



SUSSEX ORNITHOLOGICAL SOCIETY

Registered charity 256936

www.sos.org.uk

Beavers Brook,
The Thatchway,
Angmering,
West Sussex BN16 4HJ

22 June 2018

By e-mail only

Mr Karl Roberts,
Planning Department,
Arun District Council,
Maltravers Road,
Littlehampton,
West Sussex BN17 5LF

Dear Karl,

South Pagham Planning Applications P/140/16/OUT and P/25/17/OUT
SOS comment on the impact of the ECJ ruling.

On 12 April 2018 the European Court of Justice ruled that mitigation measures could not be used to justify development of sites such as those near the Pagham Hbr SPA and Ramsar site that are subject to Habitat Regulations, without a full Habitats Assessment being made to assess the importance of the site in question.

The SOS believes that this ruling makes it clear that all planning applications that have not yet been decided have to demonstrate the impact that the loss of proposed to-be-developed sites will have on the designated species – which in the case of the South Pagham sites means on wintering Dark-bellied Brent Geese. In other words under the Habitats Regulations the importance of the South Pagham sites for wintering Brent Geese has to be formally assessed, before a decision on whether they should be developed can be considered.

On P/140/16/OUT the applicant's consultants, Ecology Solutions, have provided an "Updated Statement to allow a Habitats Regulation Assessment to be made". However, it fails in this objective because it ignores the fact that wintering Brent Geese **DO** forage on the P/140/16/OUT site and therefore that the importance of this site must be properly assessed under the ECJ ruling. The report also does not provide data, at the required level of certainty, about precisely where the wintering flock of Pagham Harbour Brent Geese do actually forage, so that the importance of the South Pagham sites can be assessed against the other sites used by wintering Brent Geese..

It merely concludes that this site is "not important".

Indeed the Ecology Solutions' report fails to include any records after 2014, and has a number of data errors and omissions of fact. These problems are explained in more detail in the appendix at the end of this letter.

We do know that significant numbers of wintering Brent Geese have for many years regularly foraged on the P/140/16/OUT site, as the residents who live opposite the site have told us this, and have backed this up with photographs of the geese foraging on the site. The bird records created by the SOS from the residents statements have been described as “not robust”. Whilst it is true that they do not give exact dates and numbers of birds seen, they do give an exact 6-figure grid reference location, which few other Brent Geese records from around Pagham Harbour have, as well as stating the period of years that geese have been seen on the site. (A six-figure grid reference shows a location accuracy to within 100 meters, allowing you to pinpoint the field being used). There are very few other records of wintering Brent Geese from around Pagham Hbr which have that level of location precision – most show four-figure grid references which only show a location precision of one square kilometer, or a tetrad grid reference which only shows a location accuracy of two by two kilometers. which is totally inadequate to pinpoint the fields that the birds have been recorded on, as has to happen before a proper Habitats Assessment can be made.

It, therefore, is in the interests of local councils that more detailed location evidence is gathered, together with data on how many birds are present, so that robust assessments can be made of where the important foraging areas are. Without an overall picture of where the geese forage it is difficult to make an assessment of the importance of any one site. .

To address this, SOS is working with RSPB to obtain more comprehensive information of precisely where (by field) wintering Brent Geese forage, along with the numbers of Brent recorded in each field. To this end the first of a series of annual surveys was carried out in 2018. Until this data gathering is completed it is important that areas where we know that they do forage, such as the South Pagham sites, are not developed - otherwise our ability to use this data to identify “goose sanctuaries” to fully protect the wintering Brent Geese will be jeopardised.

Recognising the lack of information on how many Brent Geese use the South Pagham sites, and how frequently they are used, the Planning Inspector in 2017, during his hearings on the Arun Local Plan, agreed with Natural England's recommendation that the South Pagham sites be planted up with suitable foraging crops, kept free of bird scarers, and their use by wintering Brent Geese be recorded. **Until this is done no formal Habitats Assessment of the importance of these sites for wintering Brent Geese can be made.**

Why we ask (again) have Arun DC decided to ignore the Inspector's recommendation?

Finally I would again ask that you meet myself and Jim Weston so that we can update you on the steps being taken to record in detail where the Pagham Brent Geese forage, and to make sure that you understand some of the details about bird records (such as the differences between WeBS records, casual bird records and bird surveys) all of which are designed to demonstrate different things. We also don't know whether at the end of the day mitigation measures will be a factor, but as we pointed out in our 28 February letter the ones currently being proposed are inadequate, so I would like to understand what part of the SOS objections to the current mitigation proposals you have doubts about.

If you wish to include any other parties in a meeting with Jim and myself that will, of course, be fine with us.

Yours sincerely,

Richard Cowser
(SOS Conservation Manager)

Copies to:

Jim Weston – PAGAM
Nick Gibb (MP)
Alison Giacomelli (Natural England)
Chloe Rose (RSPB)
David Easton (Arun DC)

Appendix: Errors and omissions in the “Updated Statement”.

