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Your ref: P/30/19/OUT



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BY EMAIL ONLY

Dear David

Planning consultation: Outline application with some matters reserved for the construction of up to 300 No. new homes, a care home of up to 80 beds, D1 uses of up to 4,000 sqm including a 2 form entry primary school, the formation of new means of access onto Hook Lane & Pagham Road, new pedestrian & cycle links, laying out of open space, new strategic landscaping etc (resubmission following P/6/17/OUT)

Location: Land north of Hook Lane Pagham

Thank you for your consultation on the Habitats Regulations Assessment (HRA) for the above proposal, which was dated 09 July 2019 and was received by Natural England on the same date. Thank you also for the telephone conversation today, particularly regarding the potential water quality impacts, which has informed this response.

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 – NO OBJECTION SUBJECT TO MITIGATION

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 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. Therefore, in line with these conclusions, the following mitigation measures should be secured:

- Financial contribution to the Pagham Harbour SAMM Strategy;
- Greenspace totalling 6.65ha within the development site, managed to provide recreational space for people and their dogs. A costed 25 year management plan should be produced, with a suitable management company identified.
- Development should be phased to align with Southern Water's delivery of sewerage network reinforcement, in accordance with the Memorandum of Understanding between Arun DC and Southern Water developed during the Arun Local Plan examination.
- A detailed surface water drainage strategy addressing both flood risk and water quality should be produced. A management and maintenance plan should be produced with a suitable management company identified.

- A Construction Environment Management Plan should set out the best practice measures to avoid pollution during construction.

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

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 4.22 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. The suitability of the proposed mitigation measures should be tested at the appropriate assessment stage.

Loss of supporting habitat

The applicant submitted a Brent Goose Assessment Report (FPCR, 2018) in support of P/6/17/OUT, which provides information on cropping regimes and survey work in response to the requirements of Policy ENV DM2 of the Arun Local Plan. Natural England has advised the applicant's consultants to update this report with last winter's cropping regime, and any additional reports of brent goose usage submitted to the Sussex Ornithological Society. This would be helpful for completeness. However, Natural England's view is that it would not change the conclusions of the HRA Report as this was undertaken during last winter, so considered the suitability of the application site for brent geese at this time. Therefore, Natural England agrees with the conclusion of the HRA Report in that the application site is not functionally linked to the SPA/Ramsar, and so its loss would not have a likely significant effect.

Water quality

It is clear from work undertaken for the HRA of the Arun Local Plan, that whilst there is 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. Furthermore, the proposal site is hydrologically linked to the SPA/Ramsar via ditches and the Pagham Rife. Therefore, there is a potential pathway for surface water quality impacts during construction and operation of the proposal. 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 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

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

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>

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.

In addition to financial contributions to the SAMM strategy, the applicant is providing 6.65ha of greenspace within the application site, in accordance with Policy ENV DM2 of the Arun Local Plan. 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, Natural England agrees with the advice in paragraph 5.44 of the HRA Report, which states that the mitigation needs to be suitably secured to meet the tests required by the Appropriate Assessment.

Hence, we agree that the area and ownership of the greenspace should be secured, to ensure that the 6.65ha of greenspace is protected for the lifetime of the development. Management of the greenspace is also important to maintain its attractiveness for people and their dogs. Therefore, we agree that a 25 year management plan, with costed prescriptions, should be produced, with a commitment from a suitable management company to implement the prescriptions.

Water quality – during construction

The proposal site is hydrologically linked to Pagham Harbour via ditches and Pagham Rife. Therefore, there is a risk that pollution events, for example oil spillages, could occur during construction, and reach the designated site, potentially impacting habitats and the food that the birds rely on. A Construction Environment Management Plan that sets out the best practice measures that will be taken to avoid contamination of the designated site should be secured by condition.

Surface water quality

As the proposal site is hydrologically linked, run-off from the development could impact the features of the designated sites. Sustainable urban Drainage Systems can be an appropriate way of addressing water quality as well as flood management issues. CIRIA has produced guidance in their SuDS Manual (C753) on how to assess whether the SuDS treatment train proposed is sufficient to reduce pollutants from various types of development. Therefore, Natural England has advised the applicant's consultants to use the index approach set out in Chapter 26, section 26.7.1, of the SuDS Manual, which describes how the pollution hazard index should be defined for the development type, and then compared against the mitigation index. To deliver adequate treatment, the selected SuDS components should have a total pollution mitigation index (for each contaminant type) that equals or exceeds the pollution hazard index (for each contaminant type). As the receiving water is sensitive, we recommend adding an additional treatment stage to ensure contamination is avoided.

