



## ECOLOGICAL ADVICE SERVICE

**TO:** Robert Allan

**FROM:** Elizabeth Fagg

**DATE:** 13 November 2024

**SUBJECT:** 24/0885/FH / Land R of Earlscliffe Mews, Folkestone

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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 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.*

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### **SUMMARY – SUFFICIENT INFORMATION PROVIDED**

We have received additional information for bat and badger surveys, we are satisfied that sufficient surveys have been completed.

A Biodiversity net gain (BNG) metric was submitted as part of this application. The information provided has shown a net loss of -11.91% habitat units and this site will not achieve 10% mandatory net gain. Off-site units will need to be purchased to meet this requirement for this site.

Our comments for protected species remain largely unchanged as below

### **BADGERS**

Badger receives protection from cruelty under the Protection of Badgers Act (1992) and the relevant part of the legislation (for planning) is in regard to the protection of setts:

*A person is guilty of an offence if, except as permitted by or under this Act, he interferes with a badger sett by doing any of the following things :*

- (a)damaging a badger sett or any part of it;*
- (b)destroying a badger sett;*
- (c)obstructing access to, or any entrance of, a badger sett;*

*(d)causing a dog to enter a badger sett; or*  
*(e)disturbing a badger when it is occupying a badger sett.*

If the development will result in damage, destruction or disturbance of any badger setts then a licence to carry out the works may be required from Natural England.

There was evidence of mammal holes, sign and tracks recorded by the ecologist in the preliminary ecological appraisal (PEA). They have identified there is a risk that a badger sett may be present within the surrounding vegetation and recommended further surveys. This survey work has now been completed using trail cameras for 17 nights. The results showed that the potential badger sett was being used by foxes, rats and squirrels and no evidence of badger was recorded, or relevant sign identified. From the information provided, we agree with the ecologist that badger is likely absent from this site and precautionary mitigation has been proposed which should be implemented prior to construction and included in the Construction Ecological Management Plan (CEcMP) detailed below.

### **BATS**

The submitted ecological report outlined that the proposed development has some mature trees which may support roosting bats a full examination was not carried out as part of the initial survey. Bats are fully protected through the Wildlife and Countryside Act 1981 (as amended) and the Conservation of Habitats and Species Regulations 2017 (as amended).

A daytime bat survey was carried out 4/10/24, which included an aerial inspection for trees of sufficient size, for potential roost features for the relevant which are to be removed and reduced. The survey found a single beech tree to have features providing low bat roost potential but with no evidence of bats or signs of presence. We are satisfied that no further bat surveys are required. Mitigation has been proposed for the crown reduction works to this tree and this should be included in the CEcMP, outlined below.

A sensitive lighting strategy will also be required, and wording can be provided once the further information is provided.

### **BREEDING BIRDS**

Vegetation within the site has been identified as suitable breeding bird habitat and some will be impacted by clearance works. We recommend that any works to vegetation are conducted outside the breeding bird season (1<sup>st</sup> March to 31<sup>st</sup> Aug) to avoid risk of impacts or if within the breeding bird season, a survey by a suitably qualified person needs to be conducted to confirm absence, prior to commencing works. This can be included in a CEcMP outlined below.

### **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](#).

The PEA reports that the existing maintained garden has limited potential for reptiles, although vegetation and tree roots may provide potential for hibernation places. A

precautionary approach has been proposed in the PEA which we agree with. We recommend the current management mowing regime must continue to ensure the suitability of the site for reptiles does not increase. A precautionary works strategy is proposed and can be included in the CEcMP outlined below.

## **TREES**

We note that one of the trees for removal is T1 the Tree of Heaven (*Ailanthus altissima*). This plant is listed on Schedule 9 of the UK Wildlife & Countryside Act as an **invasive non-native species** and as such we recommend that removal is carried out as part of this application. A precautionary works strategy is proposed in the arboricultural report to protect retained trees and their root protection areas and this can be included in the CEcMP outlined below.

