

Recommendation Report for Planning Permission

REF NO: P/93/21/PL

LOCATION: Church Norton Spit
Pagham Beach
Pagham
PO21 4TD

PROPOSAL: Creating 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. This application is the subject of an Environmental Statement & is in CIL Zone 5 (Zero Rated) as other development.

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION

It is proposed to create a channel through the Spit in a similar location to the previous permission but with a much smaller intervention. Unlike the previous application, the proposal does not include any establishment of temporary access to the spit with temporary steel sheet pile protection or the use of excavated shingle to block the existing outlet channel because there is not enough shingle to create a blockage and alternative low tide access for plant. The proposal involves the removal of 7,500m³ as opposed to 55,000m³ as agreed previously. Approximately 5,000m³ of the excavated material will be moved to the eastern side of the new opening.

As compensation, it is proposed to provide a new island of approximately 0.3m hectares within the harbour to provide alternative nesting habitat for displaced Little Terns. This will be formed using approximately 2,500m³ of the excavated material. This alternative location does not require any access works unlike the previous proposal.

Construction is stated to take only a week but this is dependant on tides and weather and could therefore take up to 4 weeks. It is stated that there will be two 40 tonne, 360 degree excavators together with two D6 bulldozers. The shingle will then be moved utilising two 30 tonne dump trucks. The main access route to the site during the construction phase will be from the east on the Pagham side of the harbour and is situated approximately 75 metres to the west of the Pagham Yacht Club, between 9 & 11 West Front Road.

The machines will traverse the beach crest immediately opposite the access (thus avoiding damage to vegetated areas) then track along the inter-tidal shingle and access Church Norton Spit at low water. It is stated there will be

temporary plant parking areas on Church Norton Spit and a base compound area in the car park at the end of West Front Road which will deal with fuel supply for the machines.

The application includes land in Chichester District. A determination under 21/01921/FULEIA will be made by them. There will be a Marine licence issued by the Marine Management Organisation under MLA/2021/00272.

SITE AREA

The area of the breach is around 0.3ha and the proposed Tern Island will have a similar area.

TOPOGRAPHY

The location of the spit is predominantly above sea level but the topography varies depending on the tides and weather.

SITE CHARACTERISTICS

Open shingle spit with active geomorphology.

CHARACTER OF LOCALITY

Coastal location adjacent to a residential area based on former railway carriages.

RELEVANT SITE HISTORY

P/12/20/DOC	Approval of details reserved by conditions imposed under P/97/15/PL relating to conditions 4-programme of archaeological investigation & mitigation; 5-final plans & details concerning design & construction of Tern Island compensation measure; 6-adaptave management plan setting out how harbour opening wil be monitored & how approved compensation/mitigation measures will be reviewed; 7-details of proposed mitigation measures to be employed on sections of remaining Spit; 8-management plan for proposed Little Tern Island compensation measure; 9-Construction Management Plan; 14-scheme detailling deployment of tide gauge within the harbour to monitor tidal height & tidal behaviour.	DOC Approved 23-04-20
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P/98/17/DOC	Application for approval of matters reserved by condition imposed under P/97/15/PL relating to condition13 for watching brief.	DOC Approved 11-12-17
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P/97/15/PL	Managed breach of shingle spit & blocking of adjacent tidal inlet channel with shingle barrier & formation of shingle island within Harbour following excavation of adjacent area of spit. This application is accompanied by an environmental statement.	ApproveConditionally 27-06-17
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P/97/15/PL was for a much larger more complex scheme. It was never implemented due to natural processes breaching the spit and no intervention being required and expired in June 2020. P/98/17/DOC

and P/12/20/DOC relate to the discharge of conditions 7, 8, 13 & 14 of P/97/15/PL.

REPRESENTATIONS

Pagham Parish Council state Support.

12 letters of support have been received on the grounds that this is an urgent community application for the protection of people, homes and businesses in Pagham from flood risk and beach erosion.

COMMENTS ON REPRESENTATIONS RECEIVED:

Comments noted.

