



ECOLOGICAL ADVICE SERVICE

TO: Rebecca Harrison

FROM: Emma England

DATE: 09 September 2024

SUBJECT: 20231313 / Eastcourt Marshes Electricity Distribution Site, Gravesend

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

We have reviewed the ecological information submitted in support of this application and advise that additional information is sought from the applicant prior to determination of the planning application.

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.

We can suggest wording for relevant conditions if planning permission is granted, once sufficient information relating to biodiversity net gain, and reptiles has been provided.

We would also highlight that 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 NPPF 2023. The responsibility for carrying out a Habitat Regulations Assessment (HRA) Screening and Appropriate Assessment lies with the Competent Authority, Gravesham Borough Council¹.

¹ We were surprised that Natural England has not provided formal comments on this application as the ES Biodiversity Chapter indicates that during consultation prior to submission of the application, Natural England was concerned

Detailed comments are provided below.

Detailed Comments

Reptiles

Reptiles are protected through the Wildlife and Countryside Act 1981 (as amended). All British reptiles are also [listed as rare and most threatened species](#) under Section 41 of the Natural Environment and Rural Communities Act (2006) and local planning authorities are required to have regard for the conservation of Section 41 species as part of planning decisions under their [biodiversity duty](#).

We note there are severe limitations regarding the results of the reptile surveys undertaken. The project ecologists have stated in the submitted technical note that the site is only expected to support low numbers of reptiles, and so taking a precautionary approach to vegetation clearance without the need for a reptile translocation was considered appropriate. The project ecologists have stated that an update survey will be necessary to confirm the size of the reptile population present the season prior to the works to ensure their approach is appropriate. In the absence of reliable survey data prior to determination, we do not consider this approach appropriate.

Necessary mitigation/ compensation for reptiles needs to be provided prior to determination of any planning application. This is in alignment with paragraph 99 of the ODPM 06/2005, which states *"it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision"*.

We note that the project ecologists indicate that 1.1 ha of moderate quality reptile habitat will be retained and protected during construction. There will be a permanent loss of 2.6ha of reptile habitat in 2024/2025 and a further 3.2 ha of reptile habitat (of which 2.6 ha has been assessed to be of moderate quality by the project ecologists) temporarily lost due to the works to the overhead line in 2028. The temporary habitat clearance is expected to take around 12 weeks to complete, and the project ecologists indicate the habitat will return to its original condition within 6-24 months. Together this habitat loss could have a profound impact on the reptile population on-site in the short to medium term as a minimum.

There will be both a permanent and temporary loss of reptile habitat from the site. Whilst it may be possible to avoid immediate killing and injury of reptiles by encouraging them to move into adjacent retained habitat outside the works area, this habitat is unlikely to be suitable to support significant numbers of additional animals, even with the addition of some hibernacula.

regarding potential impacts to a Site of Special Scientific Interest (SSSI) notification project, and on the potential for functionally linked land within the application site for birds designated in nearby SPA habitat. Further, the applicant has carried out an Appropriate Assessment for noise disturbance effects during construction on the Thames Estuary & Marshes SPA/Ramsar site (30m south of the application site). We would urge Gravesham Borough Council to reconsult with Natural England to establish whether it has provided no comment in error. Further dialogue and clarification from Natural England will ensure that Gravesham Borough Council can be confident that the proposed measures to minimise/manage/mitigate/compensate any likely significant negative effects are acceptable.

In the absence of reliable reptile survey data, carried out in line with standard professional guidelines, we do not consider the current approach with regards to reptiles suitable.

Non-statutory Designated Sites and Biodiversity Net Gain

Local Wildlife Sites (LWSs) are important for the conservation of wildlife at the county level. These are non-statutory designations which are generally recognised by local authorities and given weight and protection by inclusion in development plan policies in accordance with paragraphs 181 and 185 of the National Planning Policy Framework (NPPF) 2023.

Proposals lie within the Canal and Grazing Marsh, Higham Local Wildlife Site (LWS). This LWS has been designated for its managed and unmanaged grazing marsh, dykes, sea wall, salt marsh and a long stretch of the Thames and Medway Canal. The site lies adjacent to the South Thames Estuary & Marshes Site of Special Scientific Interest (SSSI) and adds to the overall importance of this stretch of the North-West Kent Marshes.

The NPPF 2023 states under paragraph 180 that: *“Planning policies and decisions should contribute to and enhance the natural and local environment by: a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);...d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures”*.

Where applicants choose to provide a quantitative assessment of biodiversity net gain, but are not required to under legislation, appeal decisions² have clarified that:

- *“Paragraph 174 [now 180] of the Framework [the NPPF encourages applicants to], ... seek a net gain in biodiversity without identifying a specific percentage...”*
- The relevant Core Strategy may *“...seek a net gain in biodiversity without identifying a specific percentage...”*; and
- *“A net gain of just 1% would be policy compliant....”*

Therefore, in line with planning policy, the aim would be to achieve simply a biodiversity net gain, with no specific % target, in line with the NPPF. We acknowledge that the applicant has internal policies for at least a 10% biodiversity net gain.

