



ECOLOGICAL ADVICE SERVICE

TO: *Ethan Bonthron*

FROM: *Emma England*

DATE: *06 September 2024*

SUBJECT: *20240447 / 28 Lanes Avenue, Northfleet*

The following is provided by Kent County Council's Ecological Advice Service (KCC EAS) for Local Planning Authorities. It is independent, professional advice and is not a comment/position on the application from the county council. It is intended to advise the relevant planning officer(s) on the potential ecological impacts of the planning application and if sufficient/appropriate ecological information has been provided.

Any additional information, queries or comments on this advice that the applicant or other interested parties may have must be directed in every instance to the planning officer, who will seek input from the EAS where appropriate and necessary.

SUMMARY – SUFFICIENT INFORMATION PROVIDED

We have reviewed the updated information submitted by the applicant and advise that sufficient ecological information has been provided.

We understand that a 10% mandatory biodiversity net gain applies to this application. Further, under section 40 of the Natural Environment and Rural Communities (NERC) Act 2006 and paragraphs 180 and 186 of the National Planning Policy Framework (NPPF) 2023, biodiversity should be maintained and enhanced through the planning system. Enhancement refers to providing net benefits for biodiversity over and above requirements for avoidance, mitigation and compensation. Ecological enhancements for features such as bat and bird boxes can be secured by separate condition should planning permission be granted.

Developer Contributions will need to be provided due to the increase in dwellings within the zone of influence of a Special Protection Area.

Ecological Mitigation

The submitted preliminary ecological appraisal report indicates that avoidance of harm to hedgehogs and foxes should be considered during construction. However, no other animals are anticipated to be adversely affected from proposals.

Suggested Condition Wording:

From commencement of works (including site clearance), all mitigation measures for protected and priority species shall be carried out in accordance with the details contained in section 4 of the KB Ecology Ltd (July 2024) Preliminary Ecological Appraisal (Ref No 2024/05/36).

Ecological Enhancement

On-site habitat improvements can be made through the addition of habitat features such as bird and bat boxes. In line with the NPPF 2023, we recommend the following condition is included on the decision notice if planning permission is granted.

Suggested Condition Wording:

Prior to completion, details of how the development will enhance biodiversity through the inclusion of habitat features (e.g., bird and/or bat boxes, hedgehog holes in fencing) shall be submitted to, and approved in writing by, the local planning authority. Any boxes shall be building integrated and/or wall-mounted. Any boxes shall be made of durable materials (i.e., woodcrete). Any bird boxes shall be targeted at red or amber listed species as per the latest Birds of Conservation Concern report by the British Trust for Ornithology. The approved measures will be implemented and retained thereafter.

Mandatory 10% Biodiversity Net Gain

This application was received on 20th May 2024, with the application form declaration signed 17th May 2024, according to the information available on the planning portal. The site is 357 square metres (0.036 hectares) in size, according to the information in the application form.

Under the Environment Act 2021, all planning applications for major development (unless exempt^{1,2}) submitted on or after 12th February 2024 in England, will have to deliver at least a 10% biodiversity net gain. It is a requirement for minor applications, unless exempt, submitted on or after the 2nd April 2024. We highlight that local policy may expect a higher level of biodiversity net gain and that 'significant'³ on-site habitat gains, and off-site habitats created/enhanced to achieve biodiversity net gain will need to be secured for at least 30 years.

Any application which is required to achieve a 10% BNG must submit the following information as a minimum⁴:

Information Needed	Provided	Comments
Confirmation that the applicant believes that planning permission, if granted, the development would be subject to the biodiversity gain condition.	No	The applicant has stated in the application form that they believe the development to fall under the de minimis exemption.
The pre-development biodiversity value(s), either on the date of application or earlier proposed	Yes	The applicant has provided a statutory small sites metric calculation tool for the site.

