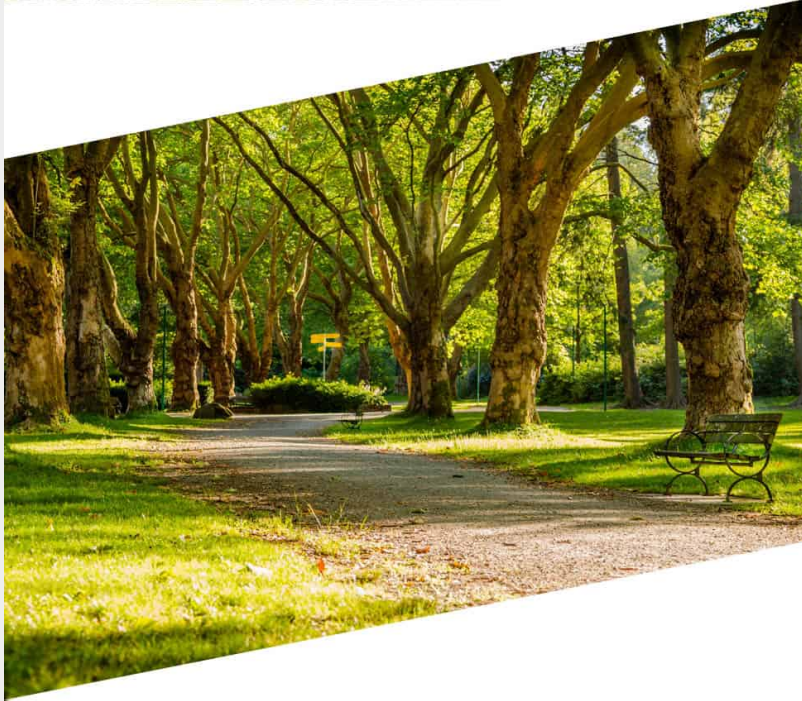


THE EXEMPTIONS TO MANDATORY BIODIVERSITY NET GAIN

Posted on April 4, 2024



Mandatory Biodiversity Net Gain (“BNG”) came into effect on 12th February, for major developments and now is in place for minor developments as of the 2nd April 2024. This mini-guide provides an overview of circumstances when it does not apply. Legislation that sets out the exact circumstances in which a development is exempt is contained in the Biodiversity Gain Requirements (Exemptions) Regulations 2024.

Firstly, it is important to note that just because mandatory BNG does not apply there are many authorities in which BNG forms part of planning policy within the development plan. This may mean that BNG may still apply and even in some circumstances be higher than the 10%. Cambridge County Council already requires 20%, and London Boroughs Kingston Upon Thames and Tower Hamlets are targeting a 30% uplift in their emerging local plans.

Statutory BNG requires that small sites use the small sites metric. However, we have noted in some planning policies, that the statutory biodiversity metric (as used for major developments as a starting point) is specified, currently version 4.0, and any forthcoming version henceforth. This does throw up a confusing situation, whereby the policy specifically requires the formal metric, whereas the legislation requires the use of the small sites calculation tool. We would hope that pragmatism will prevail.

Back to mandatory BNG, and exemptions which are:

Regulation 4 - De Minimis Exemption: The applicant impacts less than 25 sqm of non-zero distinctiveness habitat and less than 5 sqm of hedgerow and does not impact priority habitat.

“(a) “priority habitat” means a habitat specified in a list published under section 41 of the Natural Environment and Rural Communities Act 2006(2);

(b) a habitat is impacted where the habitat is lost or degraded such that there is a decrease in the biodiversity value of that habitat;

(c) “linear habitat” means the types of hedgerow habitat or watercourse habitat identified for the purposes of the biodiversity metric(3) (which are measured by length (expressed in kilometres) rather than area).”

Regulation 5 - Householder Applications: The application is for householder development as per the definition contained in article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Regulation 6 - High Speed Railway Transport Network: Development forming part of or ancillary to HS2.

Regulation 7 - Biodiversity Net Gain Sites: The application is to primarily create a BNG site.

Regulation 8 - Self-build or Custom-build: Self-build or custom-build applications of 9 dwellings and below. Self-build or custom housebuilding has the same meaning as in section 1(A1) of the Self-build and Custom Housebuilding Act 2015.

Urgent crown developments

Development Order: Development that has been granted planning permission by a development order, including permitted development rights.

Understanding the policy requirements as well as if mandatory BNG applies is a crucial first step in taking forward sites to planning. We recommend that clearly explaining why a scheme is exempt will be required as guidance is still being absorbed, this is particularly in relation to Regulation 4 as listed above. Examples of sites that will be exempt under Regulation 4 could be on land where it is void of habitat and vegetation and not within 10m of a watercourse. Embedding whether to BNG or not to BNG at the earliest stages will be needed to avoid unnecessary expense and headache. Whilst the credit market is still developing, it is clear that if this is the only route to achieving the uplift, it could be costly.

If you want to understand whether your site or project can be exempt from Mandatory then get in touch with our team for an initial chat. [Contact Us](#)

The Biodiversity Gain Requirements (Exemptions) Regulations 2024 (Regulation 4)