CONSULTATIONS

CONSULTATION RESPONSES RECEIVED:

ENVIRONMENT AGENCY - No objection but request an informative regarding pollution.

HISTORIC ENGLAND - No objection

NATURAL ENGLAND - Full comments on the Council's website but in summary are supportive of the proposals albeit their full agreement is dependant on the submission to them of a Habitat Regulation Assessment and all mitigation and compensation measures are secured/implemented. Comment that:

- The proposal is for a minimalist (and smaller scale) intervention (than previously) and will work with natural processes to achieve the desired outcome;
- Monitoring of the new Island and remaining sections of the Spit as Little Tern habitats should be secured as a condition;
- If the island erodes and the spit has not regrown, the island must be recharged prior to the nesting season but with shingle from outside the SPA;
- The management measures approved by P/12/20/DOC should still apply;
- Monitoring of the harbour mouth after the spit has breached is required and there must be measures in place to enable it to be reopened;
- A Construction Management Plan is required before commencement;
- There is a need for a restriction on the timing of works to take account of cold/freezing weather restrictions after November; and
- Vegetated shingle must be protected during construction.

MARINE MANAGEMENT ORGANISATION - No objection and state that the works also require a Marine Licence.

WSCC HIGHWAYS - No objection but require a Construction Management Plan is submitted to show as a minimum site access routes and construction site setup details.

ADC ENVIRONMENTAL HEALTH - No objection.

ADC COASTAL ENGINEERS - State that they welcome the approach and work completed by the Pagham Flood Defence Community Interest Group (PFDCIG) in submitting this application and have no objection to the proposal.

COUNCILS ARCHAEOLOGIST - Comments received by Chichester DC on their application state the proposal would seem to present no direct archaeological implications but there is a slight possibility that something of interest might be revealed in cutting through the gravel spit and this would justify the need for a condition to secure access to examine the site if artefacts are found.

COMMENTS ON CONSULTATION RESPONSES:

Comments noted. The applicant provided a Construction Environmental Management Plan in response to the comments of WSCC Highways and Natural England.

POLICY CONTEXT

Designations applicable to site:

- Outside the built up area boundary;
- Site of International Importance for Nature Conservation (SPA);
- Site of National Importance for Nature Conservation (SSSI);
- Pagham Harbour Access Management Zone A; and
- Flood Zones 2 & 3.

DEVELOPMENT PLAN POLICIES

[Arun Local Plan 2011 - 2031:](#)

CSP1	C SP1 Countryside
ECCSP1	ECC SP1 Adapting to Climate Change
HWBSP1	HWB SP1 Health and Wellbeing
ENVSP1	ENV SP1 Natural Environment
ENVDM1	ENV DM1 Designated Sites of Biodiversity or geographical imp
ENVDM2	ENV DM2 Pagham Harbour
ENVDM5	ENV DM5 Development and biodiversity
HERSP1	HER SP1 The Historic Environment
HERDM4	HER DM4 Areas of Character
HERDM6	HER DM6 Sites of Archaeological Interest
LANDM1	LAN DM1 Protection of landscape character
QESP1	QE SP1 Quality of the Environment
SDSP1	SD SP1 Sustainable Development
TSP1	T SP1 Transport and Development
WDM1	W DM1 Water supply and quality
WDM2	W DM2 Flood Risk
WSP1	W SP1 Water
WDM4	W DM4 Coastal Protection

PLANNING POLICY GUIDANCE:

NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan 2011 - 2031 (ALP), West Sussex County Council's Waste and Minerals Plans, The South Inshore & South Offshore Marine Plan and Made Neighbourhood Development Plans. The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

Where applicable, Neighbourhood Development Plan's, once made by Arun District Council, will form part of the statutory local development plan for the relevant designated neighbourhood area. There is no current Pagham Neighbourhood Plan to consider as the emerging Plan was withdrawn in September 2020.

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

OTHER STATUTORY PLANS:

[South Inshore and South Offshore Marine Plan 2018:](#)

South Marine Plan Policy S-CO-1

South Marine Plan Policy S-CC-3

South Marine Plan Policy S-CC-4

South Marine Plan Policy S-BIO-1

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The application complies with the Development Plan as it is in accordance with ALP policy W DM4 and therefore is acceptable development within the countryside and there is no associated unmitigated harm to biodiversity, landscape character, highway safety or human health.

Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that

(2) in dealing with an application for planning permission the authority shall have regard to -

- (a) the provisions of the development plan, so far as material to the application,
- (aza) a post examination draft neighbourhood development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to be weighed in the balance with the Development Plan.

CONCLUSIONS

BACKGROUND:

The proposal is to address an ongoing erosion and flooding issue at Pagham Beach which is reducing the amenity of the beach, affecting local businesses and threatening people's homes (including at

Pagham Beach and Haven's Church Farm Holiday Park) and is anticipated to worsen during the winter of 21/22. The problems are largely being caused by the growth of the 'Church Norton Spit' in a north easterly direction across Pagham Harbour.

Over the last two decades, the Spit and the Pagham Harbour tidal inlet channel has extended across the mouth of the harbour and this has allowed/caused the inlet channel to cut into the adjacent beach leading to localised shoreline retreat. The formation of the Spit, tidal channel and the associated 'ebb delta' feature are also locking up shingle and not allowing it to reach the more slowly eroding up-drift sections of the Pagham foreshore via the usual sediment transport routes.

This has put homes at risk and has affected businesses which are in close proximity to the beach or rely on the beach for access to the sea (e.g. fishermen & sailing clubs who as a result of erosion on Pagham beach find it more difficult to access the water). Previous evidence showed that since February 2014, the western section of Pagham Beach had lost 40,283m³ and the Spit had exhibited a net growth of 11,583m³. Between September 2015 and January 2016, the beach lost a further 7,438m³ and the volume of Spit growth was 29,069m³.

Since January 2016, the spit underwent a further change in that a natural high water breach was formed which led to the previous long-shore tidal channel becoming shallower as a result of the deposit of sediment from the spit (i.e. from the natural breach). The natural breach then started to become the dominant tidal inlet/outlet replacing the existing channel.

Following approval of P/97/15/PL in June 2017, natural processes occurred which meant it was not necessary to implement the permission. There has been further growth since the summer of 2018 which forced the outflow channel into a tighter bend towards Pagham Spit resulting in significant erosion of the shoreline that led to a breach into the Little Lagoon in summer 2020. With rates of erosion and channel migration towards the harbour, Lagoon and properties observed since 2020 it is stated it is very likely properties will be at risk from flooding and/or erosion during the winter of 21/22.

Arun District Council is continuing to assist the local community by reinforcing coastal protection measures to protect homes that front onto the beach including shingle recycling/importation to bolster the beach, placement of rock armour and improving existing Groynes.

PROJECT OBJECTIVES:

The application sets out the following objectives:

1. Larger and longer term coastal defence benefits for Pagham Beach;
2. Improvements to amenity and human health;
3. Cost effective use of money;
4. Application of a soft solution that works with nature;
5. Greater assurance of tidal functioning;
6. Minimise breeding bird habitat damage;
7. Avoidance/reduction in the risk of a tidal breach into Pagham Lagoon with associated flood risk to properties on Pagham Beach and large parts of Haven Church Farm Holiday Park; and
8. Avoidance/reduction of the risk of coastal erosion leading to property loss at southern end of Pagham Beach.

PRINCIPLE:

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications should be determined in accordance with the development plan unless material considerations indicate otherwise.

Section 38 (5) of the Planning and Compulsory Purchase Act 2004 states: "If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document".

ALP policy C SP1 states development in the countryside outside the BUAB will be permitted if it is in accordance with other policies in the Plan which refer to a specific use or type of development. Policy W DM4 allows coastal protection and sea defence works subject to certain criteria. The proposal complies with these as it will not result in any harm to the visual character of the coast, the proposed works are technically sound (the Councils Engineers support the proposal) and the impacts on existing wildlife habitats have been addressed and compensated for.

The Shoreline Management Plan supports intervention at this location to achieve the objective of holding the line of Pagham Beach. The proposal is broadly in line with the option of adaptive management in the more recent Pagham to East Head Coastal Defence Strategy 2010.

