# Biodiversity Net Gain Statement for Development Below the BNG Threshold



## National Co-Op – Shoreham – Ham Road

*Proposal for the installation of two rapid electric vehicle charging stations and ancillary equipment within the car park of Co-operative Food. Three existing parking spaces will become two EV charging bays, including one fully accessible bay.*

Ham Road
Shoreham-by-Sea
Brighton
BN43 6PA

# 1. Introduction

1.1 "*Biodiversity net gain (BNG) is a way of creating and improving natural habitats. BNG makes sure development has a measurably positive impact ('net gain') on biodiversity, compared to what was there before development.* […]

1.2 *In England, BNG is mandatory under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021). Developers must deliver a BNG of 10%. This means a development will result in more or better quality natural habitat than there was before development*."[1]

1.3 "*BNG for small sites apply from 2 April 2024. The definition of small sites is summarised below, with the full definition found in the regulations. Small site development includes:*

- *Residential development where the number of dwellings is between 1 and 9, or if unknown the site area is less than 0.5 hectares*
- *Commercial development where floor space created is less than 1,000 square metres* ***or the total site area is less than 1 hectare***"[2]

1.4 The term 'commercial development' is not defined. This planning application is for 'the erection of plant or machinery' on an existing car park with existing hardstanding. It is not a major development by reference to the definition in the Development Management Procedure Order 2015 (as amended). It does not fall under other categories of development to which planning application fees are calculated such as commercial buildings.

1.5 It is therefore possible to erroneously to categorise this proposal as a 'small site'.

1.6 However, BNG does apply to all development. Some development types are exempt[3].

1.7 This development is exempt.

[1] https://www.gov.uk/government/collections/biodiversity-net-gain
[2] https://defralanduse.blog.gov.uk/2024/01/18/bng-launch-date-confirmed/
[3] https://defralanduse.blog.gov.uk/2024/01/22/biodiversity-net-gain-what-are-the-exemptions/

1.8 "*Where applicants consider that the development would not be subject to the general biodiversity gain condition, Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 provides that the* ***applicant must provide a statement as part of the planning application setting out why they believe this is the case***"[4].

1.9 This is that statement.

# 2. Justification

2.1 Government guidance[5] currently clearly states:

"*The developments listed in this guide are exempt from BNG rules.*

*Small sites (exempt until April 2024)*

*A small site does not fall into the category of a major development, as defined in article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.*

*A small site means:*

- *residential development where the number of dwellings is between 1 and 9, or if this is unknown, the site area is less than 0.5 hectares*
- *commercial development where floor space created is less than 1,000 square metres or total site area is less than 1 hectare*
- *development that is not the winning and working of minerals or the use of land for mineral-working deposits*
- *development that is not waste development*

*Developments below the threshold*

*A development that's below the threshold means that it does not impact a priority habitat and impacts less than:*

- *25 square metres (5m by 5m) of habitat*
- *5 metres of linear habitats such as hedgerows*".

2.2 Further Government guidance provides great detail as set out below (our emphasis in bold):

[4] https://www.gov.uk/guidance/draft-biodiversity-net-gain-planning-practice-guidance
[5] https://www.gov.uk/guidance/biodiversity-net-gain-exempt-developments

**"***Biodiversity Net Gain - what are the exemptions?*

*What are the exemptions?*

*The exemptions to the mandatory requirement were set out in the government response to the BNG regulations and policy consultation. The exemptions legislation was laid before parliament on 19 January and will become law when BNG goes live on 12 February.*

*The list of exemptions from the BNG requirement is narrow and focused, keeping the policy ambitious, whilst being proportionate and deliverable for developers and local planning authorities:*

*Development below a de minimis threshold*

***This exemption applies to development that does not impact a priority habitat and impacts less than 25 square metres (e.g. 5m x 5m) of non-priority onsite habitat (such as modified grassland)** or 5m for non-priority onsite linear habitats (such as native hedgerows). **This exemption is designed to ensure that BNG does not apply to either very small scale development or development which does not impact habitat, through loss or degradation within the red line boundary**. In practice, this will be demonstrated by a decrease in the biodiversity value, which is determined by the biodiversity metric.*

*If a development impacts less than 25 square meters of non-priority habitat but 5m or more of non-priority linear habitat is negatively impacted, or vice-versa, then the exemption will not apply and all habitats will be subject to BNG.*

*If any priority habitat within the red line boundary of the development is impacted, the exemption will not apply and all habitats will be subject to BNG.*

