

[REDACTED]

From: Marlow, Angela [REDACTED]

Sent: 18 October 2019 11:22

[REDACTED] Simon Davis <Simon.Davis@arun.gov.uk>; Planning <Planning@arun.gov.uk>;

Subject: Pagham discharge of conditions Arun P/87/19/DOC and Chichester SY/19/02257/DOC

Dear Simon and Naomi,

Arun LPA Simon Davis Simon.Davis@arun.gov.uk

P/87/19/DOC - Approval of details reserved by conditions of P/97/15/PL for Conds 4, 5 Tern Island Compensation, 6, 7 proposed mitigation measures to protect Little Tern habitat, 8, 9 and 14 at Church North Spit Pagham Harbour Pagham.

NE reference 294707.

Chichester LPA Naomi Langford [REDACTED]

SY/19/02257/DOC Discharge of Conditions 1 to 14 of planning permission SY/15/03053/FULEIA. Address: Managed Breach, Pagham Harbour, West Sussex,

SY/19/02257/DOC discharge of condition Managed Breach Pagham spit

NE reference 294842.

Thank you for consulting Natural England on the information submitted for the discharge of conditions associated with the above planning applications.

Natural England has worked with and encouraged the Pagham Coastal Issue Group to establish a Beach Action Plan (BAP) with the local authority, that encompasses all viable options to manage the Pagham frontage from coastal erosion whilst having regard to the designated sites. The BAP should include proposals that can be taken forward either through existing permitted activities or working with all stakeholders should additional permission be required to implement an option when the need arises.

Our formal advice for this consultation will be restricted to the conditions for this proposal associated with the protection of the designated sites. However, the future role of the BAP should be considered in conjunction by the applicant when deciding how best to progress this application.

The requested conditions were designed and agreed in the original application and assessed under the HRA and IROPI case, to enable the LPA to grant permission and avoid additional adverse impacts, and to compensate for the adverse impact due to loss of SPA supportive habitats. If the conditions were implemented as agreed, Natural England fully support the approach, and further request would be unnecessary.

However, our advice is that the proposed amendments requested in this information do not comply with a number of conditions, such that it is likely to result in further adverse effect to the SPA and damage to the SSSI.

We would advise that more information is needed regarding these changes and the request to amend the timing of the tern habitat delivery, the separate phasing of construction, and new access routes are of particular concern.

Therefore we would advise that these amendments are reconsidered by the applicant and that if necessary a possible short extension of a few months is sought to allow the delivery of the scheme as originally proposed rather than pursuing this more damaging option. Any agreed extension should be subject to the demonstration that the IROPI case can still be met.

If the risk to homes from the scour channel has subsided due to natural changes we would advise the BAP would be the best way to assess future options and ensure clarity of when and why specific options would be implemented.

NE's detail advice on the conditions.

The proposed amendments to the conditions that have been requested include:

- i. Changes to the timing for construction, changes to the access routes, construction phasing and construction footprint.
- ii. Removal and reduction to mitigation measures.
- iii. Changes to the proposed compensation habitat.
- iv. Additional detail is required for the construction, mitigation and compensation plans, to ensure that all elements that were originally conditioned to avoid, reduce and compensate impacts are fully addressed.

Changes on site and proposed amendments to the conditions.

Since the granting of planning permission natural changes have occurred on site that have altered the baseline of the original planning application.

Some of the requested amendments to conditions relate to the natural changes that have occurred on site. However, fundamentally the proposed intervention results in the same impacts, a managed breach of the spit and infilling of the channel, results in loss of SPA supportive habitat from the breach area and increase accessibility to the remaining severed spit, potentially increasing disturbance to this SPA supportive

habitat. Therefore it is our advice that the impacts remain, and the conditions that where part of the original application to avoid and minimise these effects should be fully implemented.

If changes to the site have been substantial, and significant amendments to the conditions are required, it is our advice this is reassessed under the HRA process to ensure the integrity of the site is maintained and the justification for intervention is still valid.

The planning authority informative number 12 makes for this provision to re-assess the application if it cannot be carried out as per the original permission due to the changes at this dynamic site.

Condition 11 and 12 Timing of work

The timings for the construction works are constrained due to the usage of the site by the SPA birds both for over-wintering and breeding, and avoiding these sensitive time periods was an essential part of the mitigation measures for this proposal. The conditions for timing were as follows:

11) Unless otherwise agreed in writing with the Local Planning Authority in consultation with Natural England, all works are to be completed before the main over wintering season which commences on the 1st November each year and ends on the 31st March each year.

Any works that are allowed to continue after the 1st November or between the end of February and the end of March shall be in accordance with Natural England's advice regarding severe/freezing weather working restrictions.

12) No work is to take place within the site between the 15th March and the 31st August or until the last little tern has fledged, whichever is the later.

The information submitted to vary this condition regarding timing of construction was:

3.2. Discharge of Timing of engineering work

3.2.1. The work will be done in two sections:

- a. 1st to 15th March 2020: Removal of enough material from the spit to form the tern island, and the completion of the island.
- b. 1st September to 31st October 2020 remove material to complete cut and infill the longshore channel, to completion of the project.

NE advice:

Commencing the construction of the little tern compensation habitat between the 1st and the 15th March does not comply with condition 11, which states "all works are to be completed before the main over wintering season which commences on the 1st November each year and ends on the 31st March each year".

