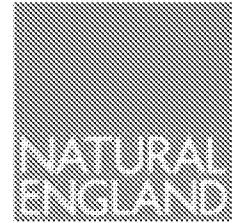


Date: 18 October 2018
Our ref: 259977
Your ref: P/140/16/OUT



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BY EMAIL ONLY

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Dear Claire

Planning consultation: Habitats Regulations Assessment (HRA) of the Outline application for access only - mixed use development comprising of up to 400 dwellings, a care home with up to 70 beds, a Local Centre comprising up to 2000sqm of A1/A2/A3/D1/sui generis floorspace, provision of land for a 1FE primary school (with sufficient space to ensure that it is expandable to 2FE), provision of land for a scout hut, safeguarding of land to help link the site to the Pagham Harbour Cycle Route & other community uses including public open space & allotments with some matters reserved.

Location: Land South of Summer Lane & West of Pagham Road Pagham

Thank you for your consultation dated 24 September 2018, which was received by Natural England on the same date. Thank you for allowing additional time for us to respond.

Conservation of Species and Habitats Regulations, 2017, consultation under Regulation 63

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

SUMMARY OF NATURAL ENGLAND'S ADVICE

Natural England concurs with the HRA Report (EPR, September 2018) that the proposal is likely to have a significant effect on Pagham Harbour SPA/Ramsar through increased recreational disturbance, loss of supporting habitat, and water quality impacts, in combination with other plans or projects.

We agree with the conclusions of the Appropriate Assessment, that mitigation measures are available to avoid an adverse effect on the integrity of the SPA/Ramsar. However, our view is that to avoid an adverse effect on the integrity of the SPA/Ramsar there should be no net loss of functionally linked land. To achieve this, a greater area within the brent goose mitigation land needs to be planted with goose forage. Therefore, the detailed habitat management plan for the brent goose mitigation area must ensure no net loss of foraging resource, to enable Arun District Council to be certain that impacts on brent geese can and will be avoided.

Therefore, the following mitigation measures should be secured:

- Financial contribution to the Pagham Harbour Strategic Access Management and Monitoring (SAMM) Strategy;

- Greenspace totalling 3.92ha within the development site, managed to provide recreational space for people and their dogs. A costed management plan should be produced, with a suitable management company identified.
- Measures to minimise disturbance to brent geese foraging within fields adjacent to the application site.
- A detailed habitat management plan for the brent goose mitigation area should be produced, which sets out the habitat management over the whole 18.5ha area. This plan must ensure no net loss of foraging habitat available to brent geese. The plan should be costed and set out who will carry out the management work.
- Development should be phased to align with Southern Water's delivery of any necessary sewerage network reinforcement.
- A detailed surface water drainage strategy addressing both flood risk and water quality should be produced; including a management and maintenance plan, with a suitable management company identified.

We advise that appropriate planning conditions or obligation is attached to any planning permission to secure these measures.

Natural England has previously commented on the proposal for 400 dwellings on land south of Summer Lane, Pagham (the proposal) on a number of occasions, the latest being dated 13 February 2018. In this letter, we advised that the incorporated mitigation measures were sufficient to avoid a likely significant effect on Pagham Harbour Special Protection Area (SPA) and Ramsar site.

However, since this advice was given, the Court of Justice of the European Union (the CJEU) has published a ruling on the interpretation of the Habitats Directive in the case of People Over Wind and Sweetman vs Coillte Teoranta (ref: C 323/17). The case relates to the treatment of mitigation measures at the screening stage of a HRA when deciding whether an Appropriate Assessment of a plan/project is required. The Court's ruling went against established practice in the UK that mitigation measures can, to a certain degree, be taken into account at the screening (likely significant effect) stage.

In the light of this, we welcome the fact that your authority has engaged ecological consultants who have carried out a HRA of the proposal (the HRA Report), and which considers mitigation at the Appropriate Assessment stage. We provide the advice enclosed on the assumption that your authority intends to adopt this HRA to fulfil your duty as competent authority.

Screening of likely significant effects

Potential pathways for impacting Pagham Harbour SPA/Ramsar comprise disturbance to birds, loss of supporting habitat for foraging dark-bellied brent geese, and deterioration in water quality.

Disturbance

Natural England agrees with the conclusion, in paragraph 4.23 of the HRA Report, that disturbance impacts from the proposal, in combination with other plans or projects, are likely to have a significant effect on Pagham Harbour SPA/Ramsar.

