Houghton, Michelle

From: Steve Lawrence <Steve.Lawrence@conservancy.co.uk>
Sent: 17 December 2019 10:35
To: Weaver, Steve
[redacted]

Subject: Tournerbury Woods Tournerbury Lane - APP/18/00943
Attachments: CHC Legal advice Tournerbury Hayling 5.12.19.pdf; CHC Advice Appendices 1 12 19.pdf

Follow Up Flag: [redacted]
Due By: 18 December 2019 16:00
Flag Status: Flagged

Dear Steve,

Further to its meeting yesterday, the Conservancy's Planning Committee resolved the following, further to the receipt of additional information pertaining to application APP/18/00943, which is considered to constitute major development within the Chichester Harbour AONB, in terms of paragraph 172 of the NPPF –

"*That Havant Borough Council, as local planning authority, be advised that Chichester Harbour Conservancy maintains its objection to the proposed development, being that no additional information has been submitted relating to specific ecological impact.*

It is suggested that the application be refused for insufficient information and that approriate planning enforcement action, including a Stop Notice followed by two Enforcement Notices be issued by the council to require (a) the use to cease and, (b) the three related structures (also subject of application reference APP/19/000889) to be removed from the land.

The reasoning supporting this view is –

- *Fails to provide adequate scientific data on which to base the required Appropriate assessment under Regulation 63 of the Habitats Regulations*
- *Likely to have a significant impact on the SSSI/SPA/SAC/RAMSAR site, particularly as there is a direct loss of habitat*
- *The precautionary principle must be applied until the decision maker is satisfied that the development will not have a significant effect on the Natura 2000 site*
- *The adopted planning policies will not support this type of development in this location*
- *The fact that it is retrospective does not change the way the Council must look at this application. It should be considered as agricultural land of huge nature conservation interest.*
- *Any decision must be in accordance with the development plan, the relevant policies that are engaged by this development would not permit such a scheme.*

- *The relevant policies contained in the National Planning Policy Framework would not support such a scheme*".

Members also asked that I share the legal opinion the Conservancy obtained with the council, which I now attach and were greatly concerned about the intended increase in the number of events the applicant aspires to.

Should you wish to review the report prepared for the Conservancy Planning Committee, please let me know and I will send it to you.

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In the matter of

Retrospective Planning Application for

Change of use from agriculture to

Wedding venue at Tournerbury Woods

Tournerbury Lane Hayling Island

Hampshire

APP/18/00943

LEGAL OPINION PREPARED FOR

CHICHESTER HARBOUR CONSERVANCY

R P LAW LIMITED

35 Chestnut Grove

Fleet

Hampshire

Introduction

We are instructed by the Chichester Harbour Conservancy (CHC), the Statutory Harbour Authority and AONB Partnership. We have been asked to review all the relevant legislation, adopted planning policy and other material planning considerations relevant to the planning application at Tournerbury Woods located in the south east of Hayling Island. We have also been instructed to review all the planning application documents and advise on the appropriate response to the application.

The application is retrospective and covers a significant area of land all situated within land designated as Site of Special Scientific Interest (SSSI) under UK Law (Wildlife and Countryside Act 1981) and as Special Protection Area (SPA) a European level designation given protection by the Wild Birds Directive, originally 1979 and a further Directive in 2009. The site is listed as the Chichester and Langstone Harbours Ramsar Site, which lists wetlands of International Importance under the Ramsar Convention 1971 and therefore protected as a matter of Government policy (para 176 NPPF). The site is also immediately adjacent to the Solent Maritime Special Area of Conservation (SAC) given protection by the Habitats Directive 1992. The two European designated sites, SPA and SAC are also referred to Natura 2000 sites. As such this planning application site is given the highest level of protection at both national, European and international level. This site is therefore afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations). These regulations were derived from European law and were first transposed into UK law in 1994.

The Site is also designated as part of the Chichester Harbour Area of Outstanding Natural Beauty (AONB). This was designated in 1964. Land designated as an AONB is nationally recognised as land where great weight should be given to conserving and enhancing landscape and scenic beauty in its own right (para 172) National Planning Policy Framework Feb 2019).