We recommend that the detailed surface water drainage strategy sets out the information in this way, so that it is clear that the SuDS components chosen are appropriate, and sufficient, to address the pollutants arising from the development. As set out at paragraph 5.49 of the HRA Report, the detailed drainage strategy should be secured by condition. Natural England also recommends that the detailed drainage strategy includes a management and maintenance plan with a suitable management company identified.

Foul sewerage

As noted above, not all of the Pagham housing allocations in the Local Plan can be accommodated within the headroom of the existing consent for Pagham WwTW. Natural England would not accept an increase in the discharge consent for this treatment works, as this would have negative consequences for the water environment. Paragraph 5.6.14 of the Appropriate Assessment of the Arun Local Plan states that flows from residential developments which exceed the available headroom should be required to be transferred to an alternative discharge location. Natural England understands that this mitigation measure was agreed during the examination of the Local Plan through an Memorandum of Understanding between Arun DC and Southern Water.

We also understand that discussions regarding which of the allocation sites will connect to Pagham WwTW and which will connect elsewhere (likely to Ford WwTW) have not moved on from the

position as described in the HRA Report. Therefore, Natural England agrees with the conclusion, set out at paragraph 5.48 of the HRA Report, that any planning permission should be conditional on the occupation being phased to align with Southern Water's delivery of any sewerage network reinforcement required.

Natural England has discussed the issue of nutrient neutrality with yourself and the applicant's consultant. This issue has arisen due to recent CJEU decisions regarding the assessment of elements of a proposal aimed towards mitigating adverse effects on designated sites and the need for certainty that mitigating measures will achieve their aims. Natural England has concerns that Pagham Harbour is close to the threshold for its water quality targets, and although it is not currently failing, deterioration must be avoided. Eutrophication is a particular concern, and the impact of Southern Water's assets including their WwTW outputs on Pagham Harbour is the subject of an agreed investigation in the Environment Agency's Water Industry National Environment Programme (WINEP) that will report by 2022.

The approach being taken in the Solent is for new proposals to achieve nutrient neutrality so that additional nutrients are not added to the designated sites. In order to help developers in the Solent determine whether their proposals are nutrient neutral, Natural England has developed a methodology for calculating a nutrient budget for developments in the Solent catchment. This involves calculating the nitrogen that would be contained in the sewage effluent derived from the proposal and discharging to the designated site, and comparing it to the nitrogen that is predicted to leach from the current land uses.

As set out in the HRA Report and supporting information on brent geese supplied by the applicant, the application site is in arable use. This means it will currently be contributing to the nutrient inputs to Pagham Harbour. Natural England has supplied the applicant's consultants with the methodology for calculating whether a development is nutrient neutral. However, as the site is currently intensive arable, it is likely that that site would contribute fewer nutrients in the future. Furthermore, when assessed in combination with the other Pagham allocations in the Local Plan, all of which are on arable land but not all of which can connect to Pagham WwTW, this would lead to a conclusion that nutrient inputs to the SPA/Ramsar will be reduced.

Pagham Harbour Site of Special Scientific Interest

Please note that if your authority is minded to grant planning permission contrary to the advice in this letter, you are required under Section 281 (6) of the Wildlife and Countryside Act 1981 (as amended) to notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, your authority has taken account of Natural England's advice. You must also allow a further period of 21 days before the operation can commence.

Other advice

Further general advice on the protected species and other natural environment issues is provided at Annex A.

If you have any queries relating to the advice in this letter please contact me on 0208 225 7693.

Please consult us again once the information requested above, has been provided.

Yours sincerely

Alison Giacomelli
Sussex and Kent Area Team

Annex A – Additional Advice

Natural England offers the following additional advice:

Landscape

Paragraph 170 of the National Planning Policy Framework (NPPF) highlights the need to protect and enhance valued landscapes through the planning system. This application may present opportunities to protect and enhance locally valued landscapes, including any local landscape designations. You may want to consider whether any local landscape features or characteristics (such as ponds or woodland) could be incorporated into the development in order to respect and enhance local landscape character and distinctiveness, in line with any local landscape character assessments. Where the impacts of development are likely to be significant, a Landscape & Visual Impact Assessment should be provided with the proposal to inform decision making. We refer you to the [Landscape Institute](#) Guidelines for Landscape and Visual Impact Assessment for further guidance.