ALP policy ECC SP1 is relevant and states development will be supported which is designed to adapt to impacts arising from climate change such as the increased probability of tidal and fluvial flooding.

There are no particular sections of the NPPF which directly support the proposal. The NPPF requires development takes full account of flood risk & coastal change and seek to mitigate against related issues. The NPPF presumption in favour of sustainable development does not apply due to the presence of international and national wildlife designations affecting the site. The development accords with the policies of the development plan and does not require the application of the presumption.

BIODIVERSITY:

ALP policy ENV DM1 refers to development within designated sites of biodiversity or geological importance. It states that development is only allowed here if it meets the following tests:

- a. There is no alternative solution (which shall be adequately demonstrated by the developer); and
- b. There are reasons of public health or public safety; or
- c. There are benefits of primary importance to the environment; or
- d. There are imperative reasons of overriding public interest.

Policy ENV DM2 states development adjacent to the boundary of such sites will only be permitted in exceptional circumstances where the developer is able to demonstrate there will be no detrimental effects on Pagham Harbour.

These tests are met by virtue of the assessment carried out under the Habitats Regulations described towards the end of this report and with reference to comments set out by Natural England in connection with the HRA.

Policy ENV DM5 requires that development schemes seek to achieve a net gain in biodiversity and protect habitats on site. The application proposes compensatory habitat in the form of a new island for Little Terns to nest on. This will be secured by condition and will be permanently retained, maintained and monitored. In addition, there are conditions in place to secure the necessary mitigations in respect of the impact on the SSSI as per Natural England's Consultation advice (Annex B of their response).

There is no conflict with policies ENV DM1, ENV DM2 or ENV DM5.

IMPACT ON WATER QUALITY:

ALP policy W SP1 seeks to protect the District's water resources and enhance the quality of the water environment which supports a range of habitats and ecosystems.

On the previous application, the Environment Agency raised concerns regarding the impact of works on bathing waters. The current proposal is for a much smaller volume of excavated material (7500m² vs 55,000m³) and the Environment Agency do not raise the same concerns with this application. Previously a condition was imposed to ensure compliance with the submitted Water Framework Directive and as this document has been resubmitted, it is reasonable to impose a similar condition. This along with the reduction in material to be excavated and shorter construction period ensures the impacts are acceptable and there is no conflict with the policy.

CHARACTER & APPEARANCE:

ALP policy LAN DM1 requires development respects the characteristics & natural features of the relevant landscape character areas and aim to reinforce or repair the character of those areas.

The proposal results in changes to the visual landscape of this part of the coastal area however the works are minor in nature. The area of the Spit is a naturally changing environment, and although the alterations will occur quicker than natural changes might, the effect is the same. As noted elsewhere in this report, the Spit continues to evolve and, changes to its morphology are to be expected. The proposed island will have a positive impact in terms of habitat for protected species and adds to the visual interest of the Harbour.

The application proposes the continued management of the breach including works to keep it open in order to avoid the Harbour being cut off from the sea. Should further breaches be needed then again, this will alter the character of the Spit. Any such additional future changes will only be to preserve a feature of the existing land/seascape and will not be visually harmful.

There will be a temporary impact on the character/appearance of the area during the construction phase. However, (a) this will be temporary; and (b) should be balanced against the potential reduction in construction activities elsewhere on the beach (i.e. works currently ongoing on Pagham Beach).

There are no conflicts with the relevant policies.

POLLUTION & OTHER AMENITY ISSUES:

ALP policies QE DM1 and QE DM3 seek to ensure that developments do not result have any significantly negative impacts due to pollution upon residential amenity, the natural environment or upon leisure/recreational activities enjoyed by residents/visitors. In addition, policy QE SP1 requires development contribute positively to the quality of the environment and ensure development does not have a significantly negative impact on residential amenity.

The construction phase of the proposal has the potential to result in adverse impacts in respect of noise and airborne pollution (such as dust). These impacts will be localised to the Spit & the access from the highway and will be temporary in nature (the construction period is stated to be between 1 and 4 weeks depending on tides & weather).

