



# BIODIVERSITY NET GAIN: A TARGETED EXEMPTION FOR RESIDENTIAL BROWNFIELD DEVELOPMENT

ACE/EIC Response to the Defra Consultation



## 1 Introduction

The Association for Consultancy and Engineering (ACE) is the business association for the UK's professional consultancies and engineering companies operating in the social and economic infrastructure sectors. As the leading voice for the sector, we foster collaboration to propel the industry to fulfil its ambitions.

We champion infrastructure and the built environment - helping our sector to build a safe, prosperous and sustainable future.

The Environmental Industries Commission (EIC) champions new environmental markets to Government and other stakeholders and is the leading association representing the environmental technologies and services sector.

Together, we represent over 350 companies who provide insight and guidance on infrastructure and environmental projects at all scales and stages of development. Leveraging insight from global best practice, they bring innovation, solutions and cost effectiveness.

The sector is highly skilled, productive, and forward-looking—employing over 470,000 people and contributing more than £39bn to the UK economy. It competes on a global stage, exporting over £11.1 bn providing solutions to the world's pressing issues and holds the key to a brighter future.

For more information and opportunities to engage further with our membership, please contact Laura Doanova, [LDoanova@acenet.co.uk](mailto:LDoanova@acenet.co.uk).

## 2 Summary

ACE Group members recognise and support the Government's ambition to deliver sustained economic growth and to build 1.5 million new homes, using a 'brownfield first' approach.

However, whilst we agree with the Government's objectives, ACE Group members are concerned that there is not enough evidence presented to suggest biodiversity is blocking brownfield development and that a new targeted exemption for residential brownfield could impact the **balance of nature considerations with development needs**.

### What are the risks?

ACE Group members are concerned about the effects this new exemption would have on housing quality (and, by extension, on the people living in it), biodiversity and nature markets.

Our understanding is that the purpose of Biodiversity Net Gain, where it is delivered on site, is to drive the integration of nature and climate resilience into design to create healthy places for people to live in. BNG has driven a step change in the way biodiversity is considered in the development process because it is a legal requirement. We have some concern that reliance on other policies and guidance documents, like the National Planning Policy Framework, will be insufficient in incentivising nature-positive and climate resilient design. As such, exempting residential brownfield sites from BNG risks causing a situation where early ecological advice is not accessed, development and nature recovery are not planned together from the outset and, risks and opportunities relating to nature and climate are missed.

In cases where onsite delivery is not possible, BNG has made a positive impact on biodiversity by drawing private investment into nature, thereby enabling nature recovery at scale. Exempting additional developments from the BNG regime will reduce the finance available in nature markets and risk negatively affecting large-scale nature projects.

ACE Group members are concerned over the need for the exemption, as proposed, because:

- The new 0.2ha exemption to be introduced for small sites already exempts around half of all residential planning permissions that were previously required to deliver BNG.
- New guidance and flexibility being introduced as part of the new regime for small sites will make it easier to deliver BNG.
- Many brownfield sites have no, or minimal habitat value and therefore the 10% net gain requirement should not be onerous.
- In those cases where high value Open Mosaic Habitat (OMH) is present, changes to be introduced relating to habitat definition and flexible options for compensation should ease the challenge of delivering BNG.
- It introduces further complexity to the application of the policy, presenting a risk of slowing down, rather than speeding up, housebuilding (despite the cost savings for developers, as presented under 'Modelled impacts' in the consultation document).

### What would be a better alternative?

- We suggest a thorough impact assessment of the recently announced changes, including the small site exemption, proposals relating to spatial hierarchy and OMH definition and compensation before making further changes to the system.
- We believe there is potential in relaxing the spatial hierarchy for all scales of development, in line with BNG for small TCPA developments and BNG for NSIPs. This would make it easier for brownfield sites which are struggling to deliver onsite BNG to secure offsite delivery.

- We suggest the introduction of a targeted exemption for sites with contaminated land (such as old landfills), underpinned by a robust impact assessment. Many brownfield sites with legacy contamination, which are causing significant environmental harm, have proven to be undevelopable due to the high cost of remediation and BNG adds to these costs. Any new exemption should therefore target these sites.

### 3 Responses to specific questions

#### 1: Definition of brownfield residential development

#### 6. Do you support the proposed regulatory definition of residential brownfield development?

- Options: Yes / **No** / I don't know / I'm not sure
- Free text (optional): If you do not support the proposed definition, what specific changes would you make and why?

