



The 0.2 Hectare Exemption and the Quiet Consequence for Individual trees habitat

How an area-based exemption for small sites removes the indirect BNG protection that Individual trees habitat had been relying on

In force from Thursday 6 August 2026 – The Biodiversity Gain (Town and Country Planning) (Amendments and Transitional Provisions) (England) Regulations 2026 (laid before Parliament).

When the Government confirmed that development sites of 0.2 hectares or smaller would no longer have to deliver Biodiversity Net Gain (BNG), most of the coverage focused on the headline: a simpler, faster route for small builders, and the removal of more than half of the smallest planning applications from the BNG regime. Less discussed was a quieter consequence buried in the mechanics of how the old rules worked – a consequence that lands squarely on Individual trees habitat as defined by the [biodiversity net gain guidance](#).

This piece walks through what has changed, how trees were treated under the outgoing rules, and why the switch to an area-based exemption removes a layer of protection that Individual trees habitat had been enjoying, almost as a by-product of how the previous threshold was drafted.

A quick recap: what BNG is meant to do

Biodiversity Net Gain became mandatory for most development in England in February 2024. In simple terms, it requires a development to leave biodiversity in a measurably better state than before – a minimum of 10% more ‘biodiversity units’ than the site started with. Habitats are measured before and after using a statutory metric, and any shortfall must be made up, either on site, off site, or as a last resort by buying statutory credits.

The idea is straightforward. The delivery, for small schemes, has been anything but. Assessing habitats, running the metric and securing units can involve disproportionate cost and delay on a plot where the development itself is modest. That tension is what the latest reform sets out to relieve.

What has changed: the new 0.2 hectare exemption

On 15 April 2026, Defra published its response to the consultation on improving the implementation of BNG for minor, medium and brownfield development. The centrepiece is a new, area-based exemption: where the red-line site area is 0.2 hectares (2,000 m²) or smaller, mandatory BNG will not apply.

A few features of the new exemption are worth pinning down:



- It is deliberately blunt. The test is simply the area of the site. If you are at or below 0.2 hectares, you are out of scope – regardless of what habitats sit within the boundary or how much of them the development affects.
- There is one significant carve-out: the exemption is not intended to apply where on-site priority habitats would be affected. Priority habitats are the specific habitats of principal importance – for example lowland mixed deciduous woodland, wood pasture and parkland, and traditional orchards. A small site containing one of these will still be caught by BNG even though it is under the area threshold.
- It is delivered through the [Biodiversity Gain \(Town and Country Planning\) \(Amendments and Transitional Provisions\) \(England\) Regulations 2026](#), which have been laid before Parliament and come into force on Thursday 6 August 2026. Until that date the current BNG rules continue to apply, and the regulations' transitional provisions will govern applications already in the pipeline.

Defra's own rationale is that the change will remove more than 50% of the smallest planning applications currently delivering mandatory BNG, easing the burden on SME developers and local planning authorities while – in the Government's framing – retaining protection for the habitats that matter most through the priority-habitat carve-out.

That framing is the crux. Whether the carve-out really does retain protection 'where it matters' depends on what you think matters – and Individual trees habitat are a revealing test case.

How Individual trees habitat were treated under the outgoing rules

To see why the change matters for trees, you have to understand the exemption it effectively replaces for small sites: the de minimis rule.

Under the current regime, a development is exempt from BNG if it does not impact a priority habitat and it impacts less than 25 square metres (a 5 m by 5 m patch) of on-site habitat, or less than 5 metres of linear habitat such as a hedgerow.

The single most important word there is **impact**. And here is a point worth being precise about, because it is easy to get wrong: the de minimis threshold is not about how much habitat is present on the site. It is about how much habitat the development affects. The GOV.UK guidance spells it out – 'a development 'impacts' a habitat if it decreases the biodiversity value.' A tree sitting in the corner of a plot, fenced off and genuinely untouched, carried across in the metric as retained habitat, contributes nothing to that 25 m² tally. Presence alone does not use up the allowance; only a reduction in biodiversity value does.

So a small scheme that retained all its trees untouched could already fall within the de minimis exemption and sit outside BNG. Trees only pulled a development into the regime when they were actually affected.



