



## ECOLOGICAL ADVICE SERVICE

**TO:** *Corinna Griffiths*

**FROM:** *Emma England*

**DATE:** *09 November 2022*

**SUBJECT:** *21/505722/OUT / 128 High Street, Newington*

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*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 whether sufficient and appropriate ecological information has been provided to assist in its determination. 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.*

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### **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. The issues surrounding brickearth extraction are also dealt with below.

Any further necessary mitigation measures will need to be submitted prior to determination of the 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*".

Under section 40 of the Natural Environment and Rural Communities (NERC) Act 2006, and paragraphs 174 and 180 of the National Planning Policy Framework (NPPF) 2021, biodiversity should be maintained and enhanced through the planning system.

### **DETAILED COMMENTS**

The submitted ecology report is comprehensive. However, KCC EAS request clarification regarding three areas: bats and lighting, reptiles and biodiversity net gain.

### **Bats and lighting**

Some species of bats are priority species under the Natural Environment and Rural Communities (NERC) Act 2006 and therefore require consideration when making planning decisions. Further, all British bats are protected under the Conservation of Habitats and Species Regulations 2017 (as amended) which is relevant with regards to the protection of commuting and foraging habitats.

It is noted that foraging and commuting bat surveys were not carried out in accordance with current guidelines. However, provided retained boundary features and the southern part of the site can be retained as unlit, bats should be able to continue to commute and forage around the site. But, it is noted that there are roads proposed near the boundary hedgerows and proposed orchard. It is requested that the applicant confirm whether it is realistic for boundary habitats to remain unlit during operation of the development.

### **Reptiles**

British reptiles are priority species under the NERC Act 2006 and therefore require consideration when making planning decisions. These species are also protected under the Wildlife and Countryside Act 1981 (as amended) from killing and injury.

The southern part of the site (estimated to be about one third of the long grassland area on-site) is proposed for retention as a reptile receptor site. The submitted ecology report states that that retained grassland will be managed to create a more varied sward structure with more basking opportunities, and the creation of new refugia and hibernacula. However, this area is also proposed as a community orchard with recommended wildflower grassland. The planting of trees within this area is likely to create more shade, and whilst not incompatible with use of the area by reptiles, may not provide an enhancement for these species, especially if management practices are not carefully considered. Additionally, the creation and management of wildflower grassland is likely to be less favourable to reptiles than managing the area as tussocky grassland interspersed with scrub. Furthermore, it is unclear whether the retention of the area proposed will be sufficient to maintain current populations of reptiles found on-site. Clarification is requested regarding these points.

### **Biodiversity Net Gain**

The submission of Defra Biodiversity Metric results is welcomed, along with a 37.55% biodiversity net gain. However, the linear features information is missing, and it should be noted that the latest Defra Biodiversity Metric is version 3.1 (version 3.0 has been used for submission). It is however noted that the application was validated prior to the updated version 3.1 becoming available. It is requested that the linear habitats information be submitted for review. We would also request to see the full calculation spreadsheet and condition assessment sheets during our review process.

### **Brickearth Extraction**

If brickearth mineral on-site is to be fully extracted prior to development occurring, the measures outlined to provide a biodiversity net gain for the site, and to mitigate for impacts to protected species may not be viable.

The submitted ecology report does not address ecological effects resulting from brickearth extraction. For example, submitted plans are for the retention and enhancement of a third of the species poor semi-improved grassland on-site for biodiversity, including reptiles known

to occur on the site. If there is to be removal of habitats currently proposed for retention in order to extract brickearth this is also likely to change the biodiversity net gain score for the site.

The ecological effects as a result of brickearth extraction will need to be considered in advance of determination of the planning application to ensure that significant ecological effects from the project are adequately addressed. Where current proposed habitat retention is not possible, a reptile receptor area is likely to be required off-site, and there may also be a requirement for off-site compensation for the loss of habitats on-site in order to achieve a biodiversity net gain.

## **NORTH KENT SITES**

The development includes proposals for new dwellings within the zone of influence (6km) of The Medway Estuary and Marshes, and Swale Special Protection Areas (SPA) and Wetlands of International Importance under the Ramsar Convention (Ramsar Site). Swale 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.

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:

*Aspect Ecology (October 2021) Ecological Appraisal. Land to the Rear of 128 High Street, Newington.*

*Clague Architects (March 2021) Residential Sketch Scheme – 46 Units Site Layout Plan Hand Drawn with Green Buffer Zone. Proposed Residential Development. Land to the rear of 128 high Street, Newington, Kent. Drawing No: 23254C / 103\_E.*

*Clague Architects (October 2021) Red Line Location Plan. Proposed Residential Development. Land to the rear of Eden Meadow, Boyces Hill, Newington, Kent, ME9 7JH. Drawing No: 23254C / 25. Revision D.*

*Clague Architects (October 2021) Design and Access Statement. Proposed Residential Development. Land Rear of 128 High Street, Newington.*