

APPENDIX 9.1

**LEGISLATION AND PLANNING POLICY CONTEXT IN RELATION
TO ECOLOGY**

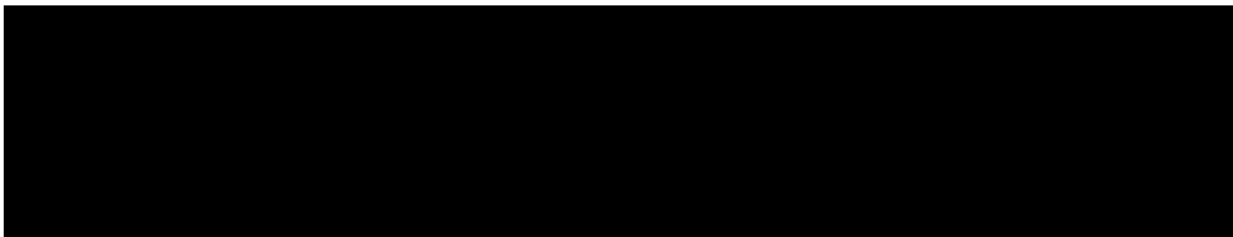
FORD AIRFIELD, WEST SUSSEX

ENVIRONMENTAL STATEMENT

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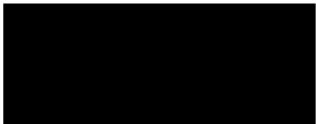
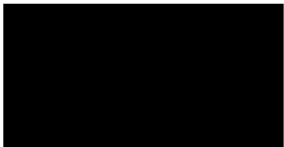
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FORD AIRFIELD, WEST SUSSEX

ENVIRONMENTAL STATEMENT

TECHNICAL APPENDIX 9.1 – LEGISLATION AND PLANNING POLICY CONTEXT IN RELATION TO ECOLOGY

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1.0 RELEVANT LEGISLATION

1.1 Introduction

This section provides details the legislation relevant to the ecological features present within the development site's Zone of Influence.

1.2 Designated Sites

1.2.1 *Internationally Designated Sites*

Special Protection Areas (SPA) and Special Areas of Conservation (SAC) form a network of protected sites across the European Union called Natura 2000 sites. In the United Kingdom the primary legislative protection is afforded to these sites under the Conservation of Habitats and Species Regulations 2017.

Ramsar sites are designated as wetlands of international importance which are afforded similar legislative protection to Natura 2000 sites.

Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 there is a legal requirement that competent authorities, such as local planning authorities, need to consider whether plans or projects are likely to have a significant adverse effect on Natura 2000 sites or Ramsar sites, either alone, or in combination with other plans or projects. In the event that a likely significant effect cannot be ruled out, on the basis of objective information, then the competent authority must undertake an "Appropriate Assessment" to fully assess the plan or project against the site's conservation objectives. Unless certain defined derogation tests can be met, the competent authority may not authorise nor undertake any plan or project which adversely affects the integrity of a Natura 2000 site or Ramsar site.

1.2.2 *Nationally Designated Sites*

Sites of Special Scientific Interest (SSSI) receive legal protection under the Wildlife and Countryside Act 1981 (as amended). Such sites are designated to protect specific areas of biological or geological interest of national importance. Such sites also generally receive strict protection through the planning system.

National Nature Reserves (NNR) are also usually designated as SSSIs and are specifically managed for their wildlife value. They receive legal protection through the National Parks and Access to the Countryside Act 1949 and the Wildlife and Countryside Act 1981 (as amended). As with SSSIs, these sites generally receive strict protection through the planning system.

1.2.3 Locally Designated Sites

Local Nature Reserves (LNR) are designated by local authorities under the National Park and Access to the Countryside Act 1949. These are generally designated not only for their local wildlife value but also for education, scientific and recreational purposes. These sites generally receive protection from development through the planning system.

1.3 Schedule 9 Invasive Species

It is illegal to plant species listed on Schedule 9 of the Wildlife and Countryside Act 1981 (as amended), or to otherwise cause these species to grow in the wild. Some species may also be classed as a 'controlled waste' under the Environmental Protection Act 1990 (EPA). As such it must be disposed of safely at a licensed landfill site according to the EPA (Duty of Care) Regulations 1991.

1.4 Bats

All UK bat species are listed in Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and Schedule 2 of the Conservation of Habitats and Species Regulations 2017. They are afforded full protection under Section 9(4) of the Act and Regulation 43 of the Regulations. These make it an offence to:

- Deliberately capture, injure or kill any such animal;
- Deliberately disturb any such animal, including in particular any disturbance which is likely:
- To impair its ability to survive, breed, or rear or nurture their young;
- To impair its ability to hibernate or migrate;
- To affect significantly the local distribution or abundance of that species;
- Damage or destroy a breeding site or resting place of any such animal;
- Intentionally or recklessly disturb any of these animals while it is occupying a structure or place that it uses for shelter or protection; or
- Intentionally or recklessly obstruct access to any place that any of these animals uses for shelter or protection.

