

From: David Innes
Sent: 31 August 2017 15:24
To: Planning.Responses
Subject: FW: 5633. Pagham - further response note

Please upload to P/140/16/OUT

Thanks

David

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Save the environment - think before you print.

From: Jodie Dixon [REDACTED]
Sent: 31 August 2017 15:22
To: David Innes
Cc: Jenny Henderson; [REDACTED] Giacomelli, Alison (NE); Karl Goodbun; Tom Smith
Subject: 5633. Pagham - further response note

Dear David

Please find attached a note in response to further comments submitted by the Sussex Ornithological Society.

I trust the content is clear but should you have any queries at all please do not hesitate to contact me.

Thanks.

Kind regards,

Karl

**Dictated by and sent on behalf of Karl Goodbun by
Jodie Dixon**

PA to the Directors:
Dominic Farmer and Karl Goodbun

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LAND SOUTH OF SUMMER LANE AND WEST OF PAGHAM ROAD

RESPONSE TO SUSSEX ORNITHOLOGICAL SOCIETY FURTHER SURVEY INFORMATION

Planning ref: P140/16/OUT

August 2017

This note has been prepared in response to further comments and survey information received from the Sussex Ornithological Society (SOS) in relation to planning application P140/16/OUT.

Ecology Solutions has been provided with a copy of the following:

- An email from the SOS Conservation Officer dated 23rd August 2017;
- A summary note titled "Appendix 1 - Brent Geese survey, Pagham Road, July 2017" prepared by SOS; and
- A spreadsheet containing the survey information relevant to the claims being made.

Matters concerning Brent Geese and implications for the Pagham Harbour SPA / Ramsar site

Within its email of 23rd August 2017, SOS conclude that "were the development to be approved birds, including Brent Geese, would be affected". This conclusion, together with the data provided by SOS and the points made to back its conclusion, are discussed below.

Before dealing with points made within the email (23rd August) and summary note, consideration is given to the data set itself.

Ecology Solutions has reviewed the information supplied and as a broad point of principle it is considered that the data can be afforded only very limited weight. Leaving aside the fact that the data has been obtained from third parties whom for the most part will be in principle objectors to the planning application, there is no scientific rigour associated with the data, both in relation to the raw data (obtained by local residents) and the assimilation of that data by SOS.

The methodology for the survey conducted by SOS is described within its summary note. Broadly, residents at 32 properties principally located along Pagham Road were interviewed during the period 22nd July to 29th July 2017. An explanation is given as to why residents of

26 of the 58 target properties were not surveyed. Residents who were surveyed were asked 6 questions:

- “
- 1 Address
 - 2 How long they had lived there;
 - 3 Had they seen Brent Geese – annually, regularly, occasionally, never;
 - 4 Had they seen Brent Geese in 1000's, 100's or less;
 - 5 What other wildlife had they seen on the fields; and
 - 6 Any other comments.”

A review of this methodology in tandem with that of the data presented within the associated spreadsheet points strongly to the fact that we are not dealing with actual, reliable data which can form part of a meaningful assessment. The overall methodology and the questions posed to respondees are narrow and leading in their nature. The following points are of note.

It would be expected that the level of competence in identifying Brent Geese and estimating flock size would have been tested within the questions. No such questions are posed.

Further, there is no means of ascertaining whether the reported Brent Geese observed, were part of a larger flock extending over a wider area, to include areas outside of the application site. Or at what frequency the birds were observed at which locations during any year.

Standardised methodologies for (e.g. wintering) bird surveys exist. Such methodologies are used by professional ecologists because they allow comparable assessments to be made between different sites and habitats. This allows the most sensitive or important sites to be given sufficient weight in a conservation context, which is also of importance in a decision-making context insofar as development is concerned. The detailed wintering bird survey information presented in support of the planning application had due regard to these standardised methodologies. For that survey, specific site visits were undertaken by experienced ornithologists on several occasions during the wintering period. Habitat within and outside of the Application Site was surveyed in order to build a picture of the importance of the Application Site in the context of surrounding habitats. Whereas, the bird data presented by SOS and being considered here has not been collected in accordance with any kind of accepted methodology.

Turning to the data, there are some obvious discrepancies within the information presented. Some simply report seeing Brent Geese in fields south of Pagham Village Hall. Some put numbers in the 100's while others report thousands. Whilst many have reported seeing them annually, that is not the case for all respondees and some have seen them only occasionally, or never. In the absence of a proper survey methodology being followed and detailed information being collected and presented, the data cannot be meaningfully used within any assessment.

Whilst not a point on which Ecology Solutions wish to labour, it is also noted that the summary report (July 2017) submitted by SOS confirms, at point 6, that the residents surveyed are essentially objectors to the scheme. Any bias which may arise from this only serves to heighten the lack of credibility associated with the data and the limited weight which can be afforded to it.

For all the above reasons, the data should be treated with a significant degree of caution and given limited weight in any assessment process.

Ecology Solutions are very concerned that SOS propose to submit these records to the Sussex Biodiversity Records Centre who will then copy them to the National Biodiversity Network in 2018. Any such data submission should be caveated since, whilst it is accepted that *ad hoc* records submitted by members of the public can be useful and help to inform the planning process, in the current instance the data would undermine the credibility of third party data sources.