The Site has a Scheduled Monument: Tournerbury Hillfort situated on it (NPPF para 184). The Planning (Listed Buildings and Conservation Areas) Act 1990 expresses a legal duty to have special regard for these heritage assets.The NPPF also contains Government Guidance on the LPA duty to consider potential impacts on heritage assets.

The Application

Due to the threat of enforcement action, the owner has submitted a planning application to Havant Borough Council (HBC) under reference APP/18/00943 to attempt to regularise the unauthorised activities on the Site.

The Application description is:

> "Change of Use of land and woodland (retrospective) as a wedding venue, including retention of permanent ancillary buildings and structures, the erection of temporary structures (including marquees and temporary facilities) and the use of land as a campsite in association with events, and use of existing cottage for visitor accommodation."

The Site falls wholly within Havant Borough so apart from being protected by the legislation mentioned above and fully discussed below, it is also subject to the relevant planning policies in the adopted Havant Borough Local Plan Core Strategy March 2011 as well as relevant paragraphs in the NPPF Government Guidance and Government Circular 06/2005.

As this is a retrospective application, it needs to be assessed on the basis that all the buildings are unauthorised and the land is still in its original use, which we assume is woodland/agriculture. There may be an element of residential land around the cottage, we have not considered whether this cottage has a lawful use.

The Role of the Chichester Harbour Conservancy in relation to the Application

CHC has recently published the Third Review of the Chichester Harbour Management Plan 2019 – 2024 which is an Integrated Coastal Zone Management Strategy for the Trust Port and AONB. This is the Statutory Management Plan for Chichester Harbour AONB and therefore its policies are relevant to this application. These policies are supported by paragraphs 166, 167 and 168 of the NPPF.

Natural England (NE) (the Statutory Consultee) advises the Local Planning Authority (HBC) (LPA) in relation to both the sites nature conservation interest and the AONB. In a letter dated 17th December 2018, it was advised that the LPA should also consult the relevant AONB Partnership or Conservation Board, which in this case is CHC. NE advice is that any advice received should be duly considered as:

> "Their knowledge of the Site and its wider landscape setting, together with the aims and objectives of the AONBs statutory management plan, will be a valuable contribution to the planning decision"

NE refer to Office of the Deputy Prime Minister Circular/06/2005 and Defra Circular 01/2005 which provides helpful Government Guidance relating to Biodiversity and

Geological Conservation – Statutory Obligations and their impact within the Planning System. This is an especially useful guidance document to assist with the application of the law. It is also referred to in footnote 56 of the NPPF, which confirms its continuing relevance. This document is therefore a material consideration when considering a planning application. It sets out lists of protected species and habitats, some of which may be relevant the Chichester Harbour and this site in particular.

Section 63 Habitats Regulations 2017

The overarching legislation protecting this Site is the Habitat Regulations, the relevant section when considering any plan or project on a European designated site is Section 63 set out below. A plan or project comprises much more than just those matters which are deemed to be development under Section 55 of the Town and Country Planning Act. It covers a range of activities which either alone, or in combination with other plans and projects are likely to have a significant effect on a Natura 2000 site. It states:

"*Assessment of implications for European sites and European offshore marine sites*

63.*—(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—*

(a)is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

(b)is not directly connected with or necessary to the management of that site,

must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.

(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable it to determine whether an appropriate assessment is required.

(3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

(4) It must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate

(5) In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it

will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.

(7) This regulation does not apply in relation to—

(a)a site which is a European site by reason of regulation 8(1)(c);

(b)a site which is a European offshore marine site by reason of regulation 18(c) of the Offshore Marine Conservation Regulations; or

(c)a plan or project to which any of the following apply—

*(i)the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001(**1**) (in so far as this regulation is not disapplied by regulation 4 (plans or projects relating to offshore marine area or offshore marine installations) in relation to plans or projects to which those Regulations apply);*

(ii)the Environmental Impact Assessment (Agriculture) (England) (No. 2) Regulations 2006);

(