



21/06762/F | Public Conveniences Circular Road Sneyd Park Bristol BS9 1ZZ

Demolition of existing public toilet block and construction of single storey building comprising cafe (use class E), education booth (use class F1[a]) and replacement toilets (resubmission of planning permission 18/04727/F).

Further Comments - made after the Development Control Committee B meeting on 06 April 2022.

Summary

When Development Control Committee B met on 06 April 2022 reserved its resolution to reject this application whilst officers formalised the grounds for rejection.

If this application is allowed to proceed, it will result in the destruction of important Priority Habitat Lowland Calcareous/acidic Grassland which is one of the main reasons why the Clifton and Durdham Downs SNCI (BC43) was established. This will result in an unacceptable loss of biodiversity. This is contrary of the following planning policies:

- Paragraph 174 of the **National Planning Policy Framework**¹ (the Framework) states that *Planning policies and decisions should contribute to and enhance the natural and local environment by... minimising impacts on and providing net gains for biodiversity.*
- It is not clear if the requirements of paragraph **180 (Habitats and biodiversity)** of the Framework have been satisfied.
- **BCS9** requires that individual green assets are to be retained and integrated into new development.
- **DM17** states that applications which fail to take account the importance of valuable multifunctional green infrastructure assets or make provision for their preservation and replacement should not be permitted. Clifton and Durdham Downs is identified as a 'prominent green hillside' under DM17.
- **DM17** states that, unless the development is ancillary to the open space use, it will not be permitted.
- **DM19** states that development that will have a harmful impact on the nature conservation value of a Site of Nature Conservation Interest will not be permitted.

Our analysis

The applicant now plans to enhance a 200 metres area to the north of the development site and convert it to *Other neutral grassland* habitat. Using the boundary shown in the Location and Block Plan² which was filed with the application, we have mapped the new habitats proposed to include this enhanced *Other neutral grassland* proposed (Figure 1). As can be seen,

¹

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005759/NP_PF_July_2021.pdf

² 21_06762_F-LOCATION_AND_BLOCK_PLAN-3111104.

it includes an established tree and part of the woodland in the adjacent SSSI/SAC³ (outlined in yellow in Figure 1). These habitats cover 0.0041 hectares (41 square metres).