ACE Group members do not support the definition as currently drafted. In our view, the definition should be clearer, more precise and more robust if it is to be used as the basis for an exemption from a statutory biodiversity requirement.

Having multiple definitions of previously developed land (PDL) and Brownfield Sites within the regulatory system risks further complicating development. Whilst the definition seeks to remove ambiguity, it requires checking several sources and it is not yet clear who will arbitrate its application given the acknowledged lack of resources in local planning authorities (LPAs). The need to assess this definition creates more complexity and process in the BNG policy and leaves open the potential for misuse as has been evidenced in the current system in respect of the de minimis exemption.

In our view, the appropriate application of the definition for BNG should also provide greater clarity on mixed-use schemes and what is meant by 'predominantly residential'. This should be defined objectively, for example by reference to floorspace, site area, number of units, or another clear measure. Without this, there is a risk of inconsistent interpretation or deliberate manipulation of the presentation of schemes to avoid BNG and a risk of potential disputes at validation or determination stage.

Finally, ACE Group members are concerned about the exclusion of 'land used for landfill waste activities' from the definition. Many ACE Group members are contaminated land specialists. From their experience, many landfill sites, particularly unlined landfill sites, are already difficult to develop due to the costs associated with their decontamination. Mandating BNG on these sites may further exacerbate viability issues for developers which have already left some sites undeveloped for decades.

ACE Group members would welcome the inclusion of landfill sites in the regulatory definition of residential brownfield development. We believe that these sites should be the focus of any exemptions. However, we note that the presence of historical landfill sites in a landscape can promote biodiversity.<sup>1</sup> The introduction of this exemption should therefore be underpinned by a robust impact assessment.

We would also welcome meaningful discussion with Government on the interaction between different policies affecting brownfield land development and how we can efficiently deliver the clean-up and development of old landfill sites. Under the current system, there is misalignment between the objectives of legislation and policies affecting contaminated land (such as the environmental permitting regime, the Waste Framework Directive and contaminated land legislation). This diverts the focus away from what should be the ultimate objective – which is to reduce environmental harm as much as possible.

This issue has been raised by other industry stakeholders, see for example [National Brownfield Forum: Interactions Between Government Policies Affecting the Planning and Development of Brownfield Land in England](#).

<sup>1</sup> See Callum J. Macgregor et al., "Brownfield sites promote biodiversity at a landscape scale," *Science of The Total Environment*.804 (2022), <https://doi.org/10.1016/j.scitotenv.2021.150162>

**7. Do you agree that the proportion of the land within the planning application boundary should be  $\geq 75\%$  Previously Developed Land (PDL) to qualify?**

- Options: Yes / **No** / I don't know / I'm not sure. If no, which % PDL do you support?  $\geq 70\%$  PDL /  $\geq 80\%$  PDL / Other PDL% (please specify)
- Free text: Please provide the rationale and any evidence supporting your response (for example case studies, data, or experience).

ACE Group members are concerned about this approach – and the proposed threshold – as it may reduce incentives to avoid impacting or retain higher value habitats.

In our view, using a percentage-based threshold could become an incentive to adjust red-line boundaries to secure the exemption, as opposed to reflecting the ecological effects of the development. For example, an applicant could include sufficient previously developed land within the boundary to meet the percentage-based test, while the actual areas of habitat loss or development impact include the non-PDL part of the site.

Additionally, a 75% threshold may be too low. It may be relatively easy to manipulate the red-line boundaries (as explained above) and the remaining 25% of the site, which is a notable proportion, could be valuable habitat.

If the Government proceeds with a percentage-based approach, ACE Group members recommend a higher threshold – such as 80-85% – to reduce the risk of boundary manipulation.

Lastly, as explained in our response to question 6, the 75% threshold represents a strict criterion which will need to be assessed. There is also a need for further clarity on which bodies would be responsible for assessing that sites qualify for the exemption under the proposed definition. ACE Group members are concerned that further complexity could potentially further slow down housebuilding.

**8. To what extent do you agree that the proposed regulatory definition aligns with current interpretations of 'Previously Developed Land' under the NPPF glossary for planning decisions?**

- Options: Strongly agree / Agree / Neither agree nor disagree / Disagree / Strongly disagree / I do not have experience with the current interpretation of PDL / **I don't know** / I'm not sure
- Free text (optional): If you disagree or strongly disagree, please identify the circumstances where you consider divergence between the definitions would occur. Information on the frequency of these circumstances and the impact of using the proposed regulatory definition for a BNG exemption would be welcome.