The tree officer may need to be consulted regarding the tree removals as this is not our area of expertise

## **LIGHTING**

Nocturnal animals (including bats) are likely to be using the site and surrounding area for foraging and commuting and any lighting associated with the proposal may have a negative impact, especially any light spill to hedgerow boundaries and trees on the site. We advise that a **condition** will be required for the external lighting and will require the following requirements:

- *Plan showing location of lighting, light fittings and light spill*
- *Downward facing*
- *On a motion sensor (where possible)*
- *Follow the recommendations within Bat Conservation Trust/Institute of Lighting Professional's 'Guidance Note 08/23 Bats and Artificial Lighting at Night'*

## **CONSTRUCTION ECOLOGICAL MANAGEMENT PLAN**

We suggest that the below wording is included as a condition for a Construction Ecological Management Plan (CEMP – biodiversity) if planning permission is granted. This will mitigate for impacts to biodiversity and help ensure compliance with relevant legislation. The plan will include protected species mitigation as outlined in the ecological survey reports, Ecoassistance.

*Prior to commencement of works (including site clearance), a construction ecological management plan (CEcMP) will be submitted to and approved in writing by the local planning authority. The CEcMP will be based on the recommendations in preliminary ecological appraisal, bat and badger survey reports by Ecoassistance, and include the following:*

- *Risk assessment of potentially damaging construction activities;*
- *Identification of 'biodiversity protection zones';*
- *Mitigation strategy and precautionary method statements for bats, badgers, breeding birds and reptiles;*
- *The location and timing of sensitive works to avoid harm to biodiversity features;*
- *The times during construction when specialist ecologists need to be present on site to oversee works;*
- *Responsible persons and lines of communication;*

- *The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person, and;*
- *Use of protective fences, exclusion barriers and warning signs.*

*The approved CEMP will be adhered to and implemented throughout the construction period in accordance with the approved details.*

## **BNG**

Under the Environment Act 2021 and the Town and Country Planning Act 1990 (as amended), all planning applications received in England (with a few exemptions) must deliver at least a 10% biodiversity net gain (BNG) from the 12th February 2024 and all minor applications from the 2nd April 2024. The application form was dated 10<sup>th</sup> June 2024 which is within relevant BNG dates.

Following the query (KCC Aug 24) regarding the self-build exemption the applicant has now submitted a Biodiversity net gain report, habitat baseline map and BNG metric. The baseline habitats shown are representative of the habitats stated on site with modified grassland, bramble scrub, developed land/sealed surface and individual trees. The post development habitat is shown to be developed land/sealed surface and vegetated garden. As this results in a loss of habitat from 1 habitat unit to 0.88 habitat units the net loss is -11.91% of habitat units, not achieving the mandatory 10% net gain. The applicant will need to purchase off-site units to meet the requirements of BNG.

Where off-site habitat creation is required, we direct the applicant towards the Kent Biodiversity Net Gain Site Register<sup>1</sup> 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 units will need to be subject to a deed of conservation covenants or Section 106 (as appropriate). Off-site gains must be registered<sup>2</sup> after determination. Section 106 agreement templates are available on the Planning Advisory Service website<sup>3</sup>.

If planning permission is granted, local planning authorities are encouraged to use suggested paragraphs for Biodiversity Gain Information on the written decision notice which are available to download here: [https://assets.publishing.service.gov.uk/media/663251d969098ded31fca800/BNG\\_Decision\\_Notice\\_Text.odt](https://assets.publishing.service.gov.uk/media/663251d969098ded31fca800/BNG_Decision_Notice_Text.odt). The applicant should submit a biodiversity gain plan form<sup>4</sup> 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

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<sup>1</sup> <https://www.makingspacefornaturekent.org.uk/bng/kent-biodiversity-net-gain-site-register/>

<sup>2</sup> [Register a biodiversity gain site - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/register-a-biodiversity-gain-site)

<sup>3</sup> [PAS Biodiversity Net Gain \(BNG\) Legal Agreement and Planning Condition Templates | Local Government Association](https://www.gov.uk/government/publications/pas-biodiversity-net-gain-bng-legal-agreement-and-planning-condition-templates)

<sup>4</sup> <https://www.gov.uk/government/publications/biodiversity-gain-plan>

## **ENHANCEMENTS**

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) 2023, biodiversity should be maintained and enhanced through the planning system. While BNG cannot take into consideration enhancements within gardens, they still can be carried out under the NPPF. As such, if planning permission is granted, we advise that a condition is included requiring an ecological enhancement plan to be submitted. We note that some enhancements have been outlined in the PEA. A condition wording is provided below.