As the Spit is well away from residential properties, it is not considered these impacts will result in any harm to the amenity of residents. It is clear from representations that the local community support the works and are unlikely to be concerned with temporary construction impacts. Although construction activities will affect enjoyment of the area by local people (in terms of recreation), the construction period will be temporary and there will be no permanent or long lasting impacts.

A further impact associated with the construction phases concerns the need to transport plant, equipment, supplies and workers. There is potential for some localised traffic congestion and/or safety issues to occur but this will only be for a temporary period. The applicant has supplied a Construction Management Plan which clarifies the access and site compound arrangements. There are no conflicts with relevant policies and the main amenity impact that will arise from this proposal is a positive one in that the scheme will help to protect local homes and businesses.

MARINE PLAN POLICIES

The South Inshore & South Offshore Marine Plan is part of the development plan and its policies must be considered by this report. Policies S-CO-1, S-CC-3, S-CC-4 and S-BIO-1 are all relevant.

Policy S-CO-1 states "Proposals will minimise their use of space and consider opportunities for co-existence with other activities". The proposal is for a smaller intervention than the previous application and uses the smallest amount of space needed to secure the breach. Policy S-CC-3 states that "Proposals in the south marine plan area and adjacent marine plan areas that are likely to have a significant adverse impact on coastal change should not be supported. " The proposal will not have an adverse impact on coastal change and instead this will be positive.

Policy S-CC-4 states "Proposals that may have a significant adverse impact on habitats that provide a flood defence or carbon sequestration ecosystem service must demonstrate that they will, in order of preference: a) avoid, b) minimise, c) mitigate significant adverse impacts". The proposal is not considered to have a significant adverse impact on habitats that provide flood defence and instead will benefit these by reducing the loss of shingle beach or even reversing the current erosion.

Policy S-BIO-1 states "Proposals that may have significant adverse impacts on natural habitat and species adaptation, migration and connectivity must demonstrate that they will, in order of preference: a) avoid, b) minimise c) mitigate significant adverse impacts." The proposal will result in the loss of Little Tern breeding habitat but this will be compensated for with a new island habitat.

There are no conflicts with the policies of the South Inshore & South Offshore Marine Plan.

ASSESSMENT UNDER THE HABITATS REGULATIONS:

The site is covered by the Pagham Harbour Special Protection Area (SPA), the Pagham Harbour Ramsar site, the Pagham Harbour Site of Special Scientific Interest (SSSI), and a Marine Conservation Zone, as well being part of the Solent and Dorset Coast SPA. As the site is in a European designated site (commonly referred to as Natura 2000 sites), the proposal has the potential to affect its interest features, which are afforded protection under the Conservation of Habitats and Species Regulations 2017 (as amended) (the 'Habitats Regulations').

Natural England advise the proposal is acceptable on the provision that all mitigation/compensation measures set out in the original Habitat Regulations Assessment (HRA) from the previous application (and updated/detailed in the current application), are implemented. They stated the HRA needs to be refreshed by the competent authority to take account changes since the original assessment was undertaken.

A revised HRA has been produced by the competent authorities (CDC and ADC) and the conclusions of this are summarised below:

(1) The proposal has potential effects in respect of the direct loss of breeding habitat for little terns; the

potential for the harbour to close as a result of the breach (thus removing the harbour from tidal influence & impacting on supportive habitats that occur within it); and construction phase impacts that may reduce foraging habitat for, and disturb, overwintering or breeding birds.

(2) The project, including mitigation measures but excluding compensation measures, will have an Adverse Effect on the Integrity of Pagham Harbour Special Protection Area and Ramsar Site.

(3) The project can only be granted lawfully by means of a derogation under regulation 64 of The Conservation of Habitats and Species Regulations 2017 (as amended). This requires three tests are met - (a) that there are no feasible alternative solutions that would be less damaging or avoid damage to the site; (b) that the proposal needs to be carried out for imperative reasons of overriding public interest; and (c) that the necessary compensatory measures can be secured.

