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Dear Claire

Planning consultation: Habitats Regulations Assessment (HRA) of the Outline application for construction of up to 300 new homes, care home of up to 80 beds, D1 uses including a 2 form entry Primary School, formation of new means of access onto Hook Lane & Pagham Road, new pedestrian & cycle links, the laying out of open space, new strategic landscaping, habitat creation, drainage features & associated ground works & infrastructure.

Location: Land North of Hook Lane, Pagham

Thank you for your consultation dated 24 September 2018, which was received by Natural England on the same date.

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 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 mitigation for surface water quality is required in addition to those set out in the HRA Report.

Therefore, 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 deliver of sewerage network reinforcement.
- A detailed surface water drainage strategy addressing both flood risk and water quality, and including three stages of SuDS treatment, should be produced. A management and maintenance plan should be produced with a suitable management company identified.

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

Natural England has previously commented on the proposal for 300 dwellings on land north of Hook Lane, Pagham (the proposal), in our letter dated 10 March 2017. 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 to carry out a HRA of the proposal (the HRA Report), and to consider 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 4.22 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 has submitted a Brent Goose Assessment Report (FPCR, 2018), which provides additional information on cropping regimes and survey work in response to the requirements of Policy ENV DM2 of the newly adopted Arun Local Plan. Given this additional information, and in particular, given that the site has not been planted with crops suitable for foraging brent geese in the last five years, Natural England's view is that the site is not functionally linked to the SPA/Ramsar. We, therefore, agree that the proposal will not have a likely significant effect, alone or in combination with other allocations in the Arun Local Plan.

Water quality

It is clear 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. 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 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 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. As noted in our letter dated 10 March 2017, 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

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.

The HRA Report does not mention surface water run-off. However, Natural England's view is that as the application site is hydrologically connected to the SPA/Ramsar via ditches and Pagham Rife, there is a risk of contaminated run-off having an adverse effect. In our letter of 10 March 2017, Natural England suggested that a detailed surface water drainage strategy, addressing water quality and run-off (and including three stages of SuDS treatment), should be secured by condition. The Flood Risk Assessment (January 2017) states that the SuDS will include swales and detention basins. CIRIA SuDS Manual (C753) indicates that this is acceptable for the size of the proposal, however, it recommends a precautionary approach to be taken if the discharge is to protected waters. Hence Natural England recommends an additional stage of treatment, or that the detention basins are upgraded to ponds or wetlands, which achieve greater water treatment.

As the People over Wind ruling has altered established practice, and means that mitigation measures such as SuDS should be considered through Appropriate Assessment, Natural England's advice is that now, your authority must be certain that the necessary SuDS treatment can be delivered. Further, a suitable management company should be identified to ensure that the SuDS are maintained and functioning effectively.

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>

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 [REDACTED]

Yours sincerely

Alison Giacomelli
Sussex and Kent Area Team