



ECOLOGICAL ADVICE SERVICE

TO: Alison Webster
FROM: Emma England
DATE: 12 March 2025
SUBJECT: 20241161 / St Josephs Convent of Mercy

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 information submitted by the applicant and advise that sufficient ecological information has been provided.

Under the Environment Act 2021, all planning applications for development (unless exempt^{1,2}) must deliver at least a 10% biodiversity net gain. This mandatory 10% biodiversity net gain is provided through the provision of habitats and does not require the provision of habitat features such as bird boxes, bat boxes, hedgehog highways etc. The provision of such habitat features may be required to meet necessary protected and/or priority species mitigation/compensation, and/or to contribute to biodiversity enhancements³ as per the NPPF 2024 and to help meet the public authority biodiversity duty⁴.

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

² [The Biodiversity Gain Requirements \(Exemptions\) Regulations 2024 \(legislation.gov.uk\)](https://legislation.gov.uk)

³ Enhancement refers to providing net benefits for biodiversity over and above requirements for avoidance, mitigation and compensation.

⁴ [Complying with the biodiversity duty - GOV.UK](https://www.gov.uk)

We highlight that paragraph 187 of the NPPF 2024 states: *“Planning policies and decisions should contribute to and enhance the natural and local environment by: ... 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 and incorporating features which support priority or threatened species such as swifts, bats and hedgehog...”*

As such, to meet the necessary policy and legislative requirements, if planning permission is granted, we advise the conditions in Appendix 1 are included.

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

The ecological impact assessment submitted as part of this application indicates that there are the following ecological constraints or potential constraints on-site with regards to protected and priority species:

- An on-site building supports a day roost for two common pipistrelle bats;
- There is habitat suitable for foraging and commuting bats, badgers, breeding birds, hedgehogs.

Mandatory 10% Biodiversity Net Gain

Under the National Planning Policy Framework 2024, proposals achieving a biodiversity net gain with no specific percentage target should be viewed favourably⁵. Under the Environment Act 2021, all planning applications for development (unless exempt^{6,7}) must deliver at least a 10% biodiversity net gain. Unless exempt, every planning permission granted pursuant to an application is deemed to have been granted subject to a pre-commencement condition requiring a Biodiversity Gain Plan to be submitted and approved by the local planning authority prior to commencement of the development.

We highlight that local policy may expect a higher than 10% biodiversity net gain and that ‘significant’⁸ 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 after the development is completed. This must be secured either by a planning condition, planning obligation, or conservation covenant⁹.

Having reviewed submitted information, we consider this application to fall under mandatory biodiversity net gain.

⁵ 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 187] 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...”

⁶ [Biodiversity net gain: exempt developments - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/biodiversity-net-gain-exempt-developments)

⁷ [The Biodiversity Gain Requirements \(Exemptions\) Regulations 2024 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2024/125/contents/making)

⁸ [Make on-site biodiversity gains as a developer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/make-on-site-biodiversity-gains-as-a-developer)

⁹ Paragraph 14(2) of Schedule 7A Town and Country Planning Act 1990

Detailed advice regarding biodiversity net gain requirements and submitted information is provided in Appendix 1, a summary is provided below.

Having reviewed the submitted information, we consider that the applicant has provided the minimum information required prior to determination.

We have provided suggested condition wording should planning permission be granted, in Appendix 2.

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)¹⁰ provides a link to a document with [suggested paragraphs for Biodiversity Gain Information](#) to fulfil these requirements.

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 Wetland 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) 2024.

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

¹⁰ [Biodiversity net gain - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/biodiversity-net-gain)

line with the NPPF 2024¹¹. 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, 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:

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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."

Appendix 1 – Suggested Condition Wording

Ecological Mitigation

Badgers

To ensure that badgers are protected during site clearance and construction, we recommend the below condition be attached should planning permission be granted:

No development shall be undertaken (including any site and/or vegetation clearance) until an updated badger survey report for the site (including any necessary mitigation, compensation and licensing measures) has been provided to, and approved in writing by, the local planning authority.

Bats

In accordance with the February 2020 Natural England explanatory note for local planning authorities on Clause 9.3 and Annex D6.1 of BS42020:2013, planning conditions and European Protected Species licences¹², we recommend the below condition be attached should planning permission be granted:

- 1) *No development shall be undertaken (including any site clearance) until one of the following has been provided to, and approved in writing by, the local planning authority, which clearly shows that the impacts from the development with regards to roosting bats have been appropriately compensated for:*
 - *A copy of the relevant protected species licence; or*
 - *A copy of a statement in writing from Natural England stating that such a licence is not necessary for the specified development.*

We also recommend that the below condition be attached should planning permission be granted:

- 2) *Non-bitumen coated roofing membranes (or breathable roofing membranes) shall not be used in any new roofing on-site or a certificate shall prove the roofing membrane has passed a 'snagging propensity test' if using a non-bitumen coated roofing membrane. This is to prevent bat entanglement and death.*

General

To mitigate for the effects of proposals upon habitats and protected and priority species, we recommend the below condition be attached should planning permission be granted:

From commencement of works (including site/vegetation clearance) and for the duration of construction, all mitigation measures for habitats and protected and priority species shall be carried out in accordance with the details contained in section 4 of the Ecological Impact Assessment for The Convent of Mercy, Hillside Drive, Gravesend, by Lizard Landscape, Design and Ecology (Rev 01; Ref: LLD3294-ECO-REP-001-01-EcIA; dated 25th November 2024). With regards to bats, all mitigation and compensation measures for bats shall be carried out in accordance with the aforementioned Ecological Impact Assessment unless additional and/or alternative measures are required by Natural England through the licensing process. Should Natural England require less mitigation

¹² [Natural England Explanatory Note](#)

than that detailed within the Ecological Impact Assessment, then all remaining measures shall be included as enhancements under the National Planning Policy Framework 2024. Bat mitigation, and any enhancements, shall be implemented as above and retained thereafter.

Biodiversity Gain Plan

The below condition is not a statutory requirement but unless imposed there would be no requirement that the Biodiversity Gain Plan submitted for approval to be in accordance with any biodiversity or ecological information submitted with the planning application.

Suggested Condition Wording:

The Biodiversity Gain Plan shall be prepared in accordance with the Biodiversity Net Gain Statement (Ref: LLD3294-ECO-REP-003-00-BNG), submitted with the planning application, for The Convent of Mercy, Hillside Drive, Gravesend, dated 27th November 2024 and prepared by Lizard Landscape Design and Ecology, unless otherwise agreed in writing with the Local Planning Authority.

Habitat Management and Monitoring Plan

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 shall 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 covenant¹³.

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 template¹⁴ 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 advice¹⁵. We consider that some of the proposed on-site habitats shall likely qualify as significant enhancements and shall need to be effectively secured should planning permission be granted.

To note: The "completion of development" is not defined by the Town and Country Planning Act 1990. Local authorities may wish to agree on the meaning of "completion of development" with applicants and include its interpretation as an informative on decision notices. The "completion of development" could be the full

¹³ Paragraph 14(2) of Schedule 7A Town and Country Planning Act 1990

¹⁴ [Biodiversity gain plan - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/biodiversity-gain-plan)

¹⁵ [Make on-site biodiversity gains as a developer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/make-on-site-biodiversity-gains-as-a-developer)

implementation of the permission, but it is possible that a planning permission is never fully implemented (and thereby never triggering the 30-year monitoring period); alternative interpretations could be (but are not limited to) practical completion or first occupation of the development.

Suggested Condition Wording:

The development shall not commence until a Habitat Management and Monitoring Plan(s) (the HMMP), prepared in accordance with the approved Biodiversity Gain Plan, and including the information required by (a) to (e) below, has been submitted to, and approved in writing by, the local planning authority:

- (a) A non-technical summary;*
- (b) The roles and responsibilities of the people or organisation(s) delivering the HMMP;*
- (c) The planned habitat retention, creation and enhancement works to conserve, create and/or improve habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan and the NPPF 2024. This shall include the provision of scaled and detailed soft landscaping plans, as well as planting schedules. This shall also include details of habitat features to be provided (e.g., hedgehog highways, bat and bird boxes) shown on scaled plans with details regarding numbers, target species, make and model, and precise locations (including height);*
- (d) The management measures to conserve, maintain and improve habitat in accordance with the approved Biodiversity Gain Plan for a period of 30 years from the completion of development; and*
- (e) The monitoring methodology and frequency by suitably qualified person, in respect of the retained, created and/or enhanced habitat to be submitted to the local planning authority.*

The retained, created and/or enhanced habitat specified in the approved HMMP(s) shall be managed, created and maintained in accordance with the approved HMMP(s).

Reason: To ensure the development delivers the required biodiversity net gain on site in accordance with [local policy reference] and Schedule 7A of the Town and Country Planning Act 1990.

Appendix 2 – Biodiversity Net Gain Advice

This application was received on 23rd December 2024, with the application form declaration signed 17th December 2024, according to the information available on the planning portal.

The site is 4,600 square metres (0.46 hectares) in size, according to the information in the application form. The habitat area reported in the biodiversity metric calculation tool matches the reported red line boundary site area as per the application form.

We note that biodiversity calculations indicate that there will be a 3.55% biodiversity net loss from proposals and so off-site compensation will be required to achieve a 10% biodiversity net gain from proposals.