Gravesham Borough Council's Local Plan states within Policy CS12: Green Infrastructure:

“5.7.23 Sites designated for their biodiversity value will be protected, with the highest level of protection given to internationally designated Special Protection Areas, Special Areas of Conservation and Ramsar sites, followed by nationally designated Sites of Special Scientific Interest, followed by Local Wildlife Sites and then by other areas of more local importance for biodiversity.

² Planning Inspectorate (2022). Appeal Decisions APP/Y3940/W/21/3278256, APP/Y3940/Q/21/3278923, APP/Y3940/W/21/3282365

5.7.24 *There will be no net loss of biodiversity in the Borough, and opportunities to enhance, restore, re-create and maintain habitats will be sought, in particular within the Biodiversity Opportunity Areas shown on the Strategic Green Infrastructure Network map and within new development.*

5.7.25 *Where a negative impact on protected or priority habitats/species cannot be avoided on development sites and where the importance of the development is considered to outweigh the biodiversity impact, compensatory provision will be required either elsewhere on the site or off-site, including measures for ongoing maintenance.”*

Based on the current plans for the Site, the proposed development (including Tilbury) is predicted to result in a biodiversity net loss of 13.50%. However, a biodiversity net gain of 11.88% is expected with compensation at two off-site areas.

We note that Policy CS12: Green Infrastructure indicates that ‘*there will be no net loss of biodiversity in the Borough*’. It is not clear whether both the compensation sites are within Gravesham Borough, or whether at least one falls within Medway Council. It is also not clear whether proposals achieve the policy objectives of no net loss of biodiversity within the borough. It would be helpful for this to be clarified.

If planning permission for proposals is granted, the on-site biodiversity measures (including detailed soft landscaping plans), and off-site net gain site should be secured through planning obligation/condition.

A detailed Landscape and Ecological Management plan for both the on-site and off-site habitats should also be secured by a suitably worded condition/planning obligation if planning permission is granted in order to ensure that the proposed habitats can be effectively created and managed into the future.

Water Voles

We are satisfied that effects on water vole can be adequately dealt with through conditions attached to any granted planning permission.

Invertebrates and Birds

A number of invertebrate (hornet robberfly, shrill carder-bee; brown-banded carder-bee, and small heath butterfly) and bird species found at the Gravesend site,^{3,4} are listed under Section 41 of the Natural Environment and Rural Communities Act (2006) and local planning authorities are required to have regard for the conservation of Section 41 species as part of planning decisions under their [biodiversity duty](#)⁵. Paragraph 84 of the ODPM Circular 06/2005 states that “...*The potential effects of a development, on habitats or species listed as priorities... are capable of being a material consideration in the ... making of planning decisions*”.

The applicant should take appropriate measures to avoid, mitigate and, as a last resort, compensate for any negative effects on Section 41 species in the development proposal, in accordance with relevant government standing advice.

³ [Invertebrates: advice for making planning decisions - GOV.UK \(www.gov.uk\)](#)

⁴ [Wild birds: advice for making planning decisions - GOV.UK \(www.gov.uk\)](#)

⁵ [Complying with the biodiversity duty - GOV.UK \(www.gov.uk\)](#)

Submitted information appears to indicate that there will be a permanent reduction in semi-natural habitats as a result of proposals. Submitted information indicates that in the long-term, taking into consideration mitigation and compensation measures, this is expected to result in a negligible effect on the invertebrate populations of District importance, and bird populations of District and Local importance. The comments from Buglife suggest that the project ecologists have undervalued the site's importance for invertebrates. Buglife stated in its comments dated 27th February 2024 that survey data available for the site has led to the site being incorporated into the Thames Estuary South Important Invertebrate Area (IIA). This indicates that the site is nationally^{6,7} important for its invertebrate assemblage, and linkages to the wider landscape, including South Thames Estuary and Marshes Site of Special Scientific Interest (SSSI).

We note that Buglife has made the following comments: *"All the site ditches will be retained along with a 'minimum buffer of 5m'. As this is the only habitat to be retained on-site, Buglife would hope to see this buffer increased and ideally a phased approach to loss or modification of habitats rather than the whole area being cleared within a short time frame. It would also like to see a clear commitment to reinstating habitats as soon as possible after their initial disturbance"*.

Buglife has also indicated that commercial seed mixes should not be used at the site to avoid any potential negative effects on the nearby SSSI.

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. If planning permission is granted for the project, we recommend that a condition is included to ensure invertebrate and bird populations at the site are not only protected in the long-term, but also to ensure that the project is able to deliver net gains to the local invertebrate and bird populations.

Statutory Designated Sites, Bats, Badgers, Protected/Notable Plant Species, Japanese Knotweed, Marine Mammals, Veteran Tree

Following a review of the submitted information, we are satisfied that should planning permission be granted, that a detailed Construction Environmental Management Plan (CEMP) secured by condition, and including noise fencing around the construction site, will be sufficient to avoid and mitigate for impacts upon bats, badgers, protected/notable plant species, Japanese knotweed, marine mammals, veteran trees, the Thames Estuary and Marshes SSSI, SPA and Ramsar and the Medway Estuary and Marshes SPA and Ramsar during construction.