¹ [Biodiversity net gain: exempt developments - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/biodiversity-net-gain#para11)

² [The Biodiversity Gain Requirements \(Exemptions\) Regulations 2024 \(legislation.gov.uk\)](https://www.gov.uk/guidance/biodiversity-net-gain#para11)

³ [Make on-site biodiversity gains as a developer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/biodiversity-net-gain#para11)

⁴ <https://www.gov.uk/guidance/biodiversity-net-gain#para11>

date (as appropriate).		
Where the applicant proposes to use an earlier date, this proposed earlier date and the reasons for proposing that date.	-	The metric was completed 16 th July 2024 and was based on a site visit carried out 17 th June 2024. This is considered acceptable to inform the baseline, based on the habitats reported to be present on-site.
The completed metric calculation tool showing the calculations of the pre-development biodiversity value of the onsite habitat on the date of application (or proposed earlier date) including the publication date of the biodiversity metric used to calculate that value.	Yes	A metric has been supplied and a corrected metric provided.
A statement whether activities have been carried out prior to the date of application (or earlier proposed date), that result in loss of onsite biodiversity value (‘degradation’), and where they have: • a statement to the effect that these activities have been carried out; • the date immediately before these activities were carried out; • the pre-development biodiversity value of the onsite habitat on this date; • the completed metric calculation tool showing the calculations, and • any available supporting evidence of this.	-	This has been provided in the Biodiversity Gain Statement Version 1.2.
A description of any irreplaceable habitat (as set out in column 1 of the Schedule to the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) on the land to which the application relates, that exists on the date of application, (or an earlier date).	Yes	No irreplaceable habitat is reported on-site.
Plan(s), drawn to an identified scale and showing the direction of North, showing onsite habitat existing on the date of application (or earlier proposed date), including any irreplaceable habitat (if applicable).	Yes	-

We note that biodiversity calculations indicate that there will be a 73.72% biodiversity net loss at the site because of proposals. The applicant indicates in the application form that the de minimis exemption applies. A de minimis exemption can only be applied where:

- The development will not impact any onsite priority habitat (these proposals will not); AND
- The development will not impact more than 25 square metres of onsite habitat with a biodiversity value greater than zero; AND
- The development will not impact more than 5 metres of onsite linear habitat.

Government advice indicates that if an applicant considers that their development proposal is within the scope of the de minimis exemption, they must provide reasons for this. This is to provide sufficient information to the local planning authority to enable it to determine if the development is genuinely exempt at the validation stage⁵. The reasons provided by the applicant to justify an exemption are currently insufficient. The information supplied by the project ecologist appears to indicate that mandatory 10% biodiversity net gain applies to the development proposals.

Hardstanding and buildings will have a biodiversity value of zero. However, vegetated garden/modified grassland has a biodiversity value greater than zero. A habitat can be recorded as retained (and therefore not impacted) if the baseline habitat type and condition can be restored within two years of the initial impact. However, the metric is currently showing a permanent net loss of vegetated garden/grassland habitat of 51 square metres. This would be above the de minimis threshold and indicates that mandatory 10% biodiversity net gain is likely to apply to proposals.

Off-site compensation is anticipated to be required for this development should planning permission be granted. Where off-site habitat creation is required, we direct the applicant towards the Kent Biodiversity Net Gain Site Register⁶ available on the Making Space for Nature in Kent and Medway website. Biodiversity Net Gain Guidance for Kent is also available on this website.

If planning permission is granted, local planning authorities are encouraged to use suggested paragraphs for Biodiversity Gain Information on the written decision notice which are available to download⁷. The applicant should submit a biodiversity gain plan form⁸ along with supporting information (e.g., legal agreement) once planning permission has been granted to demonstrate in more detail how the proposed biodiversity net gain will be delivered.

Paragraph: 019 Reference ID: 74-019-20240214⁹ of the government standing advice states: *“The statutory framework for biodiversity net gain involves the discharge of the biodiversity gain condition following the grant of planning permission to ensure the objective of at least 10% net gain will be met for a development. The determination of the Biodiversity Gain Plan under this condition is the mechanism to confirm whether the development meets the biodiversity gain objective. Development may not be begun until the Biodiversity Gain Plan is approved.*

⁵ [Biodiversity net gain - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/biodiversity-net-gain)

⁶ <https://www.makingspacefornaturekent.org.uk/bng/kent-biodiversity-net-gain-site-register/>

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https://assets.publishing.service.gov.uk/media/663251d969098ded31fca800/BNG_Decision_Notice_Text.odt

⁸ [Biodiversity gain plan - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/biodiversity-gain-plan)

⁹ [Biodiversity net gain - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/biodiversity-net-gain)

Given this, it would generally be inappropriate for decision makers, when determining a planning application for a development subject to biodiversity net gain, to refuse an application on the grounds that the biodiversity gain objective will not be met.