But once a tree was affected, the maths tipped over the threshold almost immediately – and this is where trees quietly gained protection. In the statutory metric, an individual tree is not treated as a dimensionless point. It is measured as an area habitat, using a set value derived from the tree's diameter at breast height (a representation of canopy biomass based on the root protection area formula in BS 5837:2012). Even the smallest class of individual tree carries an area equivalent of 0.0041 hectares – about 41 square metres. Larger trees carry considerably more.

Line those two facts up and the consequence falls out. The de minimis floor is 25 m². A single small tree's area equivalent is around 41 m². So the moment a development impacts even one individual tree – felling it, or carrying out works within its root protection area that degrade its value – the impact exceeds 25 m² on its own, and the whole scheme is subject to mandatory BNG.

In practice, that gave Individual trees habitat a meaningful, if indirect, layer of protection on small sites. You could not quietly remove a tree on a modest plot without triggering the 10% net-gain obligation, having the loss counted in the metric, and having to compensate for the habitat units lost. The protection kicked in at precisely the moment the tree was threatened – when it was impacted.

The shift: from an impact test to an area test

The new exemption changes the nature of the question entirely.

The de minimis rule asked: how much habitat does this development impact? That is a question about consequences, and trees – because of their area equivalent – reliably produced an answer 'above the threshold' once they were impacted.

The 0.2 hectare exemption asks a completely different question: how big is the site? If the answer is 0.2 hectares or less, the analysis stops there. It no longer matters how much habitat is impacted, or that an individual tree is being felled.

The only factor that could still bring such a site back into BNG is the priority-habitat carve-out. However, individual trees are, in the overwhelming majority of cases, not a priority habitat. In the metric they sit within the 'Individual trees' broad habitat – urban and rural tree types – and are of medium distinctiveness. They are not habitats of principal importance. So the carve-out that is supposed to preserve protection 'where it matters' does not engage for a typical street, garden or rural tree.

The net effect: on a site of 0.2 hectares or less, Individual trees habitat can now be impacted – including removed – with no BNG consequence at all because the indirect protection that flowed from the de minimis rule falls away.



There is a certain irony in this. The old rule protected trees on sites where established trees are often most exposed – small urban and infill plots, backland development, tight redevelopments – because on those sites even one tree’s worth of impact was enough to trigger the regime and ensure a degree of compensation. These are precisely the sort of sites the new exemption now waves through.

The scale of what falls outside BNG: a worked schedule

It helps to put numbers on this. The statutory metric assigns each individual tree a set ‘area equivalent’ by size class ([Table 15 of the Statutory Biodiversity Metric User Guide](#)). Comparing those figures against the 25 m² de minimis floor and the 2,000 m² (0.2 ha) exemption ceiling show just how far the goalposts will move. The schedule below expresses the two thresholds as a number of trees of each size class.

Tree size class	DBH (cm)	BNG metric area per tree	Trees removable with NO BNG – old ≤ 25 m ² rule	Trees removable with NO BNG – new 0.2 ha rule
Small	>7.5 to 30	0.0041 ha (41 m ²)	0	up to 48
Medium	>30 to 60	0.0163 ha (163 m ²)	0	up to 12
Large	>60 to 90	0.0366 ha (366 m ²)	0	up to 5
Very large	>90	0.0765 ha (765 m ²)	0	up to 2

Notes

- Area equivalents are the set values in Table 15 of the Statutory Biodiversity Metric User Guide (June 2026): Small 0.0041 ha, Medium 0.0163 ha, Large 0.0366 ha, Very large 0.0765 ha.
- Old rule column: because even the smallest tree (41 m²) exceeds the 25 m² de minimis floor, impacting a single individual tree of any size class triggered mandatory BNG – so zero trees could be removed BNG-free.
- New rule column: figures show how many trees of each size class have a combined metric area equal to the 0.2 ha (2,000 m²) exemption ceiling – i.e. the individual-tree habitat a just-exempt site represents, all of which can now be cleared with no BNG obligation. Mixtures are equivalent (for example, roughly 6 medium plus 2 large plus 1 very large trees also fill the 0.2 ha).
- Because the exemption keys off the site red-line area rather than habitat area, the tree count on an exempt site is not in fact capped by these figures – the metric area of the trees is now irrelevant to whether BNG applies. The numbers illustrate scale. Area equivalents are notional canopy-biomass values, not ground footprints, so physical tree numbers on the ground may differ.



