

**TABLED UPDATE FOR ITEM 2.5**  
**21/505722/OUT – 128 High Street, Newington, Kent, ME9 7JH**

KCC Biodiversity Comments

1. Further to para 6.17 KCC Biodiversity have provided comments, which are included in full as an appendix to the tabled update. KCC Biodiversity advise that the submitted ecology report is comprehensive. However, the comments request clarification is sought regarding three areas: bats and lighting, reptiles and biodiversity net gain.
2. The comments outline conflict between potential brickearth extraction and proposed biodiversity net gain as the submitted documents do not consider brickearth extraction KCC Biodiversity advise that any further necessary mitigation measures will need to be submitted prior to determination of the planning application.
3. In this regard, further to the committee report (paras 7.134 – 7.139) it is not known at this stage whether there would be a viable brickearth deposit that would need extracting. As such, a Grampian condition has been proposed to address any potential brickearth extraction. In consultation with KCC Biodiversity it is recommended that this Grampian condition is amended to ensure it considers potential impacts upon ecology and biodiversity, but also regarding site levels; archaeology; and neighbouring properties. As such, it is recommended condition 1 is updated as below:

*“No development shall occur on site until information has been submitted demonstrating for the written approval by the Local Planning Authority that prior extraction of the Brickearth mineral is either:*

*A. unviable or;*

*B. further testing of the mineral demonstrates it is not usable or mineral extraction would result in significant adverse impacts upon protected species or habitats; neighbouring properties; land levels; or archaeology or;*

*C. full prior extraction of the viable deposits of the Brickearth has been completed to the satisfaction of the planning authority in consultation with Kent County Council as the minerals authority.*

*The details shall include assessments to determine whether brickearth extraction would impact upon protected species or habitats; neighbouring properties; land levels; or archaeology.*

*The above criteria a.to b. to be agreed as appropriate, in writing, with the Local Planning Authority (who shall consult Kent County Council)*

*The development shall thereafter be carried out in accordance with the approved details.*

*Reason: To ensure that the safeguarded mineral is not sterilized”*

4. Given the outline nature of the scheme, it is considered that the points raised re bats and lighting, reptiles and biodiversity net gain can be satisfactorily addressed by way of condition, and conditions are recommended to address the issues raised by KCC which include condition 22 (full details of a landscape and ecological management plan, which includes mitigation measures); condition 13 (biodiversity enhancements including 37% biodiversity net gain); and condition 30 (lighting designed for biodiversity).
5. Further to the comments provided by KCC Biodiversity, they have advised that condition

22 as per the report is split into two separation conditions which would cover Ecological Mitigation and Ecological and Landscape Management Plan. As such, it is recommended that condition 22 is updated as below, and an additional condition (38) is added:

Condition 22: *“Prior to the commencement of development (including vegetation clearance and prior to any brickearth works), an ecological mitigation strategy must be submitted to the Local Planning Authority for approval. The submitted report shall include:*

- a) Updated Preliminary Ecological Appraisal assessing if the existing ecological information is still valid.*
- b) Recommended specific species surveys.*
- c) Overview of the mitigation required*
- d) Detailed methodology to implement mitigation.*
- e) Maps showing retained habitat and mitigation areas.*
- f) Maps showing the location of any off site mitigation areas.*
- g) Landowner agreements for the retention and management of the off site mitigation areas.*
- h) A detailed method statement for the removal or long-term management /eradication of invasive species on the site.*
- i) Timings of when the works will be carried out.*
- j) Details of who will be carrying out the works.*
- k) Interim management plan for habitats retained on site. The development shall be carried out in accordance with the approved details and retained for the lifetime of the development.*

*The plan must be implemented as approved.*

*Reason: To protect biodiversity”*

Condition 38: *“With the submission of the reserve matters application an ecological and landscape management plan, Must be submitted to the Local Planning Authority for written approval. The submitted report shall include:*

- a) Overview of the habitats and species to be retained/create on site.*
- b) Methodology to create / enhance the habitats on site.*
- c) Overview of the management*
- d) Detailed timetables of the proposed management – capable of being a 5 year rolling plan*
- e) Habitat plans*
- f) Updated BNG Metric*
- g) Details of ecological enhancements to be incorporated in to the open space and buildings.*
- h) Details of on going monitoring and management plan reviews*
- i) The enhancement should include, but is not limited to, the following:*
  - a. Native species*
  - b. Bird and bat boxes/integrated features*
  - c. Insect boxes and bricks*
  - d. Hedgehog highways*
  - e. Log piles*

*The plan shall be carried out in accordance with the approved details and retained*

