

Recommendation Report for Delegated Approval by the Director of Planning & Economic Regeneration

REF NO: P/97/15/PL

LOCATION: Church Norton Spit, Pagham Beach, Pagham

PROPOSAL: 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

INTRODUCTION:

Chichester District Council was instructed on behalf of the competent authorities (Arun District Council, Chichester District Council and the Marine Management Organisation) to prepare a Part 1 Appropriate Assessment under the Habitats Regulations (Conservation of Habitats and Species Regulations 2010).

Legal advice was sought with regard to Arun District Council's Constitution and the advice received was that under Part 4, Section 2, paragraph 5.5, any decision in relation to the Appropriate Assessment can be delegated to the Director of Planning and Economic Regeneration.

Part 1 of this Assessment was approved under delegated powers by the Director of Planning and Economic Regeneration on the 27th July 2016. It was then uploaded to the Council's public website on the 28th July.

It is now necessary to give approval to the second part of the Assessment namely the Part 2 "Derogation Tests" and the Part 3 "IROPI¹ and Compensatory Measures Tests". The whole of the Appropriate Assessment (Parts 1, 2 & 3) will then inform (and crucially allow for) the determination of the planning application.

This report has been prepared to accompany the Part 2 & 3 Assessment (which is attached as an Appendix) and to enable the Director to agree its conclusions. It should be noted that the attached document has already been assessed by Counsel who considers it to be legally sound.

CONCLUSIONS OF THE PART 2 & 3 TESTS:

The Part 2 Test concludes that none of the alternative solutions identified by the applicant meet all the project objectives and therefore the Test of No Alternatives can be assessed as being met.

¹ Imperative Reasons of Overriding Public Interest

The Part 3 Tests concludes as follows:

- (a) That the economic and social cost of not achieving the coastal defence objectives (and so housing being damaged or even lost to the sea) is considered to outweigh the environmental damage that would be caused by carrying out the project. Therefore, the project does meet the derogation requirement of there being Imperative Reasons of Overriding Public Interest; and
- (b) That subject to the proposed compensation measure (creation of a new island within the harbour for the nesting of Terns) being financially fully secured before permission is granted, then the measures proposed are considered to be sufficient to meet the derogation requirements.

SUMMARY OF CONSULTATION RESPONSES:

There is no statutory requirement to consult with Natural England under the Conservation of Habitats and Species Regulations 2010. However, it was nonetheless considered wise to seek their views on the document. Their response dated the 8th August was as follows:

"Thank you for forwarding your email originally sent to Angela (Marlow), which I am happy to respond to in her absence. My understanding is that Arun, as the lead competent authority, has now formally signed off the Appropriate Assessment?"

Regarding the HRA assessment for stages 2 and 3, Tom Day is correct in his advice that Natural England is not a statutory consultee for the derogation tests of the Habitats Regulations. However, we are happy to provide advice as requested. The HRA and the approach taken seem sensible and clear. We would advise that the objectives against which alternatives to the proposal are considered are a matter for the competent authorities to decide upon. However, from an environmental perspective, we would suggest that 'Minimise breeding bird habitat damage' is not an objective of the proposal, but rather a matter that needs to be (and which has been) considered as part of the assessment of the proposal.

The alternatives, and their relative merits are also a matter for the competent authorities to weigh up, as they are a consideration of different coastal defence solutions. Ultimately, it is a matter for the local authorities to determine the basis on which the primary objective will be met. In this respect, we would advise the HRA has taken the correct approach in recognising that the Habitats Regulations process enables projects to proceed, notwithstanding a negative assessment of the implications for the European site, if there are no alternative solutions. Again, the test of IROPI which then follows is not a matter on which Natural England can advise."

OFFICERS COMMENTS ON CONSULTATIONS:

The Natural England response simply underlines that it is the responsibility of the competent authorities (i.e. the local planning authorities) to be certain sure on the test of

alternatives. The response does not make any kind of objection and nor does it request any changes to the document.

RECOMMENDATION:

It is recommended that the Director of Planning & Economic Regeneration approve the conclusions of the attached Derogation/IROPI/Compensatory Measures Tests report which are that there is no objection under the Habitats Directive and that the proposal can therefore proceed to the planning assessment.

DECISION:

SIGNATURE: _____



NAME: _____

K. Roberts

DATE: _____

16/8/16