(4) There is no feasible alternative solution which would better respect the integrity of the site in question, and so the test of no alternative can be assessed as being met. Furthermore, there are Imperative Reasons of Overriding Public Interest (IROPI) and the proposed Island compensation measure can be secured by the planning permission.

As per regulation 63(3) of the Regulations, Natural England have had the opportunity to review this HRA. They confirmed on 07/10/21 that they have no objection to the Appropriate Assessment subject to appropriate mitigations being secured. They state that:

"We consider that without appropriate mitigation the application would:

- have an adverse effect on the integrity of Pagham Harbour Special Protection Area (SPA) and Ramsar Site as well as Dorset and Solent Coast SPA.
- damage or destroy the interest features for which Pagham Harbour Site of Special Scientific Interest (SSSI) has been notified.
- damage or destroy the interest features for which Pagham Harbour Marine Conservation Zone (MCZ) has been notified.

In order to mitigate these adverse effects and make the development acceptable, compensation and mitigation measures detailed within the Appropriate Assessment should be secured. We advise that an appropriate planning condition or obligation is attached to any planning permission to secure these measures."

The conditions attached to the recommendation will secure the necessary mitigation and compensation measures.

In respect of the need to ensure that there are contingency provisions in place to ensure that the harbour can be reopened should it close in 5 years as a result of the works, previously the Local Planning Authority accepted a letter from the applicant (Pagham Flood Defence Trust) to confirm that they hold a sum of £50,000 for such reopening works. The same applicant recently confirmed they still hold this money and have provided a new letter which states the money is available to cover 5 years from the date of the new permission.

Arun District Council previously obtained legal advice which confirmed that it was entirely rational to rely on the letter, so far as it goes, even though it is not an enforceable guarantee that the funds will be available at a particular time. This was because the Council had exhausted all other potentially stronger options (including legal agreement, insurance policy) and the letter from gives a "reasonable degree of assurance" that the funds will be available, if required. The same position holds true now.

Regulation 64(5) of the Habitats Regulations requires the relevant Secretary of State (SoS) to be notified of the decision to allow the SoS to decide, within the usual period, whether or not to call the application in. This process commenced on the 8th October 2021. The Secretary of State responded by letter on the 14th October 2021 to give approval. The content of the Secretary of State's letter is provided in full on the Council's website but the letter's concluding paragraph is provided here for completeness:

"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."

SUMMARY:

The proposal is in full accordance with the policies of the development plan and gains support from the NPPF. A Habitats Regulations Assessment has been undertaken, agreed by Natural England and then the Secretary of State. The required mitigation and compensation measures can be secured by conditions. It is recommended permission be granted subject to the following conditions which have been agreed with Natural England.

HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

APPROVE CONDITIONALLY

- 1 The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby approved shall be carried out in accordance with the following approved plans and documents:

"Location Plan" Drawing G.

"PHOC - Realignment" Drawing A.

Drawing B Tern Island Location & Details.

"Water Framework Directive" (February 2017) - within Volume 2, Appendix H of the Environmental Statement.

"Managed Breach of Shingle Spit at Pagham Further Information and Marine Licence" (June 2021).

"Managed Breach of Shingle Spit at Pagham Further Information and Marine Licence" (May 2016).

"Pagham Adaptive Management Report No. 1" (May 2021)".

"Construction and Environmental Management Plan for Cutting the Church Norton Spit" Rev B (October 2021).

Reason: For the avoidance of doubt and in the interests of amenity and the environment in accordance with policies QE SP1, ENV DM1, ENV DM2 and W DM4 of the Arun Local Plan.

- 3 The development must be carried out in full accordance with the approved Water Framework Directive as dated February 2017 and which forms part of the submitted Environmental Statement (Volume 2, Appendix H).

Reason: In the interests of water quality in accordance with the National Planning Policy Framework and Policy W SP1 of the Arun Local Plan.

- 4 No work is to take place within the site between the 15th of March and 31st of August in any given year or until the last Little Tern has fledged whichever is the later.