**9. Overall, do you consider the proposed definition and evidential requirements to be proportionate and workable for applicants and local planning authorities?**

- Options: Strongly agree / Agree / Neither agree nor disagree / Disagree / **Strongly disagree** / I don't know / I'm not sure
- Free text (optional): If you disagree or strongly disagree, please state why it would not be proportionate and workable from either an applicant or local planning authority perspective. Information on the likely costs incurred or time taken by either would be welcome.

As currently presented, ACE Group members do not consider the proposed definition and evidential requirements to be proportionate and workable.

If LPAs are required to determine whether a development qualifies for the exemption, several separate criteria may need to be checked. This includes: the proportion of the application boundary that is PDL; whether the relevant structures were present from 1948 onwards; whether the scheme is predominantly residential; whether it falls within the relevant area threshold; and whether priority habitats or other ecological constraints are present.

This is likely to place significant burden on LPAs, many of which already have limited capacity. It may also create additional work and uncertainty for applicants where the evidence requirements are unclear or applied inconsistently across authorities. This may open the potential for self-assessment and the possibility of some applicants making wrongful claims of exemptions as has been seen under the current de minimis exemption. There is a risk that this approach would not lead to a simplification of the system: work may simply shift from preparing a BNG assessment to evidencing and disputing eligibility for exemption.

If the exemption were introduced, Government should set nationally consistent validation and evidence requirements. These should include a PDL plan, evidence of the date and status of relevant structures, a clear calculation of the residential component, and a clear statement confirming whether priority habitats, irreplaceable habitats, watercourses, riparian zones or hedgerows are present. Self-certification should not be relied on.

## 2: Considering a targeted BNG exemption

### 10. What impact do you think the introduction of a mandatory BNG requirement has had on brownfield residential schemes of less than 2.5 hectares?

- Options: No impact / Negative impact / Positive impact / **Mixed impact** / I don't know / I'm not sure
- Please specify specific impacts (drop down)
- Free text (optional): Please provide evidence if possible.

BNG can introduce additional administrative requirements and may add costs on constrained sites and those with Priority Habitats like Open Mosaic Habitat (OMH), particularly where on-site delivery is difficult and off-site units are required. However, industry guidance exists on how to correctly address OMH (see practice note developed by the Construction Leadership Council with input from our members: [How to Address Open Mosaic Habitat when Delivering Biodiversity Net Gain](#)) and proposed changes to be introduced based on the response to the 2025 consultations already address some of these issues.

Crucially, BNG has been beneficial by incentivising early consideration of biodiversity at concept stage rather than at the end of the design process. This early identification of risks and opportunities is particularly valuable on constrained brownfield sites where introducing ecological considerations after key layout and viability decisions have been made may not be possible or be more expensive. This has been one of the key benefits of the BNG policy.

### 11. Do you support a targeted area based exemption for residential brownfield development? We are also consulting on a proposed definition of “brownfield development”, including the threshold for the proportion of previously developed land (%PDL). For this question, please answer on the basis that the proposed definition will be taken forward.

- Options: Yes / **No** / I don't know / I'm not sure
- Free text: Please explain your reason.

ACE Group members do not support a targeted area-based exemption for residential brownfield development because (a) already announced changes make delivery easier, (b) further exemptions undermine the policy and carry risks, and (c) in our view, there are more credible alternatives.

a. Announced changes

In our view, the 0.2ha exemption for small sites as well as new guidance and further flexibility in the system already makes BNG delivery easier.

b. Risks

According to the Government's own estimates, introducing a 2.5ha exemption for residential brownfield (on top of the announced 0.2ha exemption for small sites) would exempt 64% of planning applications from BNG. There is a risk that further 'slicing' BNG by introducing new exemptions undermines the policy which has made a positive material difference for nature and people – and it therefore presents significant risks.

Whilst some residential brownfield sites have no or minimal habitat value, others can be ecologically important. In urban areas, they may provide rare pockets of biodiversity, stepping stones in ecological networks, open mosaic habitat, watercourse and riparian opportunities. A broad exemption would reduce the incentive to incorporate these features into design. It could also reduce the pool of buyers for biodiversity units and weaken investment in the nature market.