*Within three months of works commencement, a detailed plan(s) showing how the development will enhance biodiversity, will be submitted to, and approved in writing by, the local planning authority. This will include a detailed landscaping plan, detail on ownership and responsibilities of the outlined management measures to achieve the proposed habitat target conditions, native and wildlife-friendly planting, and integrated wildlife features such as durable bat and bird boxes aimed at species of conservation concern. The approved measures will be implemented and retained thereafter.*

Appendix 1 provides some generic (non-exhaustive) information regarding the most common enhancements we see proposed. To provide a view regarding the potential ecological benefits of any project, in line with relevant legislation and planning policy, we require sufficient detail to be submitted. Without sufficient detail we are unable to provide an opinion regarding the suitability of any proposed measures. Suitable detail may include the provision of information such as:

- The proposed target species;
- Make and model of any boxes;
- Location information such as height, aspect, surrounding habitat;
- Detailed planting schedules; and
- Relevant management necessary to ensure the habitat is suitable for the target species.

If you have any queries regarding our comments, please do not hesitate to get in touch.

**Elizabeth Fagg**  
**Biodiversity Officer**

This response was submitted following consideration of the following documents:

- Preliminary Ecological Appraisal, EcoAssistance, 21/7/24
- Arboricultural Implications Assessment, Broad Oak Tree Consultants Ltd, 18/1/24
- Proposed site plan Rev2, CLA Architects, 22/2/24
- Design and access statement, CLA Architects, Feb 24

## Appendix 1: Ecological Enhancement Measures

| Possible Biodiversity Enhancements | Details                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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| Provision of ready-made bird boxes | <p><b>Suitability:</b> All development.</p> <p><b>Location:</b> Semi-mature/mature trees, buildings</p> <p>To provide a long-term ecological benefit for the site, boxes will need to be correctly sited:</p> <ul style="list-style-type: none"> <li>• Be away from windows and doors;</li> <li>• Be at the appropriate height for the target species and erected in accordance with the manufacturer guidelines;</li> <li>• Be sheltered, and sited on a northern or eastern facing aspect;</li> <li>• The boxes should be away from artificial light sources.</li> <li>• If siting on a tree, place the box in a way that avoids damaging the tree, and select a mature or semi-mature specimen; and</li> <li>• There should be a clear flight path to the box, so vegetation should not clutter the box entrance.</li> </ul> <p><b>Material:</b> Wall or tree-mounted woodcrete or building integrated boxes are generally recommended for development projects over wooden boxes.</p> <p>Wooden boxes are only likely to last 5-10 years before needing to be replaced to continue to provide a wildlife benefit. A woodcrete box has a much longer lifespan of 20-25 years before needing to be replaced. We would always recommend durable materials be selected for installation to minimise maintenance in the long-term and to provide a longer-term assurance of biodiversity net gain in line with the NPPF 2023.</p> <p><b>Maintenance:</b> Many bird boxes need clearing out at the end of the nesting season. The manufacturer can provide relevant information as well as the Royal Society for the Protection of Birds (RSPB)<sup>5</sup> and British Trust for Ornithology (BTO)<sup>6</sup>.</p> |

<sup>5</sup> [How To Clean a Bird Nesting Box - The RSPB](#)

<sup>6</sup> [Putting up a nest box | BTO - British Trust for Ornithology](#)