In addition, five British bat species are listed on Annex II of the Habitats Directive. These are:

- Greater horseshoe bat *Rhinolophus ferrumequinum*;
- Lesser horseshoe bat *Rhinolophus hipposideros*;
- Bechstein's bat *Myotis bechsteinii*;
- Barbastelle *Barbastella barbastellus*; and
- Greater mouse-eared bat *Myotis myotis*.

In certain circumstances where these species are found the Directive requires the designation of Special Areas of Conservation (SACs) by EC member states to ensure that their populations are maintained at a favourable conservation status. Outside SACs, the level of legal protection that these species receive is the same as for other bat species.

1.5 Hazel Dormouse, Otter and Great Crested Newt

These species are listed in Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and Schedule 2 of the Conservation of Habitats and Species Regulations 2017. They are afforded full protection under Section 9(4) of the Act and Regulation 43 of the Regulations. These make it an offence to:

- Deliberately capture, injure or kill any such animal;
- Deliberately disturb any such animal, including in particular any disturbance which is likely, to impair its ability to survive, breed, or rear or nurture their young, to impair its ability to hibernate or migrate;
- To affect significantly the local distribution or abundance of that species;
- Damage or destroy a breeding site or resting place of any such animal;
- Intentionally or recklessly disturb any of these animals while it is occupying a structure or place that it uses for shelter or protection; or
- Intentionally or recklessly obstruct access to any place that any one of these species uses for shelter or protection.

1.6 Badger

The Protection of Badgers Act 1992 consolidates previous legislation (including the Badgers Acts 1973 and 1991 Badgers (Further Protection) Act 1991). It makes it an offence to:

- Kill, injure or take a badger;
- Attempt to kill, injure or take a badger; or
- To damage or interfere with a sett.

The 1992 Act defines a badger sett as ‘any structure or place which displays signs indicating current use by a badger’.

1.7 Water vole

The water vole is listed in Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and is afforded limited protection under Section 9 of this Act. This makes it an offence to:

- Intentionally kill, injure, or take (handle) a water vole;

- Intentionally or recklessly damage or destroy or obstruct access to any structure or place which water voles use for shelter or protection; or
- Intentionally or recklessly disturb water voles while they are using such a place.

1.8 Breeding Birds

With certain exceptions, all wild birds, their nests and eggs are protected by Section 1 of the Wildlife and Countryside Act 1981 (as amended). Therefore, it is an offence, to:

- Intentionally kill, injure or take any wild bird;
- Intentionally take, damage or destroy the nest of any wild bird while it is in use or being built; or
- Intentionally take or destroy the egg of any wild bird.

These offences do not apply to hunting of birds listed in Schedule 2 subject to various controls. Bird species listed on Schedule 1 of the Act receive further protection, thus for these species it is also an offence to:

- Intentionally or recklessly disturb any bird while it is nest building, or is at a nest containing eggs or young; or
- Intentionally or recklessly disturb the dependent young of any such bird.

1.9 Reptiles

The four widespread species of reptile that are native to Britain, namely common or viviparous lizard *Zootoca vivipara*, slow-worm *Anguis fragilis*, adder *Vipera berus* and grass snake *Natrix natrix*, are listed in Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) and are afforded limited protection under Section 9 of this Act. This makes it an offence to:

- Intentionally kill or injure any of these species.

The remaining native species of British reptile (sand lizard *Lacerta agilis* and smooth snake *Coronella austriaca*) receive a higher level of protection via inclusion under Schedule 2 of the Conservation of Habitats and Species Regulations 2017. They are afforded full protection under Section 9(4) of the Act and Regulation 43 of the Regulations (in England and Wales only) and the Wildlife and Countryside Act 1981 (as amended). The distribution of these species are restricted to only a few sites in England.

1.10 Habitats and Species of Principal Importance in England

The Natural Environment and Rural Communities (NERC) Act came into force on 1st October 2006. Section 41 (S41) of the Act requires the Secretary of State to publish a list of habitats and species which are of principal importance for the conservation of

biodiversity in England. The England Biodiversity List is used to guide decision-makers such as public bodies, including local and regional authorities, in implementing their duty under section 40 of the NERC Act 2006, to have regard to the conservation of biodiversity in England, when carrying out their normal functions. There are currently 943 species of principal importance and 56 habitats of principal importance included on the England Biodiversity List.

2.0 PLANNING POLICY CONTEXT

2.1 Introduction

This section summarises the planning policy in relation to ecology and biodiversity within the Arun District Council administrative area. This information is then used to assess the compliance of the scheme in relation to relevant planning policy and where necessary make recommendations for mitigation, compensation and enhancements.

2.2 National Policy

The National Planning Policy Framework (NPPF) sets out the government's requirements for the planning system in England. The original document was published in 2012 with the latest revision NPPF published in February 2019. A number of sections of the NPPF are relevant when taking into account development proposals and the environment. As set out within Paragraph 11 of the NPPF *“Plans and decisions should apply a presumption in favour of sustainable development”*. However, Paragraph 177 goes on to state that *“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.”*.