Lighting and Biodiversity

We note that operational lighting has the potential to have adverse impacts upon biodiversity (e.g., bats and invertebrates). Local authorities have a duty to ensure impacts upon legally protected species are avoided and impacts upon bats are a material consideration in any planning permission under the NERC Act 2006 and through the NPPF 2023.

⁶ [IIAs-A0-poster_Royal-Entomological-Society-Conference-2023-.pdf \(buglife.org.uk\)](#)

⁷ [Lower Thames Crossing - Buglife](#)

Therefore, to mitigate against potential adverse effects on biodiversity, the Bat Conservation Trust/Institute of Lighting Professional's 'Guidance Note 08/23 Bats and Artificial Lighting at Night'⁸ and Buglife's 'Bug-Friendly Lighting' advice⁹ should be consulted in the lighting design of the development.

We advise that the incorporation of sensitive lighting design for biodiversity is submitted to the local planning authority and secured via an attached condition with any planning permission. Dark buffer zones should be used to separate habitats or features from lighting. Where 'complete darkness' on a feature or buffer is required, we will consider this to be where illuminance is below 0.2 lux on the horizontal plane and below 0.4 lux on the vertical plane.

We note that the project ecologists have indicated that they consider that no dark buffer zones will be required for this development. We would disagree with this position. Although, the project ecologists have indicated that they do not consider the site of significant importance for bats, the site has been identified to be of national importance for invertebrates which can also be adversely affected by artificial lighting^{10,11}. Based on submitted information, achieving darkness throughout most of the site for most of the time seems very possible.

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:

AECOM (July 2024) Technical Note: response to ecological points raised in KCC advice to Gravesham BC dated 27th February 2024.

AECOM (July 2024) National Grid Cable Tunnel Replacement Project. Biodiversity Net Gain Assessment and Strategy Report (Revision 1).

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Environmental Statement Volume IV. Chapter 15 Biodiversity – Gravesend.

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Biodiversity Net Gain Assessment and Strategy Report.

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Environmental Statement Volume VI. Appendix 7.10 – Marine Assessment Screening.

⁸ ['Bats and Artificial Lighting at Night' ILP Guidance Note update released - News - Bat Conservation Trust](#)

⁹ [Buglife - Bug-friendly Lighting Sheet PROOF R2](#)

¹⁰ [Light Pollution - Buglife](#)

¹¹ [Impact of artificial light on invertebrates Final_docx \(buglife.org.uk\)](#)

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Environmental Statement Volume VI. Appendix 7.9 – National Vegetation Classification Survey Report.

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Environmental Statement Volume VI. Appendix 7.8 – Invertebrate Report.

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Environmental Statement Volume VI. Appendix 7.7 – Reptile Survey Report.

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Environmental Statement Volume VI. Appendix 7.6 – Badger Survey Report. CONFIDENTIAL.

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Environmental Statement Volume VI. Appendix 7.5 – Otter and Water Vole Survey Report.

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Environmental Statement Volume VI. Appendix 7.4 – Bat Survey Report.

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Environmental Statement Volume VI. Appendix 7.3 – Great Crested Newt eDNA Surveys.

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Environmental Statement Volume VI. Appendix 7.2 – Ornithological Baseline Report.

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Environmental Statement Volume VI. Appendix 7.1 – Preliminary Ecological Appraisal.

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Outline Landscape and Ecological Management Plan.

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Environmental Statement Volume VI. Appendix 3.1 – Outline Construction Environmental Management Plan.

AECOM (December 2023) National Grid Cable Tunnel Replacement Project. Report to inform Habitats Regulations Assessment.

Buglife (February 2024) By e-mail only. RE: Proposed construction of a new cable tunnel beneath the River Thames between Gravesend and Tilbury to provide additional transmission capacity. Above-ground infrastructure in the form of a new Cable Sealing End compound and a new head house building along with associated electricity infrastructure, access, parking, boundary treatment and two overhead gantry structures for future overhead lines. Temporary compound for the duration of the project to provide parking, staff welfare facilities, delivery vehicle parking, and equipment and machinery storage, including boundary treatment and lighting. Eastcourt Marshes Electricity Distribution Site Mark Lane Gravesend Kent DA12 2HN.

National Grid (October 2023) Gravesend Headhouse – Planning – Site Plan. PDD-100116-LAY-053 P03.

National Grid (January 2024) Gravesend Headhouse Compound Block Plan – Existing (Planning Drawing). PDD-100116-LAY-233 P01.

Natural England (February 2024) Planning Consultation: Proposed construction of a new cable tunnel beneath the River Thames between Gravesend and Tilbury to provide additional transmission capacity. Aboveground infrastructure in the form of a new Cable Sealing End compound and a new head house building along with associated electricity infrastructure, access, parking, boundary treatment and two overhead gantry structures for future overhead lines. Temporary compound for the duration of the project to provide parking, staff welfare facilities, delivery vehicle parking, and equipment and machinery storage, including boundary treatment and lighting. Location: Eastcourt Marshes Electricity Distribution Site , Mark Lane, Gravesend, Kent DA12 2HN.