Where it can be challenging to deliver net gain on brownfield sites, an option could be to relax the spatial hierarchy (for all scales of development, brownfield or not) as was done for small TCPA developments and will be done in the upcoming NSIP regime. This would make the policy overall simpler and would give more flexibility to developers for delivery. ACE Group members believe the BNG system should be as simple as possible and making the spatial hierarchy element consistent across the BNG regime would be a step in the right direction in that regard.

However, it needs to be recognised that BNG is designed to deliver positive outcomes not just for nature, but also for people which is why onsite delivery has been prioritised in the spatial hierarchy. This principle should therefore remain in the BNG policy even if more flexibility is permitted by relaxing the hierarchy.

A broader point we must make is that nature is not a cost or a barrier. Local green spaces provide multiple essential functions: they prevent flooding and overheating, improve air quality and provide outdoor space for people which is essential for their wellbeing.

Beyond these essential functions, nature supports growth. It plays an important role in a rapidly growing industry – LPAs have invested heavily in recruitment and staff training to deliver BNG. A well-functioning BNG market could also generate [£250m in economic activity a year and support over 2450 full time jobs](#). It increases asset value – research from the Urban Land Institute shows that properties with biodiversity features can command price premiums of between 5% and 15%. It can also often save costs: for example, planting trees for passive cooling is cheaper than designing a complicated air conditioning system.

c. Alternatives

If a new exemption is to be introduced, it should focus on contaminated sites where (re)development has stalled due to viability issues – and where a BNG exemption could help unlock these sites.

All things considered, ACE Group members recommend that the Government focuses on assessing the impact of the changes already announced (see point a.) before making further changes to the BNG system. Providing access to simplified tools and guidance for SME developers, including the Small Sites Metric, digital metric platforms and streamlined LPA pre-application advice might also be a suitable alternative.

**12. If you support a targeted area-based exemption for residential brownfield development, which exemption threshold for a residential brownfield development do you support?**

- Options: 0.5 hectare / 1 hectare / 1.5 hectare / 2 hectare / 2.5 hectare / No preference / Other (please specify) / **Do not support** / I don't know / I'm not sure

ACE Group members do not support a targeted area-based exemption for residential brownfield development and therefore do not support any of the proposed thresholds.

If the Government proceeds with this exemption, ACE Group members recommend that the lowest possible threshold – in this case 0.5ha – should be considered and be subject to strong evidence safeguards.

**13. Do you think there is a case for an area-based exemption for residential brownfield development that is greater than 2.5 hectares?**

- Options: Yes / **No** / I don't know / I'm not sure
- Free text (optional): Please explain why or why not.

ACE Group members do not support introducing an exemption for residential brownfield development that is area-based.

As mentioned above, the 0.2ha exemption for small sites should already make it easier for around half of all residential planning permissions to build. Introducing a new exemption, especially for sites greater than 2.5ha (which represents quite large sites), may exacerbate the negative impacts on people, nature and nature markets. ACE Group members are concerned that there is not yet enough evidence that a residential brownfield exemption is necessary or proportionate.

**14. Do you foresee any unintended consequences arising from a targeted exemption for brownfield residential development?**

- **Yes** / No / I don't know / I'm not sure
- Free text (optional): If yes, please outline the types of risks or unintended consequences you consider most likely (for example ecological, administrative, market based or behavioural).

**Design and effects on people:** Part of the success of BNG as a policy lies in its ability to drive green infrastructure and better design, creating high-quality housing for people to live in. Whilst there are other policies like the National Planning Policy Framework which support the delivery of green infrastructure, planners look to legal requirements such as BNG to make appropriate decisions on planning applications. Exempting sites from mandatory BNG may lead to a situation where ecological advice relating to remaining policy and legislative compliance is not sought until designs are fixed. This may cause missed opportunities for better design and a perception that nature is a blocker.

**Ecological consequences:** Brownfield sites can support open mosaic habitat, scrub, grassland, urban trees, watercourses, riparian corridors and other habitats that contribute to urban biodiversity. Exempting these sites could lead to the loss, degradation or devaluing of ecologically important habitats.

**Watercourse consequences:** Exempting smaller brownfield sites could miss opportunities to incentivise deculverting (i.e. opening up and restoring a previously buried watercourse), remove bed and bank protection and improvements to riparian corridors (that could likely be accommodated within sites of this size), or miss the opportunity to incentivise development to avoid the riparian zone so it can be improved in the future. BNG should continue to apply where a watercourse or riparian zone is present within the red-line boundary. This should not be limited only to high distinctiveness watercourses, as opportunities for restoration and set-back can also apply to modified watercourses and ditches.

