

What development does the de minimis exemption apply to? And how should it be assessed?

The de minimis exemption only applies to development if the following two conditions are met:

- the development must not impact on any onsite priority habitat; and
- if there is an impact on other onsite habitat, that impact must be on less than 25 square metres (e.g. less than a 5m by 5m square) of onsite habitat with a biodiversity value greater than zero and on less than 5 metres of onsite linear habitat (such as a hedgerow)

Onsite habitat is impacted by the development if it is lost or degraded such that there is a decrease in the biodiversity value of that habitat (as determined by the statutory biodiversity metric). A decrease in biodiversity value occurs where there is a change in habitat type, extent, or condition which results in a negative unit score. A priority habitat is a habitat listed by the Secretary of State for Environment, Food and Rural Affairs under [section 41 of the Natural Environment and Rural Communities Act 2006](https://www.legislation.gov.uk/ukpga/2006/16/section/41) (<https://www.legislation.gov.uk/ukpga/2006/16/section/41>).

The exemption is designed to cover planning permissions for:

- Development which only impacts on onsite habitat with a biodiversity value of zero so no gain would be required if there was no exemption;
- Developments where there is only a de minimis impact on other onsite habitat to ensure biodiversity net gain is applied proportionally;
- Minor development in established areas of habitat where the development would have less than 25 square metres (or less than 5 metres for linear habitat) impact on this habitat (unless priority habitat); and
- Change of uses to development where there is no or only a de minimis impact on onsite habitat.

An applicant, if they consider their development proposal would be within the scope of the de minimis exemption, must state in their planning application form that they consider the proposal to be subject to the de minimis exemption and provide reasons for this. This will enable the local planning authority to consider whether the proposal is genuinely exempt at the validation stage. They will want to consider particularly carefully those statements stating that a development proposal will be subject to a de minimis exemption where the proposal is for substantive building works and there are significant areas of onsite habitat (where the distinctiveness is higher than very low) within the red line boundary.

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

- Temporary exemption for non-major development (until April 2024).** Development which is not defined as major development under [Article 2 Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#) (<https://www.legislation.gov.uk/uksi/2015/595/article/2>) is exempt until 2 April 2024. 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.** Development which is subject of a householder application as defined within [Article 2\(1\) of the Town and Country Planning \(Development Management Procedure\) \(England\) Order 2015](#) (<https://www.legislation.gov.uk/uksi/2015/595/article/2>).
- 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 onsite habitat, and 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](#) (<https://www.legislation.gov.uk/ukpga/2015/17/section/1>).
- Urgent Crown development granted permission under section 293A of the Town and Country Planning Act 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 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](#) (<https://www.legislation.gov.uk/ukpga/2013/31/section/1>).

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