*Developers should consult publicly available data sets on priority habitats to check whether there is priority habitat on site, they do not need to seek specialist advice to record the presence of priority habitat.*

***An example of a de minims exemption would be** a minor extension to a visitor centre at a public nature park to accommodate a new accessible ramp and entrance lobby **on an existing hardstanding area. This proposal would not negatively impact or alter any habitat, but the red line which defines the development is likely to contain more than 25sqm of non-priority habitat**.*

***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***.

***This exemption ensures that BNG is applied proportionately and that a development does not incur unnecessary extra cost*** *to, for example, comply with accessibility requirements as in the example above. It also encourages developers to design in ways to avoid impacting the habitat on site in the first place, following the biodiversity gain hierarchy.*

*Further information on this exemption, including what evidence will be required to show that a development is in scope of this exemption, is available in the* ***planning practice guidance***".

2.3 The Planning Practice Guidance on the topic is set out below:

*"About biodiversity gain*

*What is the statutory framework for biodiversity net gain?*

*Biodiversity net gain is a way of creating and improving biodiversity by requiring development to have a positive impact ('net gain') on biodiversity.*

*In England, biodiversity net gain is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021). This is referred to as biodiversity net gain in Planning Practice Guidance to distinguish it from other or more general biodiversity gains.*

*Under the statutory framework for biodiversity net gain, every grant of planning permission is deemed to have been granted subject to a general biodiversity gain condition to secure the biodiversity gain objective. This objective is to deliver at least a* ***10% increase in relation to the pre-development biodiversity value of the development*** *granted permission. This increase can be achieved through onsite biodiversity gains, registered offsite biodiversity gains or statutory biodiversity credits.*

*The general biodiversity gain condition is a pre-commencement condition: once planning permission has been granted, a Biodiversity Gain Plan must be submitted and approved by the planning authority before commencement of the development.* ***There are exemptions*** *and transitional arrangements* ***which disapply the condition from certain planning permissions****, as well as special modifications for planning permissions for phased development and the treatment of irreplaceable habitats.*

*The statutory framework for biodiversity net gain also includes provisions about information requirements for planning applications and the treatment of the condition on planning decision notices.*

*The relevant primary legislation for the statutory framework for biodiversity net gain is principally set out under Section 90A and Schedule 7A (Biodiversity Gain in England) of the Town and Country Planning Act 1990. This legislation was inserted into the Act by Schedule 14 of the Environment Act 2021 and includes amendments made by the Levelling Up and Regeneration Act 2023 and the Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations [2024].*

*The relevant biodiversity net gain regulations most directly relevant to planning are:*

- *The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations [2024] which commence biodiversity net gain for most types of new planning applications and provides transitional arrangements for section 73 permissions.*
- ***The Biodiversity Gain Requirements (Exemptions) Regulations [2024]** which prescribe exemptions for categories of development to which biodiversity net gain does not apply.*
- *The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations [2024] which amend the Town and Country Planning (Development Management Procedure) (England) Order 2015 and the Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013 to include provisions related to planning applications and the Biodiversity Gain Plan, as well as modifications for phased development.*
- *The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations [2024] which set out the modifications for irreplaceable habitat.*

*In addition, there are regulations for the Biodiversity Gain Site register established under section 100 of the Environment Act 2021 for registered offsite biodiversity gains.*

*Paragraph: 001 Reference ID: 74-001-2023*

*[…]*

*Which planning permissions are in scope and* ***which are exempt*** *from biodiversity net gain?*

***While every grant of planning permission in England is deemed to have been granted subject to the general biodiversity gain condition****, commencement and transitional arrangements, as well as* ***exemptions, mean that certain permissions are not subject to biodiversity net gain****.*

*Biodiversity net gain has only been commenced for planning permissions granted in respect to an application made after [January xx 2024 subject to parliamentary timetabling]. Permissions granted for applications made before this date are not subject to biodiversity net gain.*

*This general commencement for applications does not apply to:*

- *retrospective planning permissions made under section 73A; and*
- *section 73 permissions where the original permission which the section 73 relates to was either granted before [January xx 2024 subject to parliamentary timetabling] or the application for the original permission was made before [January xx 2024 subject to parliamentary timetabling]*

*Biodiversity net gain has not been commenced yet for planning permissions which have granted through other routes to permissions. These include:*

- *local development orders*
- *neighbourhood development orders*
- *successful enforcement appeals*
- *deemed planning permission*

