition.

Question 30: 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.

No. We support the CIEEM suggestions to introduce a simple biodiversity tariff system as an optional alternative to an offsite credit and the development of local habitat banks offering small-sized biodiversity units, and fractions of units, at an affordable cost.

Question 31: Should the Spatial Risk Multiplier be disapplied for minor development purchasing off-site units?

No. Please see our response to question 30 above as an alternative.

Question 32: 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?

There are pros and cons to this. The comments by CIEEM are supported on the boundary discrepancies between LNRS and LPAs and NCAs.

Question 33: Should we review the metric habitat definition, condition assessment criteria and guidance to assist with the correct identification and classification of OMH?

Given that these options will not be limited to minor development and that they will be applicable to all development with a BNG requirement and OMH present (including NSIPs once BNG applies), the advice of the CIEEM should be sought.

Question 34: Should we allow alternative habitat delivery for the loss of Open Mosaic Habitat?

No. See our response to question 33.

Question 35: 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?

See our response to question 33.

Question 36: 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?

See our response to question 33.