In addition, all works should be completed before the sensitive over wintering season which occurs between the 1st of November and the 31st of March the following year. However, if it is necessary that works continue after the 1st of November (or between the end of February and to the 15th of March) then such works shall be in full accordance with Natural England's advice regarding severe/freezing weather working restrictions.

These state that if there has been a continuous period of 7 days of severe or freezing weather as recorded by the nearest meteorological station to the site then all work shall be suspended for 14 days unless the Local Planning Authority in consultation with Natural England/the RSPB decide that temperatures have increased (or that evidence is supplied that demonstrates to the satisfaction of the Local Planning Authority that there is a low risk to waterbirds during the period of severe/freezing weather) to the extent that the suspension can be lifted.

Reason: In the interests of protecting the interest features of the Pagham Harbour Special Protection Area, Site of Special Scientific Interest and Marine Conservation Zone in accordance with the National Planning Policy Framework and Arun Local Plan policies ENV DM1, ENV DM2 & ENV DM5.

- 5 The compensation Tern Island shall be implemented in accordance with the approved details and will commence construction at the same time as the cutting of the Church Norton spit and must be completed prior to the first nesting season following the breaching of the Spit in order to ensure that it is available for use by Little Terns before the following overwintering season.

The compensation Tern Island and the remaining Little Tern habitat on the Spit including the severed section shall then be continuously monitored in accordance with the measures in the application namely through the Southeast Strategic Regional Coastal Monitoring programme, community smartphone surveys, satellite observations and the RSPB (with review of the data by the Pagham Coastal Issues Advisory Group).

If the compensation Tern Island begins to erode such that it cannot support the little terns and the spit has not sufficiently regrown to support the little terns, then it must be recharged prior to the next nesting season using shingle from outside of the area of the Pagham Harbour SSSI and SPA. This is required in-perpetuity if the spit does not regrow.

Reason: In the interests of protecting the interest features of the Pagham Harbour Special Protection Area, Site of Special Scientific Interest and Marine Conservation Zone in accordance with the National Planning Policy Framework, the conclusions of the Habitat Regulations Assessment and Arun Local Plan policies ENV DM1, ENV DM2 & ENV DM5.

- 6 Following completion of the planned works to the Spit for this one-time breach, the remaining sections of the Spit shall be continuously and permanently managed for the Little Tern SPA population in accordance with the details approved by Arun District Council under ref P/12/20/DOC on 22/04/20 (namely the RSBP report "Pagham Harbour little tern nesting islands and shingle spits as compensatory nesting habitat" dated 28.10.2019).

Reason: In the interests of protecting the interest features of the Pagham Harbour Special Protection Area, Site of Special Scientific Interest and Marine Conservation Zone in accordance with the National Planning Policy Framework and Arun Local Plan policies ENV DM1, ENV DM2 & ENV DM5.

- 7 Following completion of the Little Tern Island compensation measure, it shall be continuously and permanently managed for the Little Tern SPA population in accordance with the details approved by Arun District Council under ref P/12/20/DOC on 22/04/20 (namely the RSBP report "Pagham Harbour little tern nesting islands and shingle spits as compensatory nesting habitat" dated 28.10.2019).

Reason: In the interests of protecting the interest features of the Pagham Harbour Special Protection Area, Site of Special Scientific Interest and Marine Conservation Zone in accordance with the National Planning Policy Framework and Arun Local Plan policies ENV DM1, ENV DM2 & ENV DM5.

- 8 Once the spit has been breached in accordance with the approved details, it shall be left to evolve naturally without any further intervention. Continuous monitoring of the harbour mouth should be conducted by the Stakeholder Group, in line with the adaptive management plan. The adaptive 'Traffic Light System' approach (set out in the ABPmer further information report, May 2016) should be used to determine when action should be taken to prevent the harbour mouth closing.

Should the Harbour mouth close within 5 years of the date of the commencement of this planning permission as a direct result of the cutting of the artificial breach then the Local Planning Authority will seek the advice of the Stakeholder Group on a scheme that may need to be prepared in respect of reopening the harbour inlet/outlet. The Stakeholder Group shall

then submit this scheme within 2 months of the particular harbour closure for consideration by the Local Planning Authority. No works shall be carried out unless and until written approval of the works has been received. This reopening of the harbour mouth is to be funded by the applicants as agreed in the Habitat Regulation Assessment.