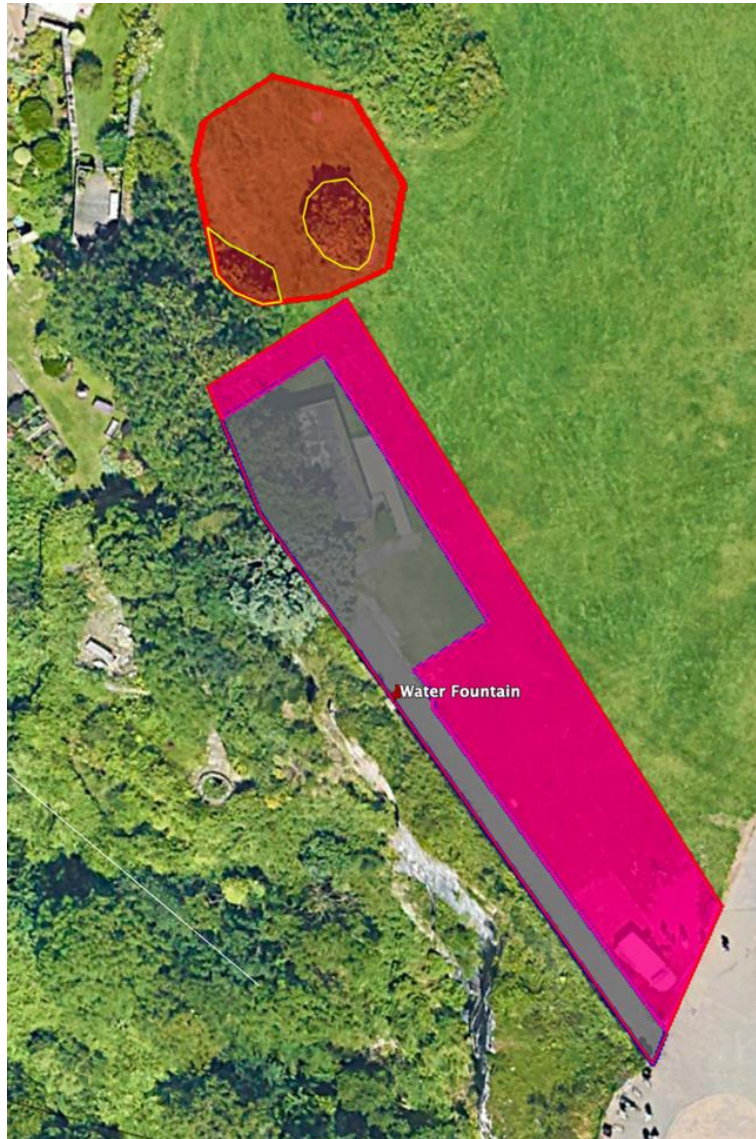


Figure 1 Proposed post-development habitats

The area shaded pink shows the retained grassland habitat. The area shaded grey is the proposed *Developed land; sealed surface* habitat. This has no biodiversity value.

However, we do not accept that the grassland habitat designations used - *Modified grassland* and *Other neutral grassland* are correct. This site falls within the Clifton and Durdham Downs SSSI (BC43) which is described as comprising:

³ The image used is taken from a Google Earth image dated 29 May 2021.



Un- & semi-improved calcareous grassland inc Priority Habitat Lowland Calcareous Grassland, plus slightly acidic grassland SW Down. Semi-natural broadleaved woodland, scattered trees & dense scrub. Proposed RIGS. Invertebrate Site Register.4

Lowland Calcareous Grassland is an increasingly rare and important habitat and needs to be protected. On this basis, the grassland habitat on and around the site should be classified as *Lowland calcareous grassland* habitat which has high Distinctiveness and may only be replaced with the same habitat.

If, however, it is decided that the grassland habitat is *Other lowland acid grassland* habitat rather than *Lowland calcareous grassland* land habitat, then the same broad habitat or a higher distinctiveness habitat will be required.

The original Biodiversity Net Gain calculation used by the applicant is based on Small Sites Metric Beta test calculator (SSM). The SSM and the *Small Sites Metric Calculation Tool: User Guide* makes it clear the SSM calculator must not be used for assessing offsite habitats:

The SSM must not be used for assessing biodiversity outside the development area. Any habitat creation or enhancement outside the site area must be assessed using Biodiversity Metric 3.0.⁵

Accordingly, we have transposed the applicant's SSM data into BNG 3.0. We have assumed that all the 0.02 hectares (200 square metres) of the *Other neutral grassland* enhanced habitat proposed is wholly offsite.

We have made these changes to their SSM calculation:

- 1) Converted the *Modified grassland* and *Other neutral grassland* habitats in the **A-1 Site Habitat Baseline** tab to *Lowland calcareous grassland* land habitat.
- 2) Added 0.0159 hectares (159 square metres) of *Lowland calcareous grassland* habitat to the **D-1 Off Site Habitat Baseline** tab and set the same parameters as those used for the *Lowland calcareous grassland* habitat in the **A-1 Site Habitat Baseline** tab. All 0.0159 hectares will be enhanced.
- 3) Added 0.0041 hectares (41 square metres) of *Urban Tree* habitat to the **D-1 Off Site Habitat Baseline** tab and set Condition to Moderate. All 0.0041 hectares will be enhanced.
- 4) All the 0.0200 hectares (200 square metres) of offsite baseline habitat are to be enhanced to *Other neutral grassland* habitat in **D-3 Off Site Habitat Enhancement** tab using the same enhancement parameters as those used in the SSM.
- 5) We have ignored the *extensive green roof* habitat of 0.0125 hectares (125 square metres) as per the applicant's revised drawing published on 14 March 2022⁶ because the applicant has not included it in its calculations.

Based on these figures, we calculate that, the applicant's proposals will result in a **16.60%** loss

⁴ BRERC.

