



ECOLOGICAL ADVICE SERVICE

TO: *Ethan Bonthron*

FROM: *Emma England*

DATE: *25 September 2024*

SUBJECT: *20240136 / 22-25 London Road, 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 – ADDITIONAL INFORMATION REQUIRED

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. This includes:

- An Ecological Impact Assessment that considers the potential of the buildings for demolition to support roosting bats; and
- Confirmation that a mandatory 10% biodiversity net gain does not apply to this development *i.e.*, that the application was submitted before 12th February 2024. If a mandatory 10% biodiversity net gain does apply to this application then the relevant advice below should be applied.

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

Ecological Impact Assessment

Submitted ecological information does not include an assessment of the buildings' suitability to support roosting bats, protected species that must be taken account of in the planning decision. As such, an Ecological Impact Assessment (EclA) should be undertaken by a suitably qualified ecologist¹, in accordance with good practice guidelines.

The EclA will include the following:

- Details of the impacts of development proposals on the ecological baseline established via a Preliminary Ecological Appraisal (PEA) and any necessary additional surveys undertaken;
- Details of any necessary and achievable ecological mitigation and/or compensation measures;
- Details of ecological enhancement measures; and
- Provision of sufficient information to determine whether the project accords with relevant nature conservation policies and legislation.

To ensure that the planning determination is adequately informed in respect of all potential ecological impacts, we advise that the EclA is sought prior to determination of the planning application. This is in alignment with paragraph 99 of the Office of the Deputy Prime Minister (ODPM) Circular 06/2005² 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"*.

The EclA will also ensure alignment with the National Planning Policy Framework (NPPF) 2023 and the Natural Environment and Rural Communities Act (NERC) Act 2006. Under section 40 of the NERC Act 2006 and paragraphs 180 and 186 of the NPPF 2023 biodiversity should be maintained and enhanced through the planning system.

Mandatory 10% Biodiversity Net Gain

This application was received on Tuesday 13th February 2024, with the application form declaration signed 20th May 2024, according to the information available on the planning portal. The site is 368 square metres (0.037 hectares) in size, according to the information in the application form.

Under the National Planning Policy Framework 2023, proposals achieving a biodiversity net gain with no specific percentage target should be viewed favourably³. Under the Environment Act 2021, all planning applications for major development (unless exempt^{4,5})

¹ Suitably qualified ecologists can be found using either the: [CIEEM Registered Practice Directory](#) or the [Environmental Data Services Directory](#).

² [odpm-circ-0605.qxd \(publishing.service.gov.uk\)](#)

³ Appeal decisions (Planning Inspectorate (2022). Appeal Decisions APP/Y3940/W/21/3278256, APP/Y3940/Q/21/3278923, APP/Y3940/W/21/3282365) 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...."

⁴ [Biodiversity net gain: exempt developments - GOV.UK \(www.gov.uk\)](#)

⁵ [The Biodiversity Gain Requirements \(Exemptions\) Regulations 2024 \(legislation.gov.uk\)](#)

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'⁶ 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.

We note that the applicant has claimed an exemption for mandatory 10% biodiversity net gain as the applicant claims the planning application was submitted before commencement of biodiversity net gain. We have been unable to verify this, and it should be verified by Gravesham Borough Council. Where the applicant believes an exemption to apply, they should submit information with the planning application to justify their position.

In the event that a mandatory 10% biodiversity net gain does apply to the application, we have completed the below table in order to show whether and how the applicant has demonstrated the capability of providing a biodiversity net gain of 10% in line with the minimum requirements prior to determination⁷.

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 an exemption applies in the application form.
The pre-development biodiversity value(s), either on the date of application or earlier proposed date (as appropriate) .	Yes	The submitted baseline habitat condition assessment report indicates a site survey was carried out 1 st August 2024.
Where the applicant proposes to use an earlier date, this proposed earlier date and the reasons for proposing that date.	-	
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	The completed metric indicates a 48.91% biodiversity loss from the site.
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:	No	

⁶ [Make on-site biodiversity gains as a developer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/biodiversity-net-gain#para11)

⁷ <https://www.gov.uk/guidance/biodiversity-net-gain#para11>

• 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.		
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 habitats 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 48.91% biodiversity loss from the site.

Paragraph: 019 Reference ID: 74-019-20240214⁸ 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.*

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):

⁸ [Biodiversity net gain - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/biodiversity-net-gain)

- *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.

For some planning applications (for instance, applications for outline planning permission where landscaping and layout are reserved matters), the implications for existing onsite habitats and the contribution to onsite gains may be uncertain at the time of the determination of the application. In these cases, decision makers may want to consider what subsequent approvals will be necessary to ensure significant onsite habitat enhancements are appropriately secured.

Onsite habitat enhancements to support the biodiversity gain objective may have positive implications for other policy objectives which may need to be taken into account as part of the determination of the planning application. For example, such as delivering wider benefits to landscaping, amenity, and climate change adaptation”.

If planning permission is granted, the statutory biodiversity gain condition (and its reason for imposition) should not be included on decision notices. Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 sets out the biodiversity net gain information which needs to be included on non-exempted decision notices. The Planning Practice Guidance (Paragraph: 026 Reference ID: 74-026-20240214)⁹ provides a link to a document with [suggested paragraphs for Biodiversity Gain Information](#) to fulfil these requirements.

If planning permission is granted, the decision notice must set out (as far as relevant):

- Information relating to the biodiversity gain condition, including exemptions to the condition, and transitional provisions in relation to that condition;
- Information to note the effect that section 73(2D) of the Town and Country Planning Act 1990 applies (that an earlier biodiversity gain plan in relation to a previous planning permission is regarded as approved);
- The [planning authority](#) for the purposes of the Biodiversity Gain Plan;
- Requirements relating to [irreplaceable habitats](#); and

⁹ [Biodiversity net gain - GOV.UK \(www.gov.uk\)](#)

- Where [development is to proceed in phases](#), a statement to that effect, and that the development cannot begin before an [Overall Biodiversity Gain Plan](#) and [Phase Biodiversity Gain Plan](#) have been submitted to, and approved by the planning authority, and that a Phase Biodiversity Gain Plan is required to be approved before that phase may begin.