- Two separate carve-outs sit outside these figures. The priority-habitat carve-out keeps a site in scope where trees form part of a priority habitat (for example wood pasture, parkland or a traditional orchard). Separately, ancient and veteran trees are irreplaceable habitat – a higher category with its own protection – not priority habitat, and not addressed by these figures.

The important qualifications

None of this means individual trees on small sites are suddenly without any protection. Several qualifications still apply.

First, the priority-habitat carve-out still does real work. Some trees grow within habitats that are themselves priority habitats – most obviously wood pasture and parkland, and traditional orchards, both of which are habitats of principal importance in their own right. Where a tree forms part of such a habitat, the exemption is not intended to apply, and BNG should continue to bite even on a sub-0.2 hectare site.

Second – and this is a distinct point often confused with the first – the most valuable trees are not priority habitat at all. Ancient and veteran trees are classified as irreplaceable habitat: a separate and higher category under both the NPPF and the BNG regime. The mandatory 10% never applied to them; instead any impact flags as unacceptable and requires a bespoke compensation strategy agreed with the authority, and national policy directs refusal of development that would result in their loss or deterioration save in wholly exceptional circumstances. Crucially, that protection stands independently of BNG and of the priority-habitat carve-out, so a standalone ancient or veteran tree does not depend on the 0.2 hectare threshold, or on the carve-out, for its protection. Whether the exemption disapplies the BNG-specific irreplaceable-habitat compensation on a small site is a matter for the regulations, but the wider national-policy protection is unaffected.

Third, BNG was never the only mechanism protecting trees, and the exemption does not touch the others. Tree Preservation Orders (TPOs), the notification requirements that apply to trees in conservation areas, planning policy on protected and veteran trees, and the felling licence regime all sit entirely outside BNG. A tree covered by these exceptions is no less protected after this change to the BNG regime than before.

Fourth, local planning authorities retain their own policy levers, and a well-advised authority may look to conditions, tree strategies or local plan policy to fill the gap on sensitive small sites. Whether they do so consistently is another matter.

One illustration of that last point is the Bristol Tree Replacement Standard (BTRS), which was adopted by Bristol City Council in 2013 and is set out in its Planning Obligations Supplementary Planning Document and supported by adopted local plan policies BCS9 and DM17. The BTRS requires trees lost to development to be replaced on a sliding scale keyed to the trunk diameter of the tree removed – the larger the tree, the more replacements are required, typically at a ratio of more than one for one – with a commuted financial sum payable where the



replacements cannot be accommodated on the site. Crucially for present purposes, the BTRS is a development-plan policy, not part of the statutory BNG regime, so it is entirely unaffected by the 0.2 hectare exemption. On an exempt small site in Bristol, a developer removing trees would still have to satisfy the standard, so the practical protection for individual trees survives locally even though the BNG layer has fallen away. The approach has been widely admired and copied by other authorities, and Bristol is updating it (as emerging policy BG4: Trees) to sit more comfortably alongside BNG. Its reach is, however, ultimately local: it protects trees only where an authority's adopted development plan contains such a policy, and the weight it carries remains a matter for the decision-maker under the plan-led system. Where no comparable local policy exists, the gap left by the exemption is not filled.

The practical upshot is a shift in what determines a tree's fate on a small site. Under the outgoing rules, impacting a tree reliably engaged BNG. Under the new rules, whether an ordinary individual tree receives any protection turns on whether a TPO or similar designation happens to apply – rather than on BNG at all.

A residual policy hook: NPPF paragraph 193(d)

There is, however, one further lever that (for the moment) survives the exemption – and not just for individual trees. The 0.2 hectare exemption switches off only the statutory net-gain requirement. It does not disapply the wider, plan-led policy framework that local planning authorities must still apply when determining applications – and that framework contains a biodiversity hook that could, at least in principle, soften the effect of the new BNG exemption for trees on sites no larger than 0.2 hectares.

