

Wildlife and
Countryside

LINK



The
Wildlife
Trusts

Biodiversity Net Gain Exemptions Myth Busters

The Government's case for keeping key Biodiversity Net Gain exemptions doesn't hold up

The examples used to justify retaining the de minimis exemption loophole are largely developments that wouldn't need to deliver Biodiversity Net Gain (BNG) anyway. We go through them one by one.

The Government's recent response to the Biodiversity Net Gain (BNG) consultations confirmed that the de minimis exemption, which currently lets developments claim they are exempt from BNG by self-declaring they have 'low-to-no' impact, will remain in place, for the time being...

To justify this, officials pointed to a list of supposedly "low impact" developments on larger sites that they say demonstrate the need for a permanent, low-impact exemption.

There's just one problem, looking at those examples closely, most of them wouldn't have to deliver BNG in the first place, with or without a de minimis threshold. The case being made to retain this loophole is built on examples that are, at best, misleading and, at worst, a smokescreen for continuing to let genuinely impactful developments off the hook.

Let's go through them.

Myth 1: Change of use applications

The Government's claim

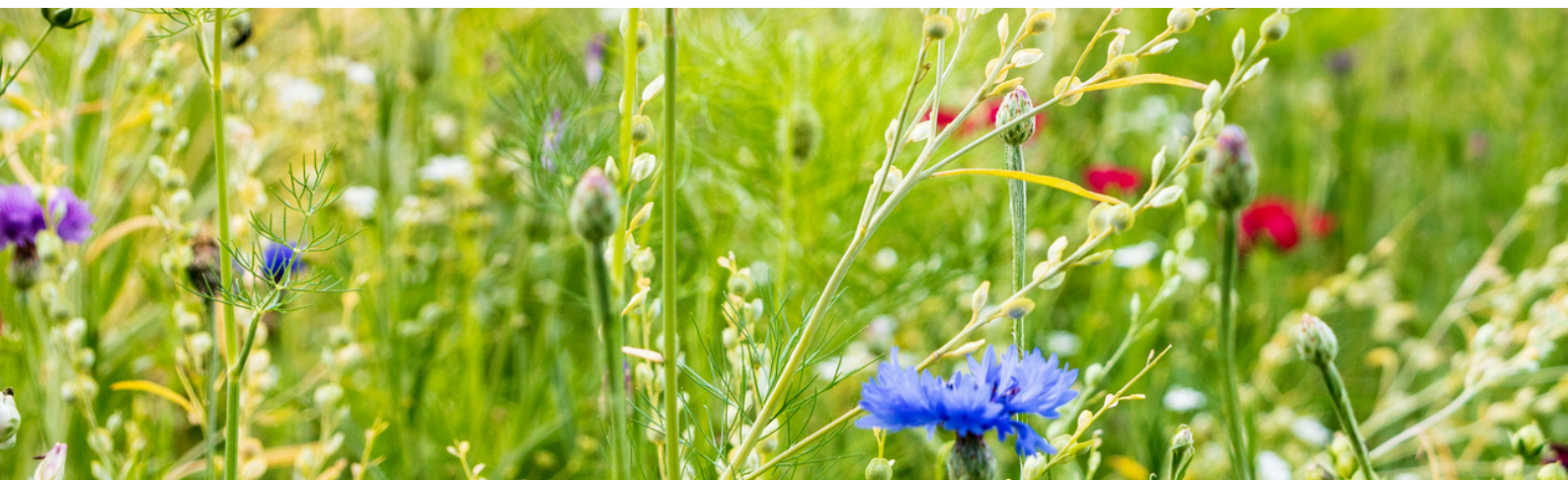
Change of use applications on larger sites are low impact and shouldn't have to deliver BNG, this justifies retaining de minimis.

The reality

A change of use application, say, converting a warehouse to offices, typically involves no or minimal physical works to land or habitat. With no-to-low ground disturbance, there are no habitat units to measure, and either no BNG obligation arises, or it would be small and simple.

Verdict

Where a change of use involves no habitat impact, BNG is simple to apply anyway. This example does not justify de minimis, it's a category of development that effectively self-exempts through the mechanics of BNG itself.



Myth 2: Installation of solar panels on an industrial building

The Government's claim

Installing solar panels on an existing industrial building is low impact development that shouldn't have to deliver BNG and is cited as a reason to keep de minimis.

The reality

Solar panels on an existing rooftop involve no change to ground-level habitat whatsoever. The building and its surroundings remain identical. There is no habitat to measure, no biodiversity units at stake, and therefore no BNG compensation obligation. Many such installations are also covered by permitted development rights and don't even require a planning application.

Verdict

A development with zero habitat footprint generates zero biodiversity unit impact. A competent person need only complete a simplified metric (it can take as little as three minutes to complete [see our video] and no BNG would need to be delivered at all. This example is a red herring.



Myth 3: Replacing a petrol station with an EV charging station

The Government's claim

Replacing a petrol station with EV charging infrastructure is a low-impact development, offered as a type that should continue to be exempt from BNG under de minimis.

The reality

Petrol stations sit almost exclusively on sealed hardstanding, concrete, tarmac, and forecourt. To use the government's own guidance: "It's worth remembering that existing sealed surfaces such as tarmac or buildings are assigned a zero score in the statutory biodiversity metric, meaning that these surfaces are effectively exempted from the 10% net gain requirement". There is no habitat present on the existing site, and a like-for-like replacement involves no habitat loss or gain. With no pre-existing habitat units, there is nothing for BNG to act upon. It is a three-minute task of putting "zero" in a metric.