1. Paragraph 5.8.37 states that the SOS records of birds using the site, reflecting the observations of residents who have lived opposite the site for over 600 years, “cannot be considered robust”, and suggest that the observations carried out by surveyors working on behalf of the client on 15 occasions between November 2014 and March 2015, totalling 23 hours of observation, should carry far more weight. A further series of surveys carried out in 2017, again totalling about 23 hours of observation, recorded no Brent Geese but noted that the habitat was mostly “ploughed land”.

The importance of the 2017 surveys in assessing Habitat Importance for Brent Geese can be dismissed out of hand, as for the first time in living memory the whole land was left fallow and ploughed over in order to ensure that Brent Geese would not be recorded there. All the 2017 surveys proved was that if suitable crops are not planted Brent Geese won’t use the fields.

Regarding the 2014/15 surveys, the SOS has no criticism of them. However, in seeking to give more weight to surveys lasting a total of only 23 hours to the records of the observations of over 30 people who have lived opposite the site for a combined total of more than 600 years and who have said that they have seen Brent Geese using the P/140/16/OUT site every year, is illogical.

This is all the more true since we have supplied photographs to Arun DC of the Brent Geese grazing on the P/140/16/OUT site – how can records, supported by photographs, supplied by those who live next door to the site, not be considered a robust record that Brent geese do use the site?

Finally, if the developers are so confident that the P/140/16/OUT site is not important for wintering Brent Geese why, for the first time in living memory, would they have forgone income to leave it fallow in order to ensure that no Brent were present when the 2017 surveys were carried out?

It is hard not to conclude that this is the consultants and their clients trying to belittle perfectly robust evidence that the fields of P/140/16/OUT are used by Brent Geese, because they would prefer to ignore facts that don’t suit their argument.

2. Paragraph 5.8.36 is totally misleading, suggesting that WeBS data show that Brent Geese numbers at Pagham Hbr are in decline. Of the 44 monthly WeBS figures quoted by Ecology Solutions in Appendix 7 for the years 2009 to 2014, only 7 of them are accurate – the other 37 are wrong. (The attached Table 1 shows the correct figures and compares them with Ecology Solutions’ quoted figures). Moreover, although WeBS figures are publically available through to June 2017, Ecology Solutions have quoted no WeBS figures for the second half of 2014, nor any figures later than the first half of 2015. Available WeBS records for two and a half of the last three years have been ignored. Why?

The subsequent reference in 5.8.39 to “taking into account population trends” and in 5.8.42 to “the population of Dark-bellied Brent Geese has fallen in recent years”, is therefore totally false. The WeBS counts in the attached Table 1 show that the population at Pagham is actually relatively stable at a maximum of about 2300 to 2500 birds a year (except for a large one-off upward blip of 3701 in February 2016). Looking at the Great Britain totals over the last five years they are also relatively level over the same period, having increased in 2013/14 and 2014/15, but fallen back in the next two years (to 2016/17) to the 2012/13 levels.

3. Also in Appendix 7 is a map showing of locations of where the Sussex Biodiversity Records Centre has records of wintering Brent Geese. However, this excludes records that have been added over the last 3 years, including the records created from the observations by the residents who live opposite the P/140/16/OUT site. Nor does it appear to include the Brent Geese sightings that the surveyors made in their surveys in November and December 2014 in Field 5. The latter records are significant when evaluating the impact of the P/25/17/OUT application, and particularly the record close to field 2. It therefore seems to be another piece of out-of-date and incomplete data that does not reflect all the records that are available.
4. Moreover, this information appears to only show records with a six-figure grid reference (i.e a 100 meter by 100 metre area). As already noted the vast majority of records of Brent Geese have 4 figure grid references (covering an area of 1 sq kilometre) or tetrad records (covering an area of two by two kilometres). No reference is made to the existence of these records at all (although they probably make up about 99% of all SOS and SxBRC Brent Geese records around Pagham Hbr). Reference has already been made of the need to survey Brent Geese around Pagham Harbour to overcome this data deficiency, so that we can find out precisely which fields they use. To ignore the problem that most of the available records have only a one-kilometer or tetrad grid reference and publish a map based on only about 1% of all the records available, such as that shown “Appendix 7, Dark-bellied Brent Geese Baseline Information”, is misleading and unscientific. It merely highlights why a proper Habitats Assessment cannot be made at this time.
5. Paragraph 6.22 makes passing reference to the mitigation measures proposed for providing alternative suitable habitat for the loss of the P/140/16 site, but offers no opinion on their adequacy. As you know the SOS believes that the proposed mitigation measures are inadequate, and in no way compensate sufficiently for the loss of the 22.9ha P/140/16/OUT site (see our letter dated 28 February, 2018). No comment on the SOS objections has been offered by Ecology Solutions. It seems that no one can counter our arguments as to why the proposed mitigation measures are so inadequate! We therefore conclude that our comments on the inadequacy of the mitigation measures are “robust” ones.