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| <p>Provision of bat boxes/bricks/tubes/tiles or bat roosting spaces within the new buildings</p> | <p><b>Suitability:</b> Most development.</p> <p><b>Location:</b> Semi-mature/mature trees, buildings</p> <p>To provide a long-term ecological benefit for the site, boxes will need to be correctly sited:</p> <ul style="list-style-type: none"> <li>• Be away from windows and doors or any features that might allow access to cats;</li> <li>• Be at the appropriate height (ideally 4-5m high) and erected in accordance with the manufacturer guidelines.</li> <li>• Be sheltered, and with the majority sited on a southerly facing aspect;</li> <li>• The boxes and a flight path to the box should be unlit;</li> <li>• A clear flight path to the box is needed, so vegetation should not clutter the space around the box; and</li> <li>• On trees, only mature or semi-mature specimens should be chosen.</li> </ul> <p><b>Material:</b> Wall or tree-mounted woodcrete or building integrated boxes are generally recommended for development projects over wooden boxes.</p> <p>Wooden boxes are only likely to last 5-10 years before needing to be replaced to continue to provide a wildlife benefit. A woodcrete box has a much longer lifespan of 20-25 years before needing to be replaced. We would always recommend durable materials be selected for installation to minimise maintenance in the long-term and to provide a longer-term assurance of biodiversity net gain in line with the NPPF 2023.</p> <p><b>Maintenance:</b> Bat boxes should only be checked by a suitably licensed individual to avoid breaches of legislation.</p> |
| <p>Provision of space for solitary bees</p>                                                      | <p><b>Suitability:</b> Most development.</p> <p><b>Location:</b> Building integrated or wall-mounted</p> <p>Bricks or boxes for solitary bees need to be correctly sited in a warm, sunny spot. The box should be near vegetation, but vegetation should not clutter the entrances. Place at least 1m from ground level. The box should not sway in the wind or easily become dislodged. Avoid where possible using single large hotels. Instead use lots of smaller ones spaced around the site.</p> <p><b>Material:</b> Woodcrete boxes and building integrated boxes are generally recommended for development projects over wooden/other boxes. Although, as some sources recommend regular maintenance of solitary bee hotels, provided</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

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|                                                                | <p>there is a commitment to regular maintenance, less durable boxes can be acceptable.</p> <p><b>Erection:</b> Follow the manufacturer guidelines.</p> <p><b>Maintenance:</b> See <a href="http://www.bumblebeeconservation.org/bee-nest-boxes/">www.bumblebeeconservation.org/bee-nest-boxes/</a>. And <a href="#">here</a>.</p>                                                                                                                                                                                                                                                                              |
| Provision of hedgehog holes in fencing                         | <p><b>Suitability:</b> Many developments.</p> <p><b>Location:</b> Base of fencing</p> <p><b>Construction:</b> 13cm x 13cm gaps at the base of fencing to allow hedgehog access to all garden areas. To reduce the risk of the holes being blocked by future residents, a sign above the hole is recommended as shown on the <a href="#">hedgehog street website</a><sup>7</sup>.</p>                                                                                                                                                                                                                           |
| Provision of hedgehog nesting boxes                            | <p><b>Suitability:</b> Many developments.</p> <p><b>Location:</b> Tucked away under a hedge, in shrubbery or near a wall in a quiet, sheltered place. Place the box where it will not flood after heavy rain.</p> <p><b>Material:</b> Woodcrete boxes are generally recommended for development projects over wooden/other boxes. Boxes should have a tunnel entrance or internal dividing wall to reduce risk of predators getting to the hedgehogs inside.</p> <p><b>Maintenance:</b> See information provided by Hedgehog Street<sup>8</sup> or The British Hedgehog Preservation Society<sup>9</sup>.</p>  |
| Provision of hibernacula (for great crested newts or reptiles) | <p><b>Suitability:</b> For larger sites with suitable habitats such as hedgerows and long grassland.</p> <p><b>Location:</b> A sunny position on a well-drained site, not prone to flooding. One of the long sides should be south-facing. Should be placed in a patch of suitable habitat such as tussocky grassland with minimal public disturbance.</p> <p><b>Material and construction:</b> For reptiles at least 4m long, 2m wide and 1m high and for great crested newt at least 2m long, 1m wide and 1m high. On free-draining soils, locate below ground level by excavating a pit or trench, then</p> |

<sup>7</sup> [Link your garden with a hedgehog highway \(hedgehogstreet.org\)](http://hedgehogstreet.org)

<sup>8</sup> <https://www.hedgehogstreet.org/cleaning-out-boxes/>

<sup>9</sup> [Hedgehog Homes \(britishhedgehogs.org.uk\)](http://britishhedgehogs.org.uk)