However, decision makers may need to consider more broadly whether the biodiversity gain condition is capable of being successfully discharged. Matters for consideration may include the following (but this is not an exhaustive list):

- The appropriate balance expected between onsite gains, off-site gains and the use of statutory biodiversity credits for the development, taking account of the Biodiversity Gain Hierarchy;*
- Whether the type and location of any significant onsite habitat enhancements proposed for onsite gains are appropriate, taking into account other policies to support biodiversity (including local nature recovery strategies) and other wider objectives (for example policies for design, open space and recreation, and retention of trees); and*
- Any planning conditions which need to be imposed to secure any significant onsite habitat enhancements, including any conditions requiring the maintenance of the enhancement for at least 30 years after the completion of the development.*

Prior to the determination of the planning application, decision makers will also want to [discuss with the applicant](#) whether any section 106 planning obligations are required to secure either significant onsite habitat enhancements or offsite gains for the development”.

Off-site gains must be registered¹⁰ after determination. The submission of provisional/draft legal documents outlining the agreement between the applicant and the provider of any off-site gains are advisable prior to determination to confirm that the proposed route to delivering net gain is feasible, but this information is not required until submission of the pre-commencement Biodiversity Gain Plan.

North Kent Sites

The development includes proposals for a new dwelling within the zone of influence (ZOI) (6km) of the Thames Estuary and Marshes Special Protection Area and its associated Wetlands of International Importance under the Ramsar Convention (Ramsar Site).

Gravesham Borough Council must consider the impact the proposal will have on these designated sites in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) and the National Planning Policy Framework (NPPF) 2023.

Gravesham Borough Council will need to ensure that the proposals fully adhere to the agreed approach within the North Kent Strategic Access Management and Monitoring Strategy (SAMMS). This is to mitigate for additional recreational impacts on the designated sites and to ensure that adequate means are in place to secure the mitigation before first occupation.

¹⁰ [Register a biodiversity gain site - GOV.UK \(www.gov.uk\)](#)

A decision from the Court of Justice of the European Union has detailed that mitigation measures cannot be taken into account when carrying out a screening assessment to decide whether a full Appropriate Assessment is needed under the Habitats Directive. Therefore, we advise that due to the need for the application to contribute to the North Kent SAMMS, there is still a need for an appropriate assessment to be carried out as part of this application.

The Conservation of Habitats and Species Regulations 2017 Regulation 63 (3) also indicates that for Special Areas of Conservation (SACs) and Special Protection Areas (SPAs): *"The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies."* The local planning authority (the "Competent Authority") must therefore consult with and take into consideration Natural England's advice in determining the application. The local planning authority also needs to be confident that proposals will not adversely affect these sites in line with the NPPF 2023¹¹.

The responsibility for carrying out a Habitats Regulations Assessment (HRA) Screening and Appropriate Assessment lies with the Competent Authority, and Natural England has indicated for previous consultations within the ZOI for application sites affected by the North Kent SAMMS that it should be consulted only after an appropriate assessment has been completed by Gravesham Borough Council.

If you have any queries regarding our comments, please do not hesitate to get in touch.

Emma England
Biodiversity Officer

This response was submitted following consideration of the following documents:

KB Ecology (Undated) Biodiversity Gain Statement Version 1.2. Biodiversity Net Gain for Kent and Medway.

KB Ecology (15 August 2024) Updated Small Sites Metric Calculation Tool Excel Spreadsheet.

KB Ecology (July 2024) Preliminary Ecological Appraisal. 28 Lanes Avenue, Northfleet, Kent.

Penfold, A. (May 2024) Application for Planning Permission. Gravesham Borough Council.

Penfold Project Services (May 2024) Proposed New Dwelling. Block Plan As Existing. Rear of 28 Lanes Avenue, Northfleet, Kent, DA11 7HR.

¹¹ "When determining planning applications, local planning authorities should apply the following principles:

a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused; and

"The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site."

*Penfold Project Services (May 2024) Proposed New Dwelling. Block Plan As Proposed.
Rear of 28 Lanes Avenue, Northfleet, Kent, DA11 7HR.*

*Unauthored (Undated) On-site Habitats existing at date of planning application. 28 Lanes
Avenue, Northfleet, DA11 7HR.*