⁵ [Biodiversity Metric 3.0 - Auditing and accounting for biodiversity](http://nepubprod.appspot.com/publication/6049804846366720). This has now been superseded by BNG 3.1 - <http://nepubprod.appspot.com/publication/6049804846366720>

⁶ 21_06762_F-PROPOSED_PLANS-3177118



of on-site habitat but a net loss of 47.99% of biodiversity net gain overall (Figure 2).

Public Conveniences Circular Road Sneyd Park Br		Return to results menu
Headline Results		
On-site baseline	Habitat units	0.66
	Hedgerow units	0.00
	River units	0.00
On-site post-intervention (Including habitat retention, creation & enhancement)	Habitat units	0.55
	Hedgerow units	0.00
	River units	0.00
On-site net % change (Including habitat retention, creation & enhancement)	Habitat units	-16.60%
	Hedgerow units	0.00%
	River units	0.00%
Off-site baseline	Habitat units	0.26
	Hedgerow units	0.00
	River units	0.00
Off-site post-intervention (Including habitat retention, creation & enhancement)	Habitat units	0.05
	Hedgerow units	0.00
	River units	0.00
Total net unit change (including all on-site & off-site habitat retention, creation & enhancement)	Habitat units	-0.32
	Hedgerow units	0.00
	River units	0.00
Total on-site net % change plus off-site surplus (including all on-site & off-site habitat retention, creation & enhancement)	Habitat units	-47.99%
	Hedgerow units	0.00%
	River units	0.00%
Trading rules Satisfied?	No - Check Trading Summary	

Figure 2 Applicant's BNG 3.0 Calculation with proposed offsite enhancement added

Under BNG 3.0, *Lowland calcareous grassland land* habitat can only be replaced with the same habitat. It is not permitted to downgrade this habitat to other habitats such as the *Other neutral grassland* habitat proposed.

Setting this aside, if the proposal to enhance 0.02 hectares (200 square) metres of *offsite habitat* to *Other neutral grassland* habitat is, as we assert, unviable, then the applicant's proposals will still result in a 16.60% loss of biodiversity net gain overall.

If instead, the *Other lowland acid grassland* habitat is used rather than the *Lowland calcareous grassland land* habitat and the *Other neutral grassland* habitat identified is retained, then the proposals will still result in an overall net biodiversity loss of 2.09% with the proposed offsite enhancement and 16.77% without it.

Using BNG 3.0, we calculate that the proposed development will result in 0.03 hectares (300 square metres) of the site being *Developed land; sealed surface* habitat with the balance of



the site - 0.0405 hectares (405 square metres) - being retained as *Lowland calcareous grassland land* habitat. Even if allowance is made for the enhancement of 0.0125 hectares (125 square metres) of the developed surface into an extensive green roof, this will still result in a **14.59%** loss of biodiversity. If the offsite habitat enhancement proposed is allowed these proposals still result in a net loss of **43.43%**.

We have already pointed out that the new offsite habitat proposed will have to be fenced off for at least 15 years (perhaps even permanently) to protect it. Whilst Section XI of the Downs Act 1861 allows the Downs Committee to '*plant or improve the said Downs*', enclosure may only be '*for ornamental purposes only*'. Creating a new habitat to achieve biodiversity net gain is not an 'ornamental purpose'.

Furthermore, section 38(1) of the Commons Act 2006 states that '*A person may not, except with the consent of the appropriate national authority, carry out any restricted works on land to which this section applies*'. This includes '*the erection of fencing*' (section 38(3)(a)).

The applicant cannot rely of the recent approval of the Secretary of State under the Section 38 of the Commons Act 2006⁷, because this part of the proposal - the creation of a new, fenced offsite habitat - was not before them at the time the matter was considered (nor indeed was any biodiversity net gain evidence).