Loss of supporting habitat

As stated in our letter of 13 February 2018, Natural England's view is that the records and anecdotal information submitted by Sussex Ornithological Society (SOS) and Pagham and Aldwick Greenfields Action Movement (PAGAM) demonstrate that brent geese use the application site and surrounding fields. We consider that this is sufficient to demonstrate that there is an impact pathway in terms of loss of supporting habitat, and therefore, a likely significant effect on the SPA/Ramsar.

The HRA of the Arun Local Plan concluded that an adverse effect on the integrity of the SPA/Ramsar could be avoided as the Plan required that further survey and assessment was carried

out at the planning application stage, and mitigation measures included if necessary. The applicant subsequently proposed mitigation measures in the form of alternative habitat, as described in their Brent Goose Mitigation Plan. Given that the People Over Wind ruling requires that mitigation measures cannot be taken into account at the likely significant effect stage, this further confirms that an Appropriate Assessment of the loss of supporting habitat is necessary.

Water quality

It is clear that, whilst there may be sufficient capacity at Pagham wastewater treatment works (WwTW) to take sewerage from the proposal, alone, there are issues when considering in combination with other plans and projects. Therefore, Southern Water have confirmed that improvements to sewerage capacity are necessary, and that planning conditions should be used to ensure development is phased to that it is aligned with any sewerage network reinforcement required. Natural England, therefore, agrees with the conclusion, at paragraph 4.59 of the HRA Report, that there is a likely significant effect of the proposal in combination with other plans or projects, and water quality impacts should be tested at the appropriate assessment stage.

Appropriate Assessment

As set out at paragraph 2.9 of the HRA Report, there is case law guiding Appropriate Assessment, which is additional to that for the likely significant effect test. Crucially, the Waddenzee Judgement clarifies that the absence of an adverse effect on the integrity of a European site must be demonstrated beyond 'reasonable scientific doubt'. This means that, it must be clear that the mitigation measures set out in the application, and described in the HRA Report, are suitably secured, deliverable and effective.

Disturbance

1. Strategic Access Management and Monitoring

Natural England's view is that the Strategic Access Management and Monitoring (SAMM) strategy is sufficient to address the impacts of recreational disturbance from the proposal in combination with other residential development proposed in the zone of influence of Pagham Harbour. Monitoring carried out as part of the Bird Aware Solent project¹, which contains very similar mitigation measures, is demonstrating that their rangers are having a positive effect in reducing disturbance. We can, therefore, have confidence that financial contributions to a similar scheme for Pagham will also be effective.

2. On-site greenspace

In addition to financial contributions to the SAMM strategy, the applicant is providing 3.92ha of greenspace within the application site, in accordance with Policy ENV DM2 of the Arun Local Plan. As noted in our letter dated 13 February 2018, Natural England's view is that whilst on-site greenspace may take some daily dog walks, it will not replace visits to Pagham Harbour. However, as the greenspace is being provided as a mitigation measure under the Habitats Regulations, the mitigation needs to be suitably secured to meet the tests required by the Appropriate Assessment.

Paragraph 6.4 of the HRA Report states that the applicant's ecologist has confirmed that the greenspace will be secured by S.106 agreement and a management plan will be secured by planning condition and produced at the reserved matters stage. Natural England's view is that this management plan should include costings and a suitable management company should be identified. As stated in our previous letters regarding this application, the landscaping plan should include a fenced off area where owners can safely let their dogs off lead.

3. Signage and information

As stated in Natural England's letter dated 13 February 2018, signage and homeowner information packs are proposed in the and Brent Goose Mitigation Plan (BGMP), to encourage residents to use

¹ Liley, D & Panter, C (2017) First year results of monitoring bird disturbance around the Solent, in the presence/absence of rangers <http://www.birdaware.org/CHttpHandler.ashx?id=28773&p=0>

the on-site recreation space and inform them of the sensitivities of the Harbour and brent geese foraging. Details of the signage and information packs should be agreed at the reserved matters stage. Signage and information should be agreed with the SAMM Project steering group (made up of Arun and Chichester District Councils, Natural England and the RSPB). This is so that consistent messages are given on the application site and through the SAMM project.