Paragraph 193 of the National Planning Policy Framework (December 2024) (the NPPF) opens: 'When determining planning applications, local planning authorities should apply the following principles.' Sub-paragraph (d) provides that opportunities to improve biodiversity in and around developments should be integrated as part of their design –

'...especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.'

Read alongside the rest of paragraph 193 – including sub-paragraph (a), which allows refusal where significant harm to biodiversity cannot be avoided, adequately mitigated or, as a last resort, compensated – this gives an authority a residual policy basis, even on an exempt sub-0.2 hectare site, to resist the needless loss of trees, to seek their retention or replacement, and to treat biodiversity opportunities as a material consideration capable of being secured by condition or negotiation. The mandatory metric may fall away, but the policy encouragement to design-in biodiversity does not.

The mitigation this offers is real, but partial. It is a direction to 'apply principles' – a matter of planning judgment and weight, not a hard, quantified obligation – and it does not restore



the biodiversity-unit accounting that made tree loss visible and compensable. The language is enabling rather than mandatory: opportunities ‘should be integrated,’ gains are to be secured ‘where this is appropriate,’ which leaves room to give the principle limited weight on the smallest schemes. A single ordinary tree is also unlikely, on its own, to cross the ‘significant harm’ threshold that engages sub-paragraph (a). And without the metric there is no standard yardstick, so the very ‘measurable’ in ‘measurable net gains’ becomes harder to evidence and to secure. Outcomes will therefore vary considerably between authorities. Much will turn on local plan policies – some of which now set canopy-cover or tree-replacement standards – and the weight individual planners give to these NPPF principles.

This hook is, in any event, in transition. In December 2025 the Government published a wholesale redraft of the NPPF for consultation (which closed on 10 March 2026). It abandons consecutively numbered paragraphs altogether, replacing them with coded policies split into ‘plan-making policies’ and ‘national decision-making policies,’ the former expressly not to be applied to decision-taking. The natural-environment material becomes Chapter 19. In this draft (still under review), the positive ‘measurable net gains’ principle appears to sit on the plan-making side, while the lead decision-making biodiversity policy (Policy N6) is recast around the protection of designated and irreplaceable habitats, using ‘unacceptable impact’ tests, with no evident net-gains or ‘public access to nature’ limb. If that reading holds, paragraph 193(d) is not merely renumbered: its decision-taking force is much weakened, and the encouragement to weigh biodiversity net gains as a benefit may survive only as a plan-making objective. Any reliance on it as a decision-taking mitigant is therefore provisional.

The weight of that hook: *Vistry Homes* (2024)

How much weight the paragraph 193(d) hook can carry was examined in *Vistry Homes Ltd v Secretary of State for Levelling Up, Housing and Communities* [2024] EWHC 2088 (Admin), in which Holgate J (as he then was) considered the treatment of biodiversity net gain as a ‘benefit’ under what was then paragraph 180(d) of the NPPF – the materially identical predecessor of the current paragraph 193(d). The court drew a careful distinction. Where a development is required to provide a measure in order to overcome, mitigate or compensate for a harm that the development itself causes, that measure cannot ordinarily be described as a benefit: where a scheme causes a loss of biodiversity and then provides equivalent biodiversity, on the same site or on land nearby, so that in overall terms there is no net reduction, that is not a benefit but the development ‘consuming its own smoke’ [¶152]. Importantly, being required by policy or legislation does not, of itself, strip a measure of benefit status; what disqualifies it is that it does no more than cancel out the harm. A genuine net gain – biodiversity delivered over and above what is needed to offset the loss – remains a benefit capable of attracting positive weight, whether or not it is mandated.

That distinction maps directly onto the position that exempt small sites will occupy from 6 August 2026. Where a sub-0.2 hectare site loses an individual tree and the developer offers



replacement planting or other measures that merely make good the loss, *Vistry* indicates that an authority relying on paragraph 193(d) cannot count that as a benefit weighing in favour of permission – it simply returns the site to neutral. To generate a benefit carrying positive weight, the scheme must deliver measurable net gains beyond replacing the tree, which is exactly what paragraph 193(d) invites. The policy route therefore rewards genuine enhancement rather than like-for-like replacement – and it gives an authority little positive leverage against a straightforward tree loss, because preventing or mitigating that loss is precisely the kind of smoke-consuming measure that carries no benefit weight, and there is no longer a mandatory requirement compelling it.

