



Department for Levelling Up,
Housing & Communities

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Our ref: PCU/HAB/C3810/328474
Your ref:

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Dear Mr Davis and Ms Prichard

Reference to the Secretary of State under Regulation 64(5) of the Conservation of Habitats and Species Regulations 2017 (as amended).

Project: Creation of a temporary alternative outflow channel to reduce/avoid flood and erosion risk to properties and businesses at Pagham Beach and Haven Church Farm over the autumn 2021.

Application numbers 1. Arun District Council - P/93/21/PL and 2. Chichester District Council 21/01921/FULEIA

1. I refer to your email regarding the above applications from Simon Davis of 8 October 2021 notifying the Secretary of State under regulation 64(5) of the Habitats Regulations 2017 (as amended) that your Councils propose to grant planning permission for the above applications relating to the above project, notwithstanding a negative assessment of the implications for the Pagham Harbour Special Protection Area (SPA) and Ramsar site.
2. The Secretary of State must give his approval where a competent authority proposes to agree to a plan or project notwithstanding a negative assessment.

The proposal

3. The proposed development by the Pagham Flood Defence Trust is to create a channel through the existing spit through the removal of shingle and to use the excavated material to provide a new island of approximately 0.3ha to provide alternative nesting habitat for displaced Little Terns within a harbour using the excavated material at, Pagham, West Sussex. The proposal would have direct effects on the Pagham Harbour

SPA and Ramsar Site, together with the Pagham Harbour SSSI and Marine Conservation Zone.

4. As the proposed development is not directly connected with or necessary for the management of the site and is likely to significantly affect a European site, the competent authority must, in accordance with Regulation 63, make an Appropriate Assessment (AA) of the implications of the proposal for the site in view of the site's conservation objectives. Arun District Council has led on behalf the competent authorities and a joint AA has been prepared. The Marine Management Organisation (MMO) has assessed and confirmed its adoption the AA as at 13 October 2021. The AA concluded that the project would adversely affect the integrity of Pagham Harbour SPA and Ramsar. Natural England is satisfied with the process and the conclusions in the AA. The Environment Agency and Historic England were also consulted by the competent authorities and do not object to the proposals.
5. In light of the conclusions of the AA, the decision-taker(s) must determine whether it can ascertain that the proposal will not adversely affect the integrity of the site. Whilst a number of the impacts would be addressed by mitigation measures, the competent authorities, and the MMO, have concluded that the proposal would have an adverse impact on the integrity of the Pagham Harbour SPA and Ramsar Site. This is due to the direct loss of nesting habitat for Little Terns, which is an interest feature of the SPA, and cannot be mitigated by conditions and obligations.
6. The Secretary of State is satisfied that the AA has been carried out in accordance with the Habitats Regulations 2017 (as amended) He also considers that the competent authorities have fulfilled the requirements of:
 - Regulation 63 (2), requiring the provision of information to the competent authority,
 - Regulation 63 (3 & 4) relating to consultation with nature conservation bodies and the public;
 - Regulation 63 (5 & 6) concerning the impact on the integrity of the European Maritime site.

Secretary of State's consideration

7. The Secretary of State is required to ensure that the proposal meets the requirements of the Habitats Regulations 2017 (as amended) and to be satisfied that there is no alternative solution or site, that the project has Imperative Reasons of Overriding Public Interest (IROPI) and that satisfactory compensation has been agreed and will be delivered.

Alternative Solutions

8. The Secretary of State has considered the detailed assessment of alternative solutions submitted by the applicant. These were:
 - Option 1 - Sediment Recycling within Sediment Cell.
 - Option 2 - Cut the Spit.
 - Option 3 - Engineered linear defence (e.g., steel sheet pile wall).
 - Option 4 - Do nothing and rely on EA contingency plan to mitigate flood risks.

He has concluded that there are no viable alternative solution that would have no effect or a lesser effect than the proposal on the site's integrity and would fully meet the projects objectives.

Imperative Reasons of Overriding Pubic Interest (IROPI)

9. If there is no alternative solution, the decision-taker should consider whether there are IROPI to justify the grant of permission despite a potentially negative effect on site integrity. Different tests apply depending on whether the site hosts a priority natural habitat type or species. Planning permission can be granted if the proposed development has to be carried out for imperative reasons of overriding public interest, including those of a social or economic nature.

10. The Secretary of State has considered the applicant's case for the development to proceed on the grounds of IROPI. The applicant considers that:

There are imperative reasons and overriding need, together with strong public interests for the project to go ahead. The project will reduce/avoid flood and erosion risk to properties and businesses at Pagham Beach and Haven Church Farm over the winter 2021/22.

11. The Secretary of State is satisfied that there is a strong case for the development to proceed on the grounds of IROPI.

Compensatory Measures

12. Where, in the absence of alternatives, the importance of the development is judged, in accordance with regulation 68, to outweigh the harm to a European site, compensatory measures must be taken to ensure that the overall coherence of the network of SPAs and SACs known as Natura 2000 is protected.
13. The Secretary of State has considered the applicant's statements which provide details of the proposed island habitat in Pagham Harbour as compensation for the project. He notes that compensatory measures would be provided in comparable proportions to the habitats for the species lost and that planning conditions and other mechanisms would allow for maintenance and monitoring once the compensation package has been implemented.
14. The compensatory measures have been considered fully by the competent authorities, having regard to the advice of the MMO and Natural England. Natural England considers that the proposed compensatory measures associated with the project, which includes compensation for habitat loss and impacts on SPA interest features, is satisfactory in terms of Regulation 68 of the Habitats Regulations and is sufficient to secure the future nature conservation interest on the sites. The Secretary of State considers that the applicant has provided satisfactory compensation measures to ensure that the coherence of the network of SPAs and SACs known as Natura 2000 will be protected.

Conclusion and Decision

15. The Secretary of State has undertaken a comprehensive assessment of the flood prevention and anti-erosion measures at Pagham Harbour and beach and considered evidence submitted by the competent authorities, MMO and statutory agencies to ensure

that the project complies with the tests in the Habitats Regulations. He considers that a rigorous case has been made to demonstrate that there is no current alternative solution and that the proposal has IROPI. He is also satisfied that satisfactory compensation measures are in place and will be delivered by the planning conditions to ensure that the coherence of the network of SPAs and SACs known as Natura 2000 will be protected. The Secretary of State concludes that the tests in the Habitats Regulations 2017 (as amended) have been fully met and that the applications are, therefore, returned to ADC and CDC for determination.

16. I am sending a copy of this letter to the Marine Management Organisation, Natural England and the Rt Hon Nick Gibb MP.

Yours sincerely

M A Hale

This decision was made by officials on behalf of the Secretary of State, and signed on his behalf