As we have previously noted, the development site is also within 500 metres of priority habitats - It is just outside the Avon Gorge Special Site of Scientific Interest and the Avon Gorge Woodlands Special Area of Conservation. It is also within the first level (within 50 metres) Impact Risk Zone⁸ (IRZ) of these priority habitats.⁹

Natural England has advised that IRZs are intended to flag potential risks to SSSIs from particular types of development and indicate those where Natural England needs enquire further. Any conclusions on whether a development of a given type/size/scale poses an actual risk will not depend on distance alone but will require more detailed consideration of the local circumstance and setting.

In its response of 31 January 2022¹⁰, Natural England states:

As submitted, the application could have potential significant effects on the Avon Gorge Woodlands SAC and the North Somerset and Mendip Bats SAC. Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation. The following information is required:

- *Mitigation for potential recreational impacts to Avon Gorge Woodlands SAC*

⁷ Application Ref: COM/3246988

⁸

https://webarchive.nationalarchives.gov.uk/ukgwa/20140605090108/http://www.naturalengland.org.uk/Images/irz-summary_tcm6-37926.pdf and

https://webarchive.nationalarchives.gov.uk/ukgwa/20140605090108/http://www.naturalengland.org.uk/Images/irz-faq_tcm6-37927.pdf

⁹ <https://data.gov.uk/dataset/5ae2af0c-1363-4d40-9d1a-e5a1381449f8/ssi-impact-risk-zones-england>

¹⁰ 21_06762_F-NATURAL_ENGLAND-3136094



- *Details of proposed lighting including modelling of predicted light spill*

Without this information, Natural England may need to object to the proposal.

Avon Gorge Woodlands SAC

The application site is directly adjacent to Avon Gorge Woodlands SAC. Natural England is aware of existing recreational pressures on Avon Gorge Woodlands SAC resulting from littering and erosion. The potential for this proposal to result in an increase in recreational pressure at Avon Page 2 of 2 Gorge Woodlands SAC must be considered and details must be provided of any measures required to mitigate for these impacts.

North Somerset and Mendip Bats SAC

The proposal has potential to result in light spill onto the habitats in Avon Gorge Woodlands SAC to the west of the site due to the extensive glazing proposed.

Whilst there is a suggestion that the LPA may have addressed Natural England's concerns about bats, there is no evidence that Natural England has seen or endorsed these proposals or that their concerns about the impact of increased recreational pressures have been dealt with to their satisfaction.

It is also unclear whether Natural England has been advised of the plan to keep the public toilets always open so that they can consider the implications of this, especially with regard to the lighting that will be needed to facilitate both night-time use or to provide overnight security.

Paragraph 180 (Habitats and biodiversity) of the Framework states:

When determining planning applications, local planning authorities should apply the following principles:

b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;

Paragraph 174 of the Framework 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;



BCS9 - Green Infrastructure makes it clear that individual green assets are to be retained wherever possible and integrated into new development.

DM17 recognises the importance of habitats which are considered valuable multifunctional green infrastructure assets - and makes provision for their preservation and replacement.

Clifton and Durdham Down (of which this site is a part) is described as a '*prominent green hillside*' by DM17. Development of features such as these:

- Will not be permitted unless the development is ancillary to the open space use.
- Which would result in the loss of open space which is locally important for recreation, leisure and community use, townscape and visual amenity will not be permitted.
- Proposals which would harm important features such as green hillsides, promontories, ridges, valleys, gorges, areas of substantial tree cover and distinctive manmade landscapes will not be permitted.

If this application is permitted, then the current provision of five cubicles plus a disabled toilet and a urinal will be reduced to four cubicles including a disabled toilet and the footprint of the current facilities will reduce from 53 square metres to just over 12 square metres - just 5% of the new, developed area, the rest of which will be given over a new café and education zone.

DM19 states that development which would have a harmful impact on the nature conservation value of a Site of Nature Conservation Interest will not be permitted. Destroying 200 square metres of rare Priority Habitat Lowland Calcareous Grassland will have a *harmful impact on the nature conservation*.

Whatever the other merits of building a café on the Downs might be, this application cannot be allowed in its current form because it fails to demonstrate that it will 'minimis[e the] impacts on and provid[e] net gains for biodiversity' as required by the NPPF and the local policies that flow from it.

Bristol Tree Forum
30 April 2022