Vistry also supplies a ready-made framework for the exempt-site situation, because it arose in closely analogous circumstances. The application there pre-dated the commencement of mandatory BNG on 12 February 2024, so the statutory 10% requirement did not apply – just as it will not apply to exempt small sites after 6 August 2026. In such cases, the court held, the 10% figure in Schedule 7A to the Town and Country Planning Act 1990 must not be treated as having applied, but may be used as a benchmark in assessing the weight to be given to a voluntary BNG contribution, and must not be used to reduce the weight the decision-maker would otherwise have given to that provision [¶163]. Translated to the exemption, a local planning authority faced with a voluntary biodiversity offer on an exempt small site may still use the statutory 10% as a yardstick for the weight to attach to it – without the 10% hardening into a requirement, and without discounting a genuine gain merely because a comparable, non-exempt scheme would have had to deliver it anyway.

Taken together, the policy hook in paragraph 193(d) and the approach in *Vistry* soften rather than neutralise the change for individual trees. They give a conscientious authority a basis to weigh genuine biodiversity net gains as benefits, and to use the statutory 10% as a benchmark, even on an exempt site – but they reward enhancement rather than preventing loss; they are discretionary, unquantified and weight-dependent where the BNG requirement was mandatory and measured; and, on the December 2025 draft, the very foothold in decision-making policy on which the hook depends may be pared back, leaving local plan policies such as the Bristol Tree Replacement Standard to carry more of the weight.

Will *Vistry* survive the new NPPF?

But will any of this hold once the revised NPPF is published. In substance, the core of *Vistry* should survive – because its reasoning does not actually depend on the wording of paragraph 180(d)/193(d). It rests on general planning-balance logic and on the statute. The use of the citation is the main thing that will change.

The ‘consuming its own smoke’ principle is the durable part. *Holgate J* was not really construing the particular text of paragraph 180(d) so much as stating a general proposition about what can rationally count as a *benefit* in the planning balance: a measure that does no more than offset



a harm the development itself causes is not a benefit. That is a rationality principle, not a gloss on a policy paragraph, so renumbering or rewording the NPPF does not disturb it – a policy could not rationally direct a decision-maker to treat pure mitigation as a positive benefit. This much survives whatever the redraft does: the distinction between offsetting (smoke) and genuine net gain (benefit) is a matter of logic, not of any particular policy wording. What is less certain is whether the redrafted Framework will still invite decision-makers to treat biodiversity net gains as a benefit at all. As noted above, the December 2025 draft appears to place the positive net-gains principle on the plan-making side and to recast the decision-making biodiversity policy as protection-focused. *Vistry*'s reasoning about how to characterise a net gain should remain good law; the open question is whether national decision-making policy will still give decision-makers occasion to apply it.

The '10% as a benchmark, not a requirement' point is even more insulated from the NPPF, because it does not come from the NPPF at all. It turns on Schedule 7A to the Town and Country Planning Act 1990 and the logic of a case where the mandatory requirement does not apply. Both survive: Schedule 7A and the statutory 10% remain in force for non-exempt development, and exempt small sites are precisely the 'requirement does not apply' scenario the reasoning was built for. A revised NPPF does not touch that statutory architecture, so the benchmark approach transfers to exempt sites regardless of what the new Framework says.

The genuine caveats are narrower. Mechanically, advice will need to cite the new numbered policy rather than 'paragraph 193(d)' and re-map the cross-references. Substantively – and, on the December 2025 draft, this is a live risk rather than a remote one – if when published, the new NPPF recasts how biodiversity is weighed (for example by confining the net-gains principle to plan-making, as the draft appears to do), a court might need to reconsider when and how *Vistry* is engaged; the December 2025 draft points that way, though it remains a draft and so is subject to change. And contextually, *Vistry*'s benefit reasoning bites hardest inside particular balances – e.g. Green Belt very special circumstances, the tilted balance – and the revised NPPF reworks some of those frameworks, so where and how much the point matters in practice may shift even though the characterisation principle holds. In status terms, a new NPPF is not 'higher law' that overrules a High Court judgment; it changes the policy the judgment was applied to, and only to the extent of real inconsistency would the ratio need revisiting.