The severe weather restriction was included to allow any works that had commenced during or after August, September or October (outside both breeding and overwintering interest periods), and had subsequently run into the over-wintering months (namely November) could be completed without impacting the over-wintering SPA birds in harsh conditions, it was not to allow the commencement of any works during this time period.

The area proposed to create the compensation habitat is within the harbour that displays the habitats, including intertidal, that support the SPA over-wintering birds and therefore this is a particularly sensitive area, including the immediate areas of the spit where birds may also roost and feed.

Condition 5 and 8 little tern compensation habitat:

More detail is required regarding the design and management plan of the compensation habitat due to both amendments that are proposed and lack of information to comply with conditions 5 and 8.

With regard to the compensation habitat no longer being an island as proposed in the original application and whether this new design meets the same requirements as originally agreed this needs to be demonstrated.

The Supplementary Advice on Conservation Objectives (SACOs) for the SPA should be considered when justifying the new design.

<https://designatedsites.naturalengland.org.uk/Marine/SupAdvice.aspx?SiteCode=UK9012041&SiteName=&SiteNameDisplay=Pagham+Harbour+SPA&countyCode=&responsiblePerson=&SeaArea=&IFCAArea=&NumMarineSeasonality=4>

Consideration needs to be given regarding any increase in disturbance from people and dogs that the habitat may now experience due to greater accessibility. The improved predator fencing is welcomed and will exclude direct access on the habitat, however, the connection with land and the closer proximity may deter little terns from nesting on part of the habitat.

We understand tern chicks go beyond the fencing on the current island and therefore being attached to the main spit would make them more vulnerable.

Consideration should also be given to the little terns generally nesting by the water edge and whether this new design reduces this opportunity.

Condition 9 Construction Management Plan and access along Church Norton Spit to construct the little tern compensation habitat.

By separating the intervention of the managed breach and the delivery of the compensation habitat into two phases this results in additional impacts that were avoided or mitigated in the original application, these impacts are both temporal and spatial.

In the original planning application the infilling of the channel created a cause-way from the Pagham frontage to the spit. This allows a shorter access route to the compensation habitat area, and includes areas of shingle that will be disturbed and subsequently lost due to the managed breached operation, thereby reducing the overall footprint of damage.

A request to vary the condition to allow access along the spit from the Church Norton end has been made, see below:

2.2.4. Because of the changes, some of the access to the spit may not be available at high tide, and will only be used when available. Because of the changes, and the continued rapid changes of the site, for the first part of the work, it may become necessary to use the emergency access as in condition 9. (Section 6.3.2. below). This will only happen after full discussion with Natural England and the RSPB.

NE advice:

Access along the Church Norton spit from the west should not be granted as this would result in further impacts, disturbing feeding and roosting SSSI, SPA birds using the harbour to over-winter, and compaction and loss to the shingle vegetation and to the coastal geomorphology that would otherwise remain undisturbed. These further impacts are avoided in the original proposal and form key mitigation measures. The SPA compensation habitat site is within the harbour used by birds to feed and roost during March when the construction is now proposed.

Condition 7 Mitigation measures for the remaining distal spit to protect potential SPA habitat.

A request has been made to remove this condition with regard to managing the remaining shingle habitat after the breach has occurred. This condition mitigates the increase in disturbance to supportive SPA habitat, that would result due to the infill of the channel, connecting the remaining distal end of the spit to the Pagham frontage.

As the proposal is to infill the current inlet/outlet this adverse impact will still occur, and the ephemeral shingle banks that have evolved on the site that little terns could potentially use, particularly if these formed temporary shingle islands, would be impacted by being more connected to the busier Pagham frontage.

Conservation efforts for little terns are highly managed on this site due to the lack of suitable ephemeral habitat that little terns would naturally utilise as these become available under coastal process. Ideally appropriate habitat management would allow this to happen, providing additional opportunities for breeding little terns.

The intervention to breach the spit and infill the inlet/outlet impacts this remaining habitat and therefore a detailed mitigation plan is still required to demonstrate how this increase in disturbance will be managed.

Condition 6 and 10 Adaptive Management Plan to ensure the harbour remains open after any managed breach.

Insufficient detail has been provided on the adaptive management plan to monitor the harbour mouth and ensure it remains open, including the triggers and the actions that may be required and how these will be delivered/funded.

If the spit is breached in a managed way, the purpose of this condition over the subsequent five years is to ensure no adverse effects on the SPA as a result of this intervention, including the possible closure of the harbour to tidal influence. Any future intervention is with regard to the designated site only and is not related to allowing further intervention for any flood or erosion management requirement during that time.

Condition 13 Watching brief

This watching brief is related to monitoring the site conditions 11 and 12.

The watching brief sets out how the site will be monitored in respect of the timed development restrictions as set out in conditions 11 and 12. No development shall then commence until written approval has been received to this plan and the brief shall thereafter be implemented and adhered to throughout the entire construction period.

This condition was signed off on the 1st Sept 2017.

No additional evidence has been provided to support the request to vary condition 11, that no works are commenced during 1st Nov to 31st March.

As stated above, our advice is that the implementation of the freezing weather condition was to allow works to continue that had overrun from the August, September October time period when works needed to commence rather than commencing works within this sensitive time.

Condition 14 tidal gauge

More details are required on when and where the tidal gauge will be deployed, what information will be gathered and how it will be used in the watching brief to monitor the harbour tidal flow.

We hope our advice is clear if you require any further comments please do not hesitate to contact us.

Kind regards,

Angela Marlow

Sussex and Kent Team

www.naturalengland.org.uk

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