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|                                                                                                                        | <p>infilling with a mixture of topsoil and rubble, sleepers, logs, etc. For ideas on the design and construction of suitable hibernacula, see <a href="#">here</a>.</p> <p><b>Maintenance:</b> Hibernacula should be left undisturbed. Where log filled hibernacula deteriorate over time, to maintain habitat provision, consider building new ones.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Provision of log piles (for invertebrates, but could also benefit other species e.g., amphibians, reptiles, hedgehogs) | <p><b>Suitability:</b> For sites which can provide the right location and surrounding vegetation.</p> <p><b>Location:</b> Wood in direct contact with the ground, in dappled shade. Can be placed in shrub beds, edge of woodland, near hedgerows, in long grassland etc.</p> <p><b>Material and construction:</b> Logs at least 100mm thick with the bark still attached, and from native hardwood species. Lay stacks of logs on their side in compact piles to maintain humidity. To prevent the logs rolling, drive a stake into the ground on either side of the pile.</p> <p>Can also partially bury logs vertically in the ground to an approximate depth of 450 to 500mm. Use logs of different diameters and length and bury them side-by-side to form a pyramid<sup>10</sup>.</p>                                                                                                                                                                                                                                                                                    |
| The creation of ponds                                                                                                  | <p><b>Suitability:</b> Many developments.</p> <p><b>Location:</b> Place away from the root protection area of trees and risk excess leaf litter. Ideally have some longer vegetation and log piles around the edge of the pond, and this connected to suitable habitat in the wider environment. This will encourage the movement of wildlife to and from the pond.</p> <p><b>Construction:</b> For maximum benefit to wildlife, the pond should be left to colonise naturally (if in a good location for it to do so) or planted with native, local provenance plants and include no fish. Consider what to do with the spoil removed from the pond (avoid placing topsoil in a location where sediment run-off to the pond could occur). Spoil could be used in the construction of other wildlife features such as hibernacula.</p> <p>Create varied depths in the pond: shallow margins and areas that allow any animals that get into the pond to escape, deeper areas, at least 600mm in the middle of the pond. Where planting up, allow for submerged and emergent</p> |

<sup>10</sup> [Build-a-log-pile-for-stag-beetles.pdf \(ptes.org\)](#)

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|                                                 | <p>vegetation.</p> <p><i>How to build a wildlife pond guide:</i><br/> <a href="http://www.froglife.org/wp-content/uploads/2013/07/JAW2014-for-printing-HLF1.pdf">http://www.froglife.org/wp-content/uploads/2013/07/JAW2014-for-printing-HLF1.pdf</a><br/> <a href="https://freshwaterhabitats.org.uk/pond-clinic/create-pond/">https://freshwaterhabitats.org.uk/pond-clinic/create-pond/</a></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Provision of native/ wildlife-friendly planting | <p><b>Suitability:</b> Most development.</p> <p><b>Native Species:</b> An RHS study found that the best way to support invertebrates in gardens and promote a healthy ecosystem, is to choose plantings biased towards British native plants, and encourage dense vegetation, although leaving some areas of bare soil<sup>11</sup>.<br/> <a href="https://www.rhs.org.uk/advice/profile?pid=848">https://www.rhs.org.uk/advice/profile?pid=848</a> or <a href="https://www.britishflora.co.uk">https://www.britishflora.co.uk</a></p> <p><b>Hedgerows:</b> As far as possible, hedgerows should be connected to high-quality habitats to improve species movement. To maximise any potential wildlife benefit long-term, species-rich (containing at least 5 different species) native hedgerows should be prioritised and be managed sympathetically for wildlife. They should have a target height and width of at least 1.8m by 1.8m. A native hedgerow consisting of a single species, managed to 1m high by 1m wide and cut every year will likely provide very limited ecological benefit in comparison.</p> <p>Hedgerows should ideally be managed sensitively on a three year rotation, with cutting avoiding the bird breeding season and retaining at least some winter fruit/berries (see <a href="#">here</a>).</p> <p><b>Establish climbing plants on walls and other vertical structures:</b> Where space is limited, climbing plants can provide increased wildlife benefit within the space available.<br/> <a href="#">Climbing Plants &amp; Wall Shrubs - The RSPB</a></p> |

<sup>11</sup> [Plants for Bugs - RHS science projects / RHS Gardening](#)