*for the lifetime of the development.*

*Reason: To contribute to protecting and enhancing biodiversity, and improving the aesthetic value of the development as well as resident's well-being."*

6. KCC Biodiversity have requested that the lighting details for ecology form part of the reserved matters application. As such, it is recommended that condition 30 is amended as below:

*"With the first reserved matters application, a lighting design plan for biodiversity will be submitted to, and approved in writing by, the local planning authority. The plan will show the type and locations of external lighting, demonstrating that areas to be lit will not disturb bat activity. All external lighting will be installed in accordance with the specifications and locations set out in the plan and will be maintained thereafter. No external lighting other than agreed subject to this condition shall be installed on site without the prior consent of the local planning authority.*

*Reason: In the interests of protected species."*

#### Archaeology and Brickearth

7. Further to the consultation comments provided by KCC Archaeology (paras 6.12-6.16) , and KCC Minerals and Waste (para 6.42 and 6.43) the recommended conditions requested by these consultees have been reviewed with regard to the potential for brickearth extraction at the site. As brickearth extraction would have a potential impact upon archaeology, additional wording has been added to condition 7 requiring the archaeological details (archaeological field evaluation works and safeguarding measures) to be submitted to an approved prior to any brickearth extraction; and before the submission of reserved matters. The updated working has been discussed with KCC Archaeology, and KCC Minerals and Waste and they raise no objection to the revised condition wording. As such, it is recommended condition 7 is updated as below:

*"7) A) Before the submission of reserved matters and any brickearth extraction, the applicant (or their agents or successors in title) shall secure and have reported a programme of archaeological field evaluation works, in accordance with a specification and written timetable which has been submitted to and approved by the local planning authority.*

*B) Following completion of archaeological evaluation works, no development (including any brickearth extraction) shall take place until the applicant or their agents or successors in title, has secured the implementation of any safeguarding measures to ensure preservation in situ of important archaeological remains and/or further archaeological investigation and recording with a specification and timetable which has been submitted to and approved by the local planning authority.*

*C) Within 6 months of the completion of archaeological works a Post-Excavation Assessment Report shall be submitted to and approved in writing by the local planning authority. The Post-Excavation Assessment Report shall be in accordance with Kent County Council's requirements and include:*

- a. a description and assessment of the results of all archaeological investigations that have been undertaken in that part (or parts) of the development;
- b. an Updated Project Design outlining measures to analyse and publish the findings of the archaeological investigations, together with an implementation strategy and timetable for the same;
- c. a scheme detailing the arrangements for providing and maintaining an archaeological site archive and its deposition following completion.

D) The measures outlined in the Post-Excavation Assessment Report shall be implemented in full and in accordance with the agreed timings.

*Reason: To ensure appropriate assessment of the archaeological implications of any development proposals and the subsequent mitigation of adverse impacts through preservation in situ or by record”*

#### Other Matters

8. Further to para 7.3, whilst paddocks can be considered as previously developed land as per the NPPF definition, the definition also outlines exceptions such as *‘land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.’* Given the derelict nature of small scale outbuildings on the site; vegetation evident on the site; and lack of use as a paddock, it is not considered that the site would meet the definition of ‘previously developed land’.

#### Neighbour Representations

9. A further representation has been received from a neighbouring property outlining they wanted to speak at the committee meeting against the item but did not register in time. The residents of The Tracies as a group have strong objections regarding the proposal, and a representation has been submitted by no. 10 The Tracies as below:

- *“I own the land and boundary fence leading to ZR61 footpath from 10 The Tracies. I will object when requested to give authorisation for this route to be accessible. Esquire or whoever is leading the planning application will need to bulldoze or remove my boundary fence to gain access from the new development (objected by all residents) into the Tracies. This needs to be considered by the committee, the footpath is accessible of course it is but only by removing my fence.*
- *126 The high road, has already objected and we support this decision, the human side is you cannot demolish a building that a person is living in called “home”*
- *We the residents require the same support / objections that Eden Meadows had when the planning application was removed. There is no difference to the 2 sites, highway safety, appearance of the area and the most important traffic generation.”*

10. The recommendation at section 9 of item 2.5 should be amended to read;

*“GRANT – planning permission to be granted subject to the conditions and Section 106 agreement set out in the committee report, and amended conditions (1), (7), (22) and (30)*

*and new condition (38) as set out in the tabled update and with authority to amend the wording of the S106 agreement and conditions as may reasonably be required.*

11. Recommendation: planning permission to be granted subject to the conditions and Section 106 agreement set out in the committee report, and amended conditions (1), (7), (22), and (30) and new condition (38) as set out in the tabled update and with authority to amend the wording of the S106 agreement and conditions as may reasonably be required.