Notwithstanding all the above, if one were to take a precautionary approach and assume that Brent Geese do use the Application Site on an annual basis, Ecology Solutions strongly contend that in applying the tests associated with the Habitats Regulations, a position of no effect on the integrity of the Pagham Harbour SPA / Ramsar site is still reached. This is discussed below.

As discussed in Ecology Solutions' response to an earlier submission by SOS it is necessary in applying the legal tests to determine whether a significant effect is likely to arise in view of the evidence available. It is not a correct approach, in view of the legislative tests or any supporting guidance (including the Communication from the Commission on the Precautionary Principle 2000) to jump to a conclusion that a significant effect arises, or worse still a sites Integrity is affected, simply because a qualifying species of a European designated site uses a site. A plan or project may (in some way) impact on a significant number of birds, but the effect itself may not be significant. Further, in accordance with the Communication from the Commission, when necessary, risk reduction measures should be proportionate and must not aim at zero risk. Adopting a 'zero risk' approach as SOS have done, has no basis in statute.

In applying the above in this instance, the following points are of note.

The assessment work undertaken by Ecology Solutions and which Natural England has reviewed, plainly makes an assumption that Brent Geese do use the Application Site. The significance of that use however has been considered in the light of available information which clearly shows that these birds make use of habitat spread over a wide area. Data made available to Ecology Solutions shows significant and concentrated use of land to the north and west of the Application Site, in closer proximity to the SPA / Ramsar site itself.

Further, the designated site itself supports significant areas of important habitat for the geese, including large areas of wet grassland. Data demonstrates that these areas are well used by them. Thus, as is required by the Directive, the most important habitat for the relevant bird population/s has been protected through statute. Considerations in this instance are limited to an analysis of whether the Application Site supports habitat which is functionally linked to the designated site and whether impacts (e.g. losses) will impact on the population/s to the extent that the SPA / Ramsar site population would be significantly and detrimentally affected.

As previously reported, a significant amount of suitable foraging, roosting and loafing habitat is available to, and is used by the geese. Through discussions with Natural England (29th August – Alison Giacomelli *pers com*) it was confirmed that Brent Geese make significant use of the SPA / Ramsar site itself in addition to using many sites in the vicinity, including the large areas of farmland and the 'Medmerry managed (coastal) realignment scheme'. It was also confirmed by Natural England (Alison Giacomelli *pers com*) that it would continue to work with landowners / farmers in relation to Environmental Stewardship schemes in the local area, which deliver significant benefits for Brent Geese and other species.

In its email of 23rd August 2017 SOS make reference to the Pagham Harbour citation stating that the site qualifies "*under Article 4 (2) as an internationally important wetland supporting in*

winter an average of 3045 dark-bellied Brent Geese *Branta bernicla bernicla* (2% of the European wintering population)". Broadly speaking, matters concerning the protection afforded to the Brent Geese population is not in dispute, though Ecology Solutions highlights some discrepancies in relation to the inclusion of this species as a qualifying interest feature of the SPA (not the Ramsar site), as reported within the Habitats Regulations Assessment document (December 2016). Full consideration has been given by Ecology Solutions (and Natural England) to all information relevant to the designated status of the site and in addition, the legislative framework and relevant guidance and case law.

SOS's stated position is that planning permission should not be approved on the basis that wintering birds including Brent Geese, would be impacted by the loss of these sites and that such an impact is not acceptable. It is claimed by SOS that the additional records provided support that position. However, as discussed in the various submissions made by Ecology Solutions in relation to this planning application, such a simplistic approach to assessment (and using data not obtained in accordance with any recognised methodology) does not fit with the relevant statutory tests and published guidance.

Ecology Solutions maintain that all necessary mitigation / avoidance measures have been included within the development proposals, that the plan / project is not likely to give rise to a significant effect, and that in line with the legal tests there is no need to undertake an appropriate assessment. Even where the Competent Authority considered an Appropriate Assessment to be necessary, all relevant information has been presented and the conclusion would be that the Development Proposals would not give rise to an effect on the integrity of the SPA / Ramsar site. A safe consent can therefore be granted.

Consideration of other relevant matters

It is noted that reference is made, within the cover email from SOS, to bats being reported by some of the interviewees. It is stated that SOS are "not sure whether this is evident in any of the other ecological submissions" received, or "what species of bat are around there".

This rather begs the question as to whether SOS have in fact fully reviewed the detailed ecological assessment information submitted by Ecology Solutions as part of the planning process. Specific bat surveys have been undertaken and impacts on bats fully assessed, with all necessary mitigation and appropriate enhancement measures put forward.

Reports of deer and fox are presented. This information is immaterial from a nature conservation perspective. Neither are subject to statutory protection (insofar as population conservation is concerned), noting that both can be hunted / controlled. Applicable legislation is focussed solely upon closed seasons (for deer) and avoiding cruel / inhumane treatment.

The report of Slow-worm corroborates the results of specific surveys reported by Ecology Solutions which additionally identified use of the site by Common Lizard and Grass Snake. Suitable mitigation and enhancement measures have been proposed.

Use of the Application Site by other bird species has also been reported by respondees to the SOS questionnaire. As discussed elsewhere, robust bird surveys have been undertaken and the results have informed a detailed assessment into impacts on bird species. Appropriate mitigation and suitable enhancements have been put forward wherever appropriate in the light of that assessment. The information provided by SOS does not change the conclusions reached in this regard.