Best and most versatile agricultural land and soils

Local planning authorities are responsible for ensuring that they have sufficient detailed agricultural land classification (ALC) information to apply NPPF policies (Paragraphs 170 and 171). This is the case regardless of whether the proposed development is sufficiently large to consult Natural England. Further information is contained in [GOV.UK guidance](#). Agricultural Land Classification information is available on the [Magic](#) website on the [Data.Gov.uk](#) website. If you consider the proposal has significant implications for further loss of 'best and most versatile' agricultural land, we would be pleased to discuss the matter further.

Guidance on soil protection is available in the Defra [Construction Code of Practice for the Sustainable Use of Soils on Construction Sites](#), and we recommend its use in the design and construction of development, including any planning conditions. *Should the development proceed, we advise that the developer uses an appropriately experienced soil specialist to advise on, and supervise soil handling, including identifying when soils are dry enough to be handled and how to make the best use of soils on site.*

Protected Species

Natural England has produced [standing advice](#)² to help planning authorities understand the impact of particular developments on protected species. We advise you to refer to this advice. Natural England will only provide bespoke advice on protected species where they form part of a SSSI or in exceptional circumstances.

Local sites and priority habitats and species

You should consider the impacts of the proposed development on any local wildlife or geodiversity sites, in line with paragraphs 171 and 174 of the NPPF and any relevant development plan policy. There may also be opportunities to enhance local sites and improve their connectivity. Natural England does not hold locally specific information on local sites and recommends further information is obtained from appropriate bodies such as the local records centre, wildlife trust, geoconservation groups or recording societies.

Priority habitats and Species are of particular importance for nature conservation and included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. Most priority habitats will be mapped either as Sites of Special Scientific Interest, on the Magic website or as Local Wildlife Sites. List of priority habitats and species can be found [here](#)³. Natural England does not routinely hold species data, such data should be collected when impacts on priority habitats or species are considered likely. Consideration should also be given to the potential environmental value of brownfield sites, often found in urban areas and former industrial land, further information including links to the open mosaic habitats inventory can be found [here](#).

² <https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

³ <http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

Environmental enhancement

Development provides opportunities to secure net gains for biodiversity and wider environmental gains, as outlined in the NPPF (paragraphs 8, 72, 102, 118, 170, 171, 174 and 175). We advise you to follow the mitigation hierarchy as set out in paragraph 175 of the NPPF and firstly consider what existing environmental features on and around the site can be retained or enhanced or what new features could be incorporated into the development proposal. Where onsite measures are not possible, you should consider off site measures. Opportunities for enhancement might include:

- Providing a new footpath through the new development to link into existing rights of way.
- Restoring a neglected hedgerow.
- Creating a new pond as an attractive feature on the site.
- Planting trees characteristic to the local area to make a positive contribution to the local landscape.
- Using native plants in landscaping schemes for better nectar and seed sources for bees and birds.
- Incorporating swift boxes or bat boxes into the design of new buildings.
- Designing lighting to encourage wildlife.
- Adding a green roof to new buildings.

You could also consider how the proposed development can contribute to the wider environment and help implement elements of any Landscape, Green Infrastructure or Biodiversity Strategy in place in your area. For example:

- Links to existing greenspace and/or opportunities to enhance and improve access.
- Identifying opportunities for new greenspace and managing existing (and new) public spaces to be more wildlife friendly (e.g. by sowing wild flower strips)
- Planting additional street trees.
- Identifying any improvements to the existing public right of way network or using the opportunity of new development to extend the network to create missing links.
- Restoring neglected environmental features (e.g. coppicing a prominent hedge that is in poor condition or clearing away an eyesore).

Access and Recreation

Natural England encourages any proposal to incorporate measures to help improve people's access to the natural environment. Measures such as reinstating existing footpaths together with the creation of new footpaths and bridleways should be considered. Links to other green networks and, where appropriate, urban fringe areas should also be explored to help promote the creation of wider green infrastructure. Relevant aspects of local authority green infrastructure strategies should be delivered where appropriate.

Rights of Way, Access land, Coastal access and National Trails

Paragraphs 98 and 170 of the NPPF highlights the important of public rights of way and access. Development should consider potential impacts on access land, common land, rights of way, coastal access routes and coastal margin in the vicinity of the development and the scope to mitigate any adverse impacts. Consideration should also be given to the potential impacts on any nearby National Trails, including the England Coast Path. The National Trails website www.nationaltrail.co.uk provides information including contact details for the National Trail Officer.

Biodiversity duty

Your authority has a [duty](#) to have regard to conserving biodiversity as part of your decision making. Conserving biodiversity can also include restoration or enhancement to a population or habitat. Further information is available [here](#).