*The grant of permission in principle is not within the scope of biodiversity net gain (as it is not a grant of planning permission), but the subsequent technical details consent (as a grant of planning permission) would be subject to the general biodiversity gain condition.*

*The approval of reserved matters for outline planning permissions are not within the scope of biodiversity net gain (as they are not a grant of planning permission).*

***There are specific exemptions from biodiversity net gain for certain types of development****.* ***The exemptions are set out in*** ***paragraph 17 of Schedule 7A of the Town and Country***

***Planning Act 1990* and the Biodiversity Gain Requirements (Exemptions) Regulations [2024].**

***The general biodiversity gain condition does not apply to the following types of development:***

- *Temporary exemption for non-major developments (until April 2024) Defined as development not defined as major development under the Article 2 Town and Country Planning (Development Management Procedure) (England) Order 2015. The exemption will continue to apply to section 73 permissions where the original permission which the section 73 relates to was subject to this temporary exemption.*
- *Householder development as defined within article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.*
- *Development granted planning permission by a development order under section 59 This includes permitted development rights.*
- ***Development subject to the de minimis exemption - development that does not impact a priority habitat and impacts less than 25 square metres (e.g. 5m by 5m) of habitat**, or 5 metres of linear habitats such as hedgerows.*
- *Self-build and custom build development - development which:*
  - *consists of no more than 9 dwellings, and*
  - *is carried out on a site which has an area no larger than 0.5 hectares, and*
  - *consists exclusively of dwellings which are self-build or custom housebuilding as defined in section 1(A1) of the Self-build and Custom Housebuilding Act 2015.*
- *Urgent Crown development granted under s293A TCPA 1990.*
- *Development of a biodiversity gain site - development which is undertaken solely or mainly for the purpose of fulfilling, in whole or in part, the biodiversity gain planning condition which applies in relation to another development.*
- *Development related to the high speed railway transport network - development forming part of, or ancillary to, the high speed railway transport network comprising connections between all or any of the places or parts of the transport network specified in section 1(2) of the High Speed Rail (Preparation) Act 2013*

*Paragraph: 003 Reference ID: 74-003-2023*

*[…]*

## *Biodiversity net gain: Submitting a planning application*

***What information should an applicant submit as part of a planning application, if they believe that the statutory biodiversity gain condition does not apply to the development****?*

*Where applicants consider that the development would not be subject to the general biodiversity gain condition, Article 7 of The Town and Country Planning (Development Management Procedure) (England) Order 2015 provides that the applicant must* ***provide a statement as part of the planning application setting out why they believe this is the case****.*

*The planning application form* includes space for this statement. An applicant would be expected in this statement to set out what exemption(s) or transitional provision(s) apply to the development. In some cases, the exemption or transitional provision will be evident as they relate to the type of permission: the planning application form for household development already includes a pre-populated statement. In other cases, evidence may need to be provided. Example scenarios are set out below.*

*Scenario 1 – Application for planning permission for a small scale brownfield development*

*The proposed development is for the redevelopment of an existing office building into 25 residential units,* ***it would not involve the loss of any priority habitat, or 25 square metres of habitat that has biodiversity value greater than zero*** *and less than 5 metres in length of linear habitat.* ***In this scenario the applicant would set out on the planning application form that the biodiversity gain condition would not apply, and state that they believe development qualifies for the de minimis exemption*** *(set out in Regulation 4 of The Biodiversity Gain Requirements (Exemptions) Regulations [2024]).*

*Scenario 2 – Application for householder development:*

*The proposed application is for a householder development, such as the development of a side and rear extension, loft conversion, or front extension. The householder planning application form already includes a statement setting out that development subject to a householder development is exempt from the general biodiversity gain condition, and the applicant would indicate on the form they accept that this is the case for the proposed development.*

*Scenario 3 – Application under section 73 to vary a condition related to a planning permission where there has previously been an approved Biodiversity Gain Plan:*

*The application is for a variation of condition under section 73 of the Town and Country Planning Act 1990, which seeks to change the opening hours of the previously approved permission for a retail unit which already has an approved Biodiversity Gain Plan. The proposed development does not affect the previously approved post-development Biodiversity value, so the applicant would indicate that by virtue of section 73(2D) of the Town and Country Planning Act 1990 the previous Biodiversity Gain Plan is regarded as approved.*

*Paragraph: 008 Reference ID: 74-008-2023*"

# 3. Conclusion

3.1 To conclude, this statement sets out our justification for why we are of the opinion that this small development, on existing hardstanding with zero existing habitat, is exempt from biodiversity net gain requirements.