The general impetus of the NPPF in relation to ecology and biodiversity is for development proposals to not only minimise the impacts on biodiversity but also to provide enhancement. Paragraph 170 states that the planning system should contribute to and enhance the natural environment by *“...minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures...”*.

A number of principles are set out in Paragraph 175, including that where harm cannot be adequately avoided then it should be mitigated for, or as a last resort, compensated for. Where impacts occur on nationally designated sites, the benefits must clearly outweigh any adverse impact and incorporating biodiversity in and around developments should be encouraged. Specific reference is also made to the protection of irreplaceable habitats¹. Where loss to irreplaceable habitats occur planning permission would normally be refused unless there are wholly exceptional reasons and an adequate compensation strategy is in place. Paragraph 175 also states *“development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and*

¹ The NPPF defines irreplaceable habitats as *“Habitats which would be technically very difficult (or take a very significant time) to restore, recreate or replace once destroyed, taking into account their age, uniqueness, species diversity or rarity. They include ancient woodland, ancient and veteran trees, blanket bog, limestone pavement, sand dunes, salt marsh and lowland fen.”*

around developments should be encouraged, especially where this can secure measurable net gains for biodiversity". Protection of sites proposed as Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar sites or acting as compensation for SPAs, SACs and Ramsar sites, should receive the same protection as habitat sites.

In addition to the NPPF, Circular 06/05 provides guidance on the application of the law relating to planning and nature conservation as it applies in England. Paragraph 98 states *"the presence of a protected species is a material consideration when a planning authority is considering a development proposal that, if carried out, would be likely to result in harm to the species or its habitat"*. Whilst paragraph 99 states *"it is essential that the presence or otherwise of a protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted"*.

2.3 Local Policy

2.3.1 Arun District

Local planning policy within Arun District is provided by the policies within the Arun Local Plan 2018. Those relevant to ecology are summarised below.

Policy ENV SP1 – Natural Environment

Arun District Council will encourage and promote the preservation, restoration and enhancement of biodiversity and the natural environment through the development process and particularly through policies for the protection of designated and non-designated sites. Where possible it will also promote the creation of new areas for habitats and species.

The following sites must be protected:

- Pagham Harbour Ramsar Site
- Arun Valley SAC
- Pagham Harbour SPA
- Arun Valley SPA
- Solent and Dorset Coast pSPA
- Pagham Harbour SSSI
- Bognor Reef SSSI
- Felpham SSSI
- Climping Beach SSSI
- Pagham Harbour LNR
- West Beach LNR
- Bersted Brooks LNR

- Ferring Rife and Meadows LNR
- Littlehampton Golf Course and Atherington Beach, Littlehampton LNR
- Elmer Rocks SSSI
- Fontwell Park Race Course SSSI
- Middleton Shingle SSSI

Policy ENV DM1 – Designated Sites of Biodiversity or Geological Importance

Proposed development likely to have an adverse effect on designated sites will not normally be permitted unless in exceptional circumstances.

Policy ENV DM2 - Pagham Harbour

Development within 400 metres of the Pagham Harbour SPA boundary will only be permitted in exceptional circumstances where the developer is able to demonstrate there will be no detrimental effects on Pagham Harbour SPA.

All new residential development within five kilometres of Pagham Harbour SPA which is likely to have an impact on the designated site will be required to make developer contributions towards strategic access management at Pagham Harbour SPA and create easily accessible new green spaces for recreation within or adjacent to the development site.

Major developments taking place beyond five kilometres of Pagham Harbour SPA will be considered on a case by case basis to determine potential effects and necessary mitigation measures.

Policy ENV DM3 – Biodiversity Opportunity Areas

Development shall retain and sympathetically incorporate locally valued and important habitats including wildlife corridors and stepping stones and will be designed in order to minimise disturbance to habitats. Habitat loss should be mitigated and proposals should reasonably address opportunities for enhancement.

Where development lies within or is likely to impact upon Biodiversity Opportunity Areas (BOAs), applications for planning permission should include surveys for the presence of species and habitats within the BOAs.

Policy ENV DM4 – Protection of Trees

Trees protected by a Tree Preservation Order (TPO), identified as Ancient Woodland, in a Conservation Area or contributing to local amenity should be retained and protected, unless the removal is required in the interests of good arboricultural practice or in order to enhance the survival and growth prospects of other protected trees. Development may also be permitted if the benefit of the proposals outweighs the loss of trees or woodland.

Policy ENV DM5 - Development and Biodiversity

Development schemes should seek to achieve a net gain in biodiversity and protect existing habitats on site and provide a network of green spaces.

Where there is evidence of a protected species on a proposed development site, planning applications should include a detailed survey of the subject species, consider direct and indirect impacts on the species and detail avoidance and mitigation measures where necessary.

Policy H SP2c – Inland Arun – Ford (SD8)

Development proposals in the Ford Strategic Allocation will provide at least 1,500 dwellings over the plan period. The site is functionally connected to Arun Valley SPA and development should avoid adverse effects on this designated area.