Subject to agreement by the Local Planning Authority in consultation with the Stakeholders Group, any maintenance of this nature should not utilise any newly accreted shingle considered as the spit geomorphology feature as this shingle will be re-establishing the geomorphological. Subject to agreement by the Local Planning Authority in consultation with the Stakeholders Group, there shall be no further follow up invention of the harbour opening beyond 5 years from the date of the commencement of this planning permission.

Reason: In the interests of protecting the interest features of the Pagham Harbour Special Protection Area, Site of Special Scientific Interest and Marine Conservation Zone in accordance with the National Planning Policy Framework and Arun Local Plan policies ENV DM1, ENV DM2 & ENV DM5.

- 9 The site and the construction activities shall be continuously monitored in accordance with the Watching Brief by APB Mer (within the letter dated 13/09/17) as approved by Arun District Council under ref P/98/17/DOC on the 4th of December 2017. Should it be necessary to deviate from this watching brief then the applicant/developer must seek permission in writing from the Local Planning Authority, in consultation with Natural England.

Reason: In the interests of protecting the interest features of the Pagham Harbour Special Protection Area, Site of Special Scientific Interest and Marine Conservation Zone in accordance with the National Planning Policy Framework and Arun Local Plan policies ENV DM1, ENV DM2 & ENV DM5.

- 10 Tidal heights and tidal behaviour before, during and up to 1 month after the construction phase within the middle of the Harbour shall be monitored using the existing tidal gauge within the harbour (as referred to by the submitted Construction Environmental Management Plan) to monitor the local tide levels and conditions. The tidal gauge is fixed to the sheet piling of the existing harbour training wall.

Reason: In the interests of coastal defence in accordance with the National Planning Policy Framework and policy W DM4 of the Arun Local Plan.

- 11 The Local Planning Authority shall be informed in writing immediately of any items known or suspected to be of archaeological interest unearthed during the Spit breaching operations and given a reasonable opportunity subject to the timed restrictions on the development for an examination of the artefact/s and the precise site where it was found. Should the Local Planning Authority advise in writing of the need for further investigation then the applicant/developer shall make appropriate and satisfactory provision for the excavation and recording of remains, and subsequent publication of the results.

Reason: In the interests of archaeology and heritage in accordance with the National Planning Policy Framework and policy HER DM6 of the Arun Local Plan.

- 12 INFORMATIVE: Statement pursuant to Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

- 13 INFORMATIVE: The applicant should note that under Part 1 of the Wildlife and Countryside Act 1981, with only a few exceptions, it is an offence for any person to intentionally take, damage or destroy the nest of any wild birds while the nest is in use or being built. Birds generally nest between March and September but the SSSI breeding species in the Harbour nest April to August.
- 14 INFORMATIVE: All precautions must be taken to avoid discharges and spills to the ground or water during construction. In the event of a pollution incident, all works should cease immediately, and the Environment Agency should be contacted via our incident hotline 0800 80 70 60 (24-hour service).
- 15 INFORMATIVE: Should any protected species or evidence of any protected species be found prior to or during the development, all works must stop immediately, and an ecological consultant or Chichester District Council's ecologist contacted for further advice before works can proceed. All contractors working on site should be made aware of this advice and provided with the contact details of a relevant ecological consultant.
- 16 INFORMATIVE: The warden supervision of the Little Tern Island compensation measure shall have a frequency at least as per the current RSPB management measures, but this should be increased to take account of any voluntary support.
- 17 INFORMATIVE: The Stakeholder Management Group to be created in order to monitor the breach and the Harbour opening and advise on whether the harbour needs to be re-opened shall in addition to the applicants, include representatives from the following bodies: Arun District Council, Natural England, RSPB, Chichester District Council, and the Marine Management Organisation.
- 18 INFORMATIVE: The Marine Management Organisation has separately issued a Marine Licence (Ref MLA/2021/00272) and the applicant/developer should also have regard to the conditions associated with that Licence.