**Behavioural and administrative consequences:** The exemption could create incentives to manipulate red-line boundaries, phase schemes, restructure mixed-use proposals, or focus effort on proving exemption eligibility rather than improving site design. It may also create more disputes over PDL status, historic evidence, residential predominance and priority habitat presence.

**Nature market consequences:** The exemption would also significantly affect nature markets – at a time when they should be supported. There is potential for the market to provide appropriate solutions for small brownfield residential sites, such as fractional units, and Government should therefore further support its

development. As the Government acknowledges, this new market is an important lever to drive private investment into nature, which is crucial for meeting the goal for at least £500million of private investment to flow into nature recovery every year by 2027 – as set out in the Government’s Nature Markets Framework 2023. The proposed exemption presents a risk of missing this target. More broadly, by removing sites from the offsite market, we risk slowing progress towards the Environment Act targets and commitments in the Environmental Improvement Plan.

**15. How easy or difficult do you think it would be for applicants and LPAs to apply this exemption in practice?**

- Options: Very easy / Easy / Neither / Difficult / **Very Difficult** / I don’t know / I’m not sure
- Free text (optional): Please indicate any specific areas where clarity or further guidance would be required.

ACE Group members believe that the application of this exemption will be very difficult as there are many criteria that will have to be assessed: including, but not limited to, the size of the site, the definition of residential brownfield development (with its 75% threshold), and presence of priority habitat. In our experience, there have been difficulties with applying the de minimis exemption and ACE Group members are concerned about introducing a new, potentially complicated, exemption.

A self-certified approach should be avoided. Exemptions based only on an applicant’s belief, or on variable LPA requests for evidence, risk inconsistent application and overuse. We could also see an increase in delays where LPAs challenge exemption claims after designs have progressed.

**16. Do you think any additional measures are needed to ensure that the exemption is appropriately targeted in relation to potential ecological impacts?**

- Options: **Yes** / No / I don’t know / I’m not sure
- Free text (optional): If yes, please outline what additional measures you consider necessary.

If the exemption is taken forward, additional safeguards are essential. In our view, an ecological survey by a competent ecologist should be required where any vegetated habitat, watercourse/riparian zone, hedgerow, trees or other ecological features are present. Desk-based methods alone, including reliance on mapped datasets, will not be sufficient to identify all priority habitats or ecologically valuable brownfield features. The exemption should not apply where priority habitats, open mosaic habitat, irreplaceable habitats, ancient or veteran trees, watercourses, riparian zones or hedgerows are present. Defra should also require standardised validation evidence and LPA sign-off, not self-certification.

**17. If you have any further evidence about the administrative, viability, biodiversity or nature market impacts for this exemption that you have not provided in previous responses, please provide it in the box below. Any evidence submitted will be reviewed by the department but will not be analysed, summarised, or included in the published government response.**

- Free text (optional): Please summarise further evidence.

ACE Group members’ experience from infrastructure and operational land suggests that brownfield status should not be treated as a proxy for low ecological value. Rail, road and energy land can include areas of hardstanding, operational structures and previously developed land, but can also contain unmanaged land, linear habitats, scrub, grassland, trees, watercourses and ecological corridors. These areas can be important for connectivity, especially in urban or peri-urban landscapes.

The rail estate is particularly relevant. We note that Network Rail has launched Platform4 to bring forward development and regeneration on surplus brownfield rail land, with ambitions to enable 40,000 homes and significant commercial floorspace over the next decade. This demonstrates the scale of brownfield and operational land that may come forward for regeneration. It also highlights the need for BNG policy to

maintain incentives for public and private landowners to identify land that is suitable for biodiversity assets, not only land suitable for built development.

Where brownfield or operational land is unsuitable for development because of access, flood risk, operational constraints or other factors, there may be opportunities to deliver habitat creation, restoration or enhancement. Diluting BNG requirements for brownfield land could reduce the incentive to identify and invest in such opportunities. Public bodies and infrastructure landowners should be encouraged to consider biodiversity asset opportunities on suitable brownfield or operational land as part of wider land stewardship.

Finally, the term 'area-based exemption' should be clarified. It could be interpreted as exempting only area habitat units, while hedgerow and watercourse units remain in scope. In our view, Defra should state explicitly whether any exemption applies to area, hedgerow and watercourse units.