

**ELIGIBILITY OF A SMALL DEVELOPMENT APPLICATION FOR AN EXEMPTION
FROM THE SCHEDULE 7A GENERAL BIODIVERSITY GAIN CONDITION UNDER
THE *DE MINIMIS* CRITERIA**

A Report by Joe's Blooms Ltd.

Introduction

1. This report by Joe's Blooms Ltd sets out why an application for planning permission is eligible for an exemption from the general biodiversity gain condition ("mandatory biodiversity gain objective" or "objective"). Joe's Blooms is a company that specialises in helping developments comply with the mandatory biodiversity gain objective.
2. Throughout this document, the mandatory biodiversity gain objective is as set out in paragraph 13 ("general condition of planning permission") of Schedule 7A of The Town and Country Planning Act 1990 (as amended).
3. This report should be accompanied by a set of reasons for why the applicant believes they are exempt - this reason will have been generated based on the results of an assessment made by the applicant using Joe's Blooms' "Exemption Checker" service. Based on the information provided by the applicant (summarised in the Annex), **their application should be exempt from the general biodiversity gain condition by virtue of its compliance with Regulation 4 of The Biodiversity Gain Requirements (Exemptions) Regulations 2024.**

Background on the application and the mandatory biodiversity gain objective

4. The development is located in England. Under the relevant regulations, every application for planning permission, which is first made after 12 February 2024 for major sites and 2 April 2024 for minor sites, for the development of land in England has to be granted subject to the development's compliance with the mandatory biodiversity gain objective.¹
5. The only exemptions that are permitted are those that are set out directly in paragraph 17 of Schedule 7A of The Town and Country Planning Act 1990 (as amended) or regulations that are produced by the Secretary of State under that paragraph. Government documentation states that applicants who believe they are eligible for an exemption for Biodiversity Net Gain should provide reasons (and, where appropriate, evidence) for the exemption, enabling the local planning authority to consider whether the proposal is

¹ See (i) paragraph 13 of Schedule 7A of the Town and Country Planning Act 1990 (as amended); (ii) Regulation 3 of the Biodiversity Gain Requirements (Exemptions) Regulations 2024; and (iii) Regulation 2 of The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024.

genuinely exempt at the validation stage. This report is intended to serve as evidence to support the reasons given by the applicant.

Eligibility for a "De Minimis" exemption under Regulation 4 of The Biodiversity Gain Requirements (Exemptions) Regulations 2024

6. Paragraph 17 of Schedule 7A of the Town and Country Planning Act 1990 (as amended) includes provisions for exemptions from the mandatory biodiversity gain objective, which provides for exemptions for "development of such... description as the Secretary of State may by regulations specify." Such regulations were issued under The Biodiversity Gain Requirements (Exemptions) Regulations 2024.

7. Regulation 4 of The Biodiversity Gain Requirements (Exemptions) Regulations 2024 gave effect to this intent, stating:

"The biodiversity gain planning condition does not apply in relation to planning permission for development which meets the first and second conditions. (2) The first condition is that the development does not impact an onsite priority habitat. (3) The second condition is that the development impacts— (a)less than 25 square metres of onsite habitat that has biodiversity value(1) greater than zero; and (b)less than 5 metres in length of onsite linear habitat.

8. Furthermore, Government guidance published on www.gov.uk provides the exact same set of tests.² The wording is as follows:

"A development that does not impact a priority habitat and impacts less than: 25 square metres (5m by 5m) of on-site habitat 5 metres of on-site linear habitats such as hedgerows A development 'impacts' a habitat if it decreases the biodiversity value."

9. The applicant was asked to provide relevant information about their development, including whether they fall outside the definition of a major development, and to confirm that the application for planning permission was first made (or granted) before 2nd April 2024.

10. Based on this information, and on the information provided by the applicant, it is the opinion of Joe's Blooms Ltd. that the development is exempt from the mandatory

² See <https://www.gov.uk/guidance/biodiversity-net-gain-exempt-developments> (Accessed May 2024)

biodiversity gain objective under Regulation 4 of The Biodiversity Gain Requirements (Exemptions) Regulations 2024:

- a) The development does not impact any priority habitat (there is no evidence of any priority habitat within 500m of the site);
 - b) The development does not impact more than 25m² of non-zero rated habitat
 - c) The development does not impact more than 5m of linear habitat.
11. It is our further assessment that no further reason or evidence is required to demonstrate the applicant's eligibility for an exemption for the mandatory biodiversity gain objective set out in Schedule 7A of The Town and Country Planning Act 1990.

Disclaimer

12. This report is provided as a supplementary source of information to accompany a set of reasons for an exemption from the BNG objective. That set of reasons was based on an assessment of the information provided by the applicant and is predicated on that information being complete and accurate.
13. This report only considers the development's eligibility for an exemption from mandatory Biodiversity Net Gain as set out under Schedule 7A of the Town and Country Planning Act 1990 (as amended). It does not consider other requirements beyond the mandatory Biodiversity Net Gain, which the development may or may not need to comply with, including requirements that may, notwithstanding the provisions of paragraph 17 of Schedule 7A, require the development to comply with elements of a different biodiversity net gain regime.
14. Joe's Blooms Ltd makes no warranty on the truthfulness or otherwise of the information that was provided by the applicant. Joe's Blooms Ltd are happy to discuss the contents of this report and the judgement reached in it. Questions can be sent to exemptionqueries@joesblooms.com and will be replied to within five working days.

JOES BLOOMS LTD.

Annexe: Specific Circumstances of the Development

General Eligibility for the General Biodiversity Net Gain Condition	
Is the application for planning permission for development exempt by virtue of being located in England?	No
Is the application exempt because it was first made after 12 February 2024 (2 April 2024 for minor sites)?	No
Specific exemptions from the General Biodiversity Net Gain Condition	
Is the application eligible for an exemption as it meets the criteria set out in Regulation 8 of the Biodiversity Gain Requirements (Exemptions) Regulations 2024 and all dwellings meet the criteria set out in section 1(A1) of the Self-build and Custom Housebuilding Act 2015.	No
Is the application eligible for an exemption as it meets the criteria set out in Regulation 7 of the Biodiversity Gain Requirements (Exemptions) Regulations 2024?	No
Is the application for planning permission a development that aligns with the sort of development described in section 1(2) of The High Speed Rail (Preparation) Act 2013?	No
Is the application for planning permission a householder application within the meaning of Article 2(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015?	No
Eligibility for an exemption under De Minimis Regulation	
Does the application for planning permission fall within the definition of the so-called “de minimis” test as set out in Regulation 4 of the Biodiversity Gain Requirements (Exemptions) Regulations 2024.	Yes

Please note that only one exemption has to be classed as “Yes” in order for the application to be exempt from the general Biodiversity Gain Condition.