The applicant should submit a biodiversity gain plan form¹⁰ along with supporting information (e.g., legal agreement and habitat management and monitoring plan) once planning permission has been granted to demonstrate in more detail how the proposed biodiversity net gain will be delivered. The biodiversity gain plan must include the following information:

- Information about steps taken or to be taken to minimise the adverse effects of the development on biodiversity;
- The pre-development biodiversity value of the on-site habitat;
- The post-development biodiversity value of the on-site habitat;
- Any registered off-site biodiversity gain allocated to the development and the biodiversity value of that gain in relation to the development;
- Any biodiversity credits purchased for the development; and
- Any other matters that the Secretary of State may be regulations specify.

When calculating the post-development biodiversity value of a habitat, the planning authority can only take into account an increase in biodiversity value post-development where it is satisfied that the habitat creation or enhancements delivering the increase will be maintained for at least 30 years after the development is completed. This must be secured either by a planning condition, planning obligation, or conservation covenant¹¹.

Neither the statutory definition of the biodiversity gain plan, nor the current DEFRA biodiversity gain plan template require management and maintenance measures to be specified. Consequently, the statutory condition does not on its own secure compliance with the approved biodiversity gain plan (including the implementation of any habitat creation and enhancement works or their maintenance for a 30-year period). The DEFRA biodiversity gain plan template¹² acknowledges a Habitat Management and Monitoring Plan (HMMP) can be annexed to the approved plan. The statutory condition does not require the HMMP to be approved even if it is attached, therefore delivery of the gain envisaged by an HMMP needs to be secured by condition, or legal agreement. Significant habitat creation and enhancement on-site can be secured by condition. Guidance on what constitutes significant is available as government standing advice¹³:

- Significant enhancements contribute significantly to the proposed development's biodiversity net gain relative to the biodiversity value before development and would normally be:
 - Habitats of medium or higher distinctiveness in the biodiversity metric;

¹⁰ [Biodiversity gain plan - GOV.UK \(www.gov.uk\)](#)

¹¹ Paragraph 14(2) of Schedule 7A Town and Country Planning Act 1990

¹² [Biodiversity gain plan - GOV.UK \(www.gov.uk\)](#)

¹³ [Make on-site biodiversity gains as a developer - GOV.UK \(www.gov.uk\)](#)

- Habitats of low distinctiveness which create a large number of biodiversity units relative to the biodiversity value of the site before development;
- Habitat creation or enhancement where distinctiveness is increased relative to the distinctiveness of the habitat before development;
- Areas of habitat creation or enhancement which are significant in area relative to the size of the development;
- Enhancements to habitat condition.

Non-significant enhancements are those whose loss will not significantly decrease the development's biodiversity value e.g., private gardens or container planting. These types of enhancements do not normally require maintenance provisions and so no HMMP, legal agreement or commitment to maintain them is required.

Where achieving a minimum 10% biodiversity net gain from proposals is reliant on implementation of a detailed planting plan and the implementation of a suitable habitat management and monitoring plan¹⁴ secured through planning condition or obligation, we can provide suggested condition wording in line with the Planning Advisory Service on request.

Where off-site habitat creation is required, we direct the applicant towards the Kent Biodiversity Net Gain Site Register¹⁵ available on the Making Space for Nature in Kent and Medway website. Biodiversity Net Gain Guidance for Kent is also available on this website.

Off-site gains/the purchase of biodiversity credits will need to be subject to a deed of conservation covenants, unilateral undertaking or Section 106 (as appropriate). Off-site gains must be registered¹⁶ after determination. Section 106 agreement templates are available on the Planning Advisory Service website¹⁷.

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 new dwellings 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.

¹⁴ [Creating a habitat management and monitoring plan for BNG - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/creating-a-habitat-management-and-monitoring-plan-for-bng)

¹⁵ <https://www.makingspacefornaturekent.org.uk/bng/kent-biodiversity-net-gain-site-register/>

¹⁶ [Register a biodiversity gain site - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/register-a-biodiversity-gain-site)

¹⁷ [PAS Biodiversity Net Gain \(BNG\) Legal Agreement and Planning Condition Templates | Local Government Association](#)

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.

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 2023¹⁸. For this type of development, it is possible to obtain an autogenerated Natural England advice letter which we have attached to the email accompanying this advice note.

The responsibility for carrying out a Habitats Regulations Assessment (HRA) Screening and Appropriate Assessment lies with the Competent Authority.

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:

Arbtech (August 2024) Baseline Habitat Condition Assessment (BHCA). 22-25 London Road, Northfleet, Gravesend, DA11 9JH.

Arbtech (August 2024) Biodiversity Net Gain Assessment (BHCA). 22-25 London Road, Northfleet, Gravesend, DA11 9JH.

Cook, L. (August 2024) The Statutory Biodiversity Metric Calculation Tool Excel Spreadsheet. 22-25 London Road, Northfleet, Gravesend, DA11 9JH.

¹⁸ "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."

Gill Sterling (February 2024) Block Plan. 22-25 London Road, Northfleet, Gravesend, DA11 9JH.

Gill Sterling (February 2024) Site Layout. 22-25 London Road, Northfleet, Gravesend, DA11 9JH.

Sterling, G. (May 2024) Application for Planning Permission. Gravesham Borough Council. 22 London Road, Northfleet, DA11 9JH.