4. Screening

The indicative layout of the proposal shows the onsite greenspace in the western part of the application site. Records show brent geese foraging in the fields to the west of the application site. Therefore there is a risk of disturbance to geese using the adjacent fields. To minimise this risk, the landscaping plan noted under point 2, above, should include details of thick hedging, reinforced by fencing, along the western boundary of the site.

Natural England's view is that the package of mitigation measures described above are sufficient to avoid an adverse effect on the integrity of Pagham Harbour SPA/Ramsar from recreational disturbance.

Loss of supporting habitat

As noted above, it is clear that brent geese make use of the application site. However, detailed counts are not available to enable the mitigation habitat to be designed to feed a particular number of geese. An alternative method is to calculate the energy provided by the arable cropping of the application site, and ensure the same amount of energy is provided within the mitigation area. Therefore, Natural England's view is that for Arun District Council to be certain that an adverse effect on the integrity of Pagham Harbour SPA/Ramsar will be avoided, the objective of the Brent Goose Mitigation Strategy must be to achieve no net loss of foraging resource.

As stated in our letter dated 13 February 2018, Natural England's view is that the proposed brent goose mitigation area is suitable in terms of its location as it represents an advantage over the application site in that it is closer to the roost, and undisturbed by footpaths. The letter went on to state that the creation of permanent pasture in the southernmost field, alongside winter wheat/clover in the west, is appropriate, but that a winter wheat crop in the eastern part of the field would be an improvement. Furthermore, the letter stated that the cessation of bird scaring activity over the 18.5ha mitigation area is only an improvement over the current situation if crops favoured by brent geese were not planted less frequently than currently. Therefore, we recommended that the Habitat Management Plan proposed for the mitigation area should include an agreed cropping regime for the fields outside the permanent habitat creation area, but within the area of cessation of bird scaring activities, and a commitment to planting winter cereals at an appropriate frequency in the rotation.

However, as mitigation measures must now be considered through an Appropriate Assessment, Natural England's advice is that your Authority must be certain that they will be deliverable and effective. Our view is, therefore, that the Habitat Management Plan should set out the grassland/crop to be planted over the whole of the 18.5ha area, with the objective of maintaining the same amount of foraging resource as will be lost to the application site. As more geese can forage on a given area of permanent pasture (as it supports a greater biomass and is available throughout the season) the arable lost can be replaced with a smaller amount of grassland. However, a greater area of either grassland or winter cereal/clover, than currently proposed (ie greater than 5ha) will be required to maintain the foraging resource².

The Habitat Management Plan should be costed and set out who will be carrying out the habitat management work. Provided that the Habitat Management Plan is required to ensure no net loss of

² Natural England is working with Bournemouth University and WWT Consulting on a wildfowl energetics model. Initial calculations indicate that the calories provided by the area of winter wheat to be lost will not be replaced by the 5ha of permanent habitat in the mitigation area.

foraging resource, Natural England's view is that this will avoid an adverse effect on integrity from impacts on brent geese foraging on land outside the SPA/Ramsar.

Water quality

Regarding potential impacts from foul sewerage, Natural England would not accept an increase in the discharge consent for Pagham WwTW as this is likely to result in water quality impacts to Pagham Harbour SPA/Ramsar. Therefore, it is clear that not all the Pagham allocations in the Arun Local Plan can be accommodated at Pagham WwTW, and that improvements to existing sewerage infrastructure will be necessary. However, as the impact will not occur until first occupation, Natural England accepts that the proposed condition requiring that development is phased to align with Southern Water's delivery of sewerage network reinforcement is sufficient to ensure an adverse effect on the integrity of Pagham Harbour is avoided.

As the application documents stated that there was no direct hydrological link between the application site and the SPA/Ramsar, Natural England had not commented on any mitigation measures for surface water drainage. Nevertheless, as the applicant has committed to including Sustainable Drainage Systems (SuDS) in their scheme, we support the recommendation in paragraph 6.7 of the HRA Report. A detailed SuDS strategy should be required by planning condition, and which should include measures to address water quantity and quality. Natural England advises that this strategy should set out the management and maintenance requirements, and identify a suitable management company to carry out the work.

Therefore, Natural England's view is that provided the above mentioned conditions are attached to any planning permission, an adverse effect on integrity from water quality impacts will be avoided.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries relating to the specific advice in this letter only please contact Alison Giacomelli on [REDACTED] For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

Yours sincerely

Alison Giacomelli
Sussex and Kent Area Team