We have completed the below table to show how the applicant has demonstrated the capability of providing a biodiversity net gain of 10% in line with the minimum requirements prior to determination¹⁶.

Information Needed	Provided	Comments
Confirmation that the applicant believes that planning permission, if granted, the development would be subject to the biodiversity gain condition.	Yes	In application form.
The pre-development biodiversity value(s), either on the date of application or earlier proposed date (as appropriate) .	Yes	A site survey was carried out on 19 th July 2024 which is considered acceptable to inform the application given the reported habitat types present on-site.
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	
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;	Yes	None reported.

¹⁶ <https://www.gov.uk/guidance/biodiversity-net-gain#para11>

- 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).	-	None reported
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	

Paragraph: 019 Reference ID: 74-019-20240214¹⁷ of the government standing advice indicates that decisions makers need to consider whether the biodiversity gain condition is capable of being successfully discharged. The standing advice also indicates that it should be considered whether there is “*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...*” and states that

“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”.

The applicant has provided an indication of the expected post-development habitat and so how much off-site compensation would be required and therefore how a 10% biodiversity net gain can be secured.

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-

¹⁷ [Biodiversity net gain - GOV.UK \(www.gov.uk\)](#)

20240214)¹⁸ 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
- 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.

As part of the Biodiversity Gain condition discharge application (which must be made prior to the commencement of development), the applicant should submit a biodiversity gain plan form¹⁹ 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 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 covenant²⁰.

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

¹⁸ [Biodiversity net gain - GOV.UK \(www.gov.uk\)](#)

¹⁹ [Biodiversity gain plan - GOV.UK \(www.gov.uk\)](#)

²⁰ Paragraph 14(2) of Schedule 7A Town and Country Planning Act 1990

creation and enhancement works or their maintenance for a 30-year period). The DEFRA biodiversity gain plan template²¹ 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 advice²²:

- 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;
 - 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.

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 plan²³ secured through planning condition or obligation. Significant on-site biodiversity net gain may require a section 106 agreement to secure monitoring fees to be paid to the Local Planning Authority.

As off-site habitat creation is required, we direct the applicant towards the Kent Biodiversity Net Gain Site Register²⁴ available on the Making Space for Nature in Kent and Medway website. Biodiversity Net Gain Guidance for Kent is also available on this website.

Where off-site gains are secured on land owned by the developer (but outside the redline boundary), or on third-party land (but not through a 'habitat bank operator'²⁵), the biodiversity net gain needs to be subject to a deed of conservation covenants or Section 106 (as appropriate). Section 106 agreement templates are available on the Planning Advisory Service website²⁶. It is not appropriate to rely solely on conditions to secure off-

²¹ [Biodiversity gain plan - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612211/biodiversity_gain_plan_template.pdf)

²² [Make on-site biodiversity gains as a developer - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612211/make_on_site_biodiversity_gains_as_a_developer.pdf)

²³ [Creating a habitat management and monitoring plan for BNG - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612211/creating_a_habitat_management_and_monitoring_plan_for_bng.pdf)

²⁴ <https://www.makingspacefornaturekent.org.uk/bng/kent-biodiversity-net-gain-site-register/>

²⁵ A 'habitat bank operator' can legally secure land and register the gain site ([Sell biodiversity units as a land manager - GOV.UK](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/612211/sell_biodiversity_units_as_a_land_manager.pdf)).

²⁶ [PAS Biodiversity Net Gain \(BNG\) Legal Agreement and Planning Condition Templates | Local Government Association](https://www.localgovernmentassociation.org.uk/resources/biodiversity-net-gain/)

site biodiversity net gain. The following needs to be secured as part of the off-site biodiversity net gain:

- The submission of a habitat management and monitoring plan (HMMP);
- Notice of HMMP implementation and completion of the habitat creation and enhancement works;
- Timescales for completion of habitat creation, and the submission of a completion report;
- Submission of a monitoring report;
- A habitat monitoring fee to be paid to the local planning authority on every habitat management monitoring event.

Where off-site gains are to be secured through a 'habitat bank operator' (which has its own legal agreement and HMMP), no additional conditions or section 106 obligations are required, above a condition requiring biodiversity net gain to be delivered as set out in the planning application. Where it is unknown prior to determination whether a 'habitat bank operator' will be used to deliver off-site biodiversity net gain, bespoke conditions may be required.

Where off-site gains are to be secured through statutory credits, no additional conditions or section 106 obligations are required above a condition requiring biodiversity net gain to be delivered as set out in the planning application.

All off-site gains must be registered²⁷ after determination, with evidence of that registration provided as part of the deemed condition discharge application.

²⁷ [Register a biodiversity gain site - GOV.UK \(www.gov.uk\)](https://www.gov.uk/register-a-biodiversity-gain-site)