Verdict

Hardstanding-to-hardstanding redevelopment produces no change in habitat units. BNG would not apply in practice. The de minimis exemption is not needed here, the nature of the site solves the problem.



Myth 4: An upward extension of a large block of flats

The Government's claim

Adding floors to an existing block of flats is low impact, used to justify why a permanent low-impact exemption is necessary for sites above 0.2 hectares.

The reality

An upward extension by definition adds storeys to a building that already exists. It does not extend the footprint of the structure into surrounding land. Unless there are associated external works that disturb habitat at ground level, the biodiversity baseline of the site remains unchanged, and there is nothing for BNG to require. Like the other examples, this is a case where the mechanics of BNG already do the work.

Verdict

No ground-level habitat impact, no BNG compensation obligation. The upward extension example does not make the case for de minimis, it is already effectively outside BNG's scope.



In short: Every single example offered by the government to justify the de minimis exemption describes a development that, in practice, would not need to deliver BNG anyway. Or where simple mechanics already exist to deal with such cases quickly and efficiently.

So, what is the de minimis exemption actually doing?

If the examples given to defend de minimis don't actually need the exemption, it raises an obvious question: what is it really exempting in practice?

It's worth remembering de minimis was originally intended to exclude the likes of "street furniture or boundary walls". However, what it's currently being used for, as shown by extensive data, is deeply troubling. Rather than acting as a convenience for genuinely struggling developments, the de minimis exemption has become a vehicle for widespread non-compliance with BNG.

Analysis by eftec, commissioned by the Lifescape Project and Wildlife & Countryside Link and drawing on Planning Portal data from BNG's entire first year, reveals the scale of the problem. Of the 101,728 planning applications submitted between March 2024 and February 2025, an extraordinary 86% claimed some form of BNG exemption.

More than half of all applications relied specifically on the de minimis route.

But here is what makes the pattern so suspicious, around 35% of developments on sites larger than 0.5 hectares, including those covering several hectares, also claimed de minimis...

A genuinely 'de minimis' impact at that scale is, as eftec puts it plainly, "not credible in more than a tiny number of exceptional circumstances." Yet it is happening routinely, across sites that are anywhere from half a hectare to several hectares in size.

The conclusion is clear: "The level of use of the de minimis exemption suggests it is being misinterpreted within the BNG system." Whether due to poor understanding, poor monitoring by local authorities, or deliberate gaming, the report notes that the sheer scale of use across all development types or all sizes "suggests that the de minimis exemption may be being intentionally misinterpreted."

The habitat loss we can't afford to ignore

This is not just a bureaucratic issue, it is causing a real, measurable loss of nature. Approximately an area the size of the city of Manchester, (< 14 000 ha) is being lost to development annually with no obligation to measure impacts, or restore or offset a single biodiversity unit through this loophole.

Keeping de minimis alongside the new 0.2-hectare area-based exemption would make a bad situation worse. Link's analysis shows that a dual exemption regime could push total exemption rates above 90%, meaning that an area roughly twice the size of Bristol , around 22,000 hectares,

could be built on each year with no requirement to create or enhance a single habitat through BNG. By contrast, properly closing the loopholes and enforcing BNG as intended would bring an area the size of the Isle of Wight back into scope annually.

Responsible developers are already leading the way

The Government's argument that BNG represents an 'intolerable' burden is further undermined by the behaviour of developers who are choosing to go beyond minimum requirements and embracing BNG as both a business asset, and a badge of honour, not a box-ticking exercise.

Analysis by Joe's Blooms of over 12,000 uses of digital BNG compliance tools, covering 100 detailed case studies, found that the vast majority of small site BNG applications were completed without difficulty, with 41.6% completed in under 24 hours and 98.2% reporting no issues, with costs of biodiversity compensation consistently under £2000. In many cases, applicants voluntarily went well beyond the 10% requirement, because the tools made it straightforward and the gains were visible. The claim that BNG is unworkable for responsible small developers simply does not stand up to scrutiny.

What must happen next

The de minimis exemption must be closed.

The new 0.2-hectare area-based exemption already handles the genuinely smallest developments. It is precisely the kind of clean, objective, size-based threshold that can work in practice without creating perverse incentives. There is no policy justification for retaining the existing impact-based route alongside it.

The system's existing toolkit: the BNG metric (small sites and full), permitted development rights, and the mechanics of the biodiversity unit system, are more than sufficient to handle genuinely low-impact development without a complicated self-declaratory loophole. If a site has no habitat to measure, it generates no biodiversity units and has no BNG obligation. No exemption needed. The metric does the work.

At the very minimum, if de minimis is retained in any form, it must require robust, verifiable evidence, as set out in Wildlife & Countryside Link's briefing No More Loopholes. That means evidence of site eligibility, a pre-development biodiversity value assessment, a completed metric sheet, a habitat plan, and confirmation that no priority habitats have been impacted.

The Government is using a list of carefully selected fringe cases, developments that were never genuinely at risk of an onerous BNG requirement, to justify maintaining an exemption that does real damage. That is not good enough. The de minimis exemption should be removed. Or, at the very least, require robust evidence to justify its legitimate use. Noncompliance must not be easier than compliance.

A system that promises 'net gain' should deliver 'net gain', not the systematic unmeasured loss of habitats through dodgy exemptions.

The de minimis loophole has to go.