So the durable core – net gain is a benefit, pure offsetting is not, and the statutory 10% can serve as a benchmark rather than a requirement – should outlast the Framework's redraft, because it is anchored in planning-balance logic and Schedule 7A, both of which survive. What changes is the label and, potentially, the surrounding balances. Until the final NPPF is published, this is a reasoned prediction rather than a certainty.

Weighing it up



It would be unfair to present the reform purely as a loss for trees. The case for it is real: BNG imposed genuine cost, delay and uncertainty on the smallest schemes, often out of all proportion to the development, and the burden fell hardest on SME builders and stretched planning departments. An objective area threshold is simpler to apply than a habitat-by-habitat impact assessment, and removing more than half of the smallest applications from the regime is a meaningful simplification. The Government has also kept a carve-out for the most valuable habitats, so this is a targeted easing rather than a blanket removal.

The counter-argument is equally real. The de minimis rule, almost by accident, had become an effective backstop for individual trees on exactly the sites where they are most vulnerable. Swapping an impact-based test for an area-based one severs that link, and because ordinary trees alone do not qualify as priority habitats, the headline carve-out does not catch them. For anyone who values mature trees in urban and suburban settings – for shade, canopy cover, character and the everyday nature they support – that is a real reduction in protection, even if an unintended one.

Both things can be true at once: the reform is a sensible response to a genuine problem for small developers, and it quietly withdraws a layer of protection that individual trees had been relying on.

What to watch

The commencement date and the core of the exemption are now fixed: the enabling regulations (SI 2026/790) were made on 13 July 2026 and take effect on 6 August. What remains in flux is the detail. Defra has said it will update Planning Practice Guidance to support implementation, and it is that guidance – rather than the regulations themselves – that is likely to shape how the priority-habitat carve-out is applied in practice: how ‘priority habitat’ is identified on a small site, and how ‘negatively impacted’ is judged.

The carve-out’s trigger is settled, but the concept it turns on is not. What counts as ‘priority habitat’ rests on foundations that are themselves being reworked: the statutory biodiversity metric is being revised, which affects how such habitats are identified and valued, and the December 2025 draft NPPF is reconsidering the definition and protection of both priority and irreplaceable habitats. Either workstream could reshape how the carve-out actually bites – so a carve-out that looks fixed today may operate differently once they land.

More change is coming, too. Defra has confirmed further exemptions still to be brought forward – for development whose primary objective is to conserve or enhance biodiversity, and for schemes that enhance parks, playing fields and public gardens – alongside changes to the metric itself. And the separate consultation on a targeted exemption for residential brownfield development, which closed on 10 June 2026, awaits a government response that could extend the current direction of travel to considerably larger sites.



BIODIVERSITY NET GAIN · BRIEFING

Until 6 August 2026, the current rules — de minimis, area equivalents and all — continue to apply. From that date, the calculus for individual trees on small sites changes quietly but materially: on a site of 0.2 hectares or less, the loss of individual trees (possibly as many as 48) will no longer, by itself, bring the scheme within the BNG regime at all.

This article is the author's personal opinion and does not constitute legal or planning advice. The position described reflects Defra's April 2026 consultation response and The Biodiversity Gain (Town and Country Planning) (Amendments and Transitional Provisions) (England) Regulations 2026, which come into force on 6 August 2026. Tree area equivalents are drawn from Table 15 of the Statutory Biodiversity Metric User Guide (June 2026). NPPF references are to the National Planning Policy Framework (December 2024), which is itself under review; the case discussed is Vistry Homes Ltd v Secretary of State for Levelling Up, Housing and Communities [2024] EWHC 2088 (Admin). References to the draft revised Framework are to the Draft NPPF (December 2025); The draft is subject to change.