

Your ref - APP/18/01297 HRA & Appropriate Assessment & Nitrogen Budget - Construction of 1x4 bed dwelling and 8x3 bed dwellings, following demolition of existing glasshouse, together with improved site access and associated vehicle parking. Manor Road Nurseries, Manor Road, Hayling Island PO11 0QL

Thank you for consulting us on the above application.

Natural England notes that your authority, as competent authority under the provisions of the Habitats Regulations, has undertaken an Appropriate Assessment of the proposal, in accordance with Regulation 63 of the Regulations. Natural England is a statutory consultee on the Appropriate Assessment stage of the Habitats Regulations Assessment process.

Occupation impacts - Further information required

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we do not concur with the assessment conclusions. Insufficient information has been provided to rule out potential significant effects on Chichester & Langstone Harbours Special Protection Area and its functionally linked land during the operational phase of the proposals.

As advised in our previous response dated 5th October 2020 the proposals have the potential to impact on SPA functionally linked. The proposals are adjacent to a site identified in the Solent Waders and Brent Goose Strategy as H49H, a Primary site. The Solent Waders and Brent Goose Strategy (SWBGS) aims to protect the network of non-designated terrestrial wader and brent goose sites that support the Solent Special Protection Areas (SPA) from land take and recreational pressure associated with new development. Natural England advises the authority to ensure that the development is in accordance with Policy E17 of the pre-submission Havant Local Plan, which states; "Development proposals adjacent to sites used by SWBG will only be permitted where access and disturbance to the adjacent SWBG site is prevented. This can either be achieved by avoiding development close to the adjacent SWBG site, or by providing a package of avoidance and/or mitigation measures which are agreed with the Council."

Natural England advises that potential impacts from the operational phase should be examined in the HRA and further mitigation measures to address potential unauthorised access should be included appropriate assessment. Please note that, recent case law ('Sweetman II') 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.

Our previous response advised that indirect effects from occupation had not been adequately addressed and no further information has been submitted for this consultation. Natural England has concerns regarding presence of built form adjacent to sensitive bird sites, the adequacy and effectiveness of the measures proposed in perpetuity (in excess of 80 years), and the potential for increased unauthorised access to H49H from West Lane. Natural England advised that further mitigation measures are required to safeguard this site through improved protection or management. Mitigation measures should be in line with the [Solent Wader and Brent Goose strategy guidance on mitigation measures and offsetting requirements](#).

Please see below on occupation impacts:

‘43. Appropriate mitigation will be required where new development or changes to access and management has the potential to adversely impact the function of the ecological network. Detailed consideration will need to be given to the design and layout of new development adjacent to sites used by SPA birds to ensure there is no disturbance. Consideration should be given to potential impacts from new walking and cycling routes, access to open space, over-shadowing from built development and lighting. In the first instance, consideration should be given to avoidance measures, following which bespoke mitigation should be proposed.

44. The level of mitigation necessary will be determined on a case by case basis. Mitigation could include a range of access management measures such as fencing, signage, interpretation and timing of works / operation. Consideration could be given to improving the management of the site or, if this is not possible, improved management of an alternative site within the network. The provision of funding for wider management of the sites within the network is also an option for consideration.

45. There may be situations where the indirect effects cannot be mitigated by access management measures and the potential for an adverse effect on the integrity of the site remains. In these cases, the loss of the function of a site would need to be off-set by a replacement site.’ (*Solent Waders and Brent Goose Strategy 2018*)

Natural England would be happy to provide further advice to the applicant through our Discretionary Advice Service.

Construction impacts – no objection subject to mitigation

The application is supported by Construction Environment Management Plan, Natural England advises this should be submitted to and approved by the Council’s ecologist. Provided the approved CEMP is secured by appropriately worded condition attached to any planning consent and shall be adhered to at all times, Natural England is satisfied that the applicant has mitigated against the potential adverse effects during the construction phase on the integrity of the European site(s).

Solent recreation mitigation – no objection subject to mitigation

Your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects from increased recreational pressure on the integrity of any of the sites in question. Provided the applicant is fully compliant with the Solent Recreation Mitigation Partnership Definitive Strategy and an appropriate planning condition or obligation is attached to any planning permission to secure the contributions towards this mitigation measure, Natural England is satisfied that the applicant has mitigated against the potential adverse effects of recreational disturbance on the integrity of the European site(s).

Deterioration the water environment – no objection subject to mitigation

The nutrient budget has been calculated in line with Natural England’s Advice on Achieving Nutrient Neutrality in the Solent (version 5 June 2020). Provided the competent authority is assured and satisfied that the site areas used in the calculation are correct and that the existing land uses are appropriately precautionary, then Natural England raises no concerns with regard to the nutrient budget.

Please note the calculation is based on all wastewater from the development being treated at Budds Farm WwTWs. If this situation changes, a reassessment of the nutrient calculation will be required and a revised Habitats Regulations Assessment will be necessary.

It is noted that the approach to address the positive nitrogen budget for this development is via Havant Borough Council's mitigation scheme. We welcome and support this initiative which has scope for nutrient offsetting and biodiversity gain.

Natural England has reviewed the Position Statement and Mitigation Plan for Nutrient Neutrality Development (August 2020) and Warblington Farm Study Evidence Base (Ricardo, June 2020). Natural England concurs with the conclusion of this work that this scheme will deliver effective mitigation for developments draining to Budd's Farm WwTW and Thornham WwTW.

The nitrogen capacity of the land and proposed management of the offsetting land has been discussed and agreed. It is understood that this has been secured through legal agreements to ensure that effective mitigation is delivered for the lifetime of the development. It is also understood that a system has been set up to monitor the developments using the mitigation scheme to ensure there is capacity available for each scheme. Provided this is the case and the long term management of the mitigation scheme is monitored by the local planning authority, as competent authority, to ensure effective mitigation for the lifetime of the development, Natural England raises no further concerns.

It is for the competent authority to determine the importance of timing issues for each development, depending on location and form of mitigation applied. Given the close proximity of the mitigation land to designated sites, Natural England is not expecting any significant timing issues in this case, provided the land is brought into appropriate management at the earliest opportunity. In considering the significance of timing issues within an appropriate assessment competent authorities should take account of the average time taken from the removal of agricultural activities to first occupation and rate of completions for each development. Provided the local planning authority is satisfied that timely mitigation can be delivered in this case, Natural England raises no further comments for consideration.

Joseph Forster
Sustainable Development Advisor
Thames Solent Team | Natural England
07464 905079

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