

Houghton, Michelle

From: Clemson, Rachael <Rachael.Clemson@naturalengland.org.uk>
Sent: 21 October 2020 11:02
To: Havant Planning and Development Mailbox New
Subject: Re: APP/20/00819

FAO Lesley Wells

Your ref - APP/20/00819 - Application for Lawful Development Certificate relating to the continued siting of 2No. static caravans. -139 Eastoke Avenue, Hayling Island. PO11 9QR

The information provided by your authority do not demonstrate that the requirements of Regulations 75-77 of the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') covering permitted development rights, have been considered by your authority.

It is Natural England's opinion that the proposals would, in combination with other plans and projects, have adverse effects upon the following European designated sites :

- Solent Maritime SAC & Chichester Harbour SPA from increased recreational pressures on designated features such as disturbance and enrichment
- Solent international designated sites through increased nutrients from waste water entering the Solent which causes eutrophication and excessive and smothering algal growth in turn impacts on designated feature

These adverse effects are relevant to the designated sites features and without appropriate mitigation we believe the proposals will have likely significant effects in combination with other plans and projects.

However the proximity of the proposed residential accommodation is such that suitable mitigation *could* be secured by the applicant but not as part of a CLU. Section 75-78 of the Habitats Regulations consider the GDO and permitted development, the authority may only approve a development after having ascertained that it will not adversely affect the integrity of the site. In this case Natural England advise that the only way in which suitable avoidance/mitigation can be secured is through a planning application to ensure no likely significant effect on designated sites through contributions and planning conditions.

Recent case law ('Sweetman II' <https://cornerstonebarristers.com/cmsAdmin/uploads/people-over-wind-judgment.pdf>) outlines that mitigation measures should not be assessed through a Habitats Regulations Assessment (HRA) to 'screen out' impacts at the stage of considering Likely Significant Effects (LSE) rather avoidance/mitigation measures should be considered through an Appropriate Assessment. Therefore where impacts are identified as having a LSE, the HRA will need to move on to the Appropriate Assessment stage where avoidance/mitigation measures can be fully assessed. In accordance with the Conservation of Habitats & Species Regulations 2017, Natural England must be consulted on any appropriate assessment your Authority may decide to make.

Please contact me if you have any queries relating to this advice

Kind regards

Rachael Clemson
Sustainable Development Lead Adviser
Thames Solent Area Team

Mobile : 07500 954264

Please note my non-working day is Friday

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Please send planning consultations to Natural England by email to: consultations@naturalengland.org.uk.

Natural England offers two chargeable services – The Discretionary Advice Service ([DAS](#)) provides pre-application, pre-determination and post-consent advice on proposals to developers and consultants as well as pre-licensing species advice and pre-assent and consent advice. The Pre-submission Screening Service ([PSS](#)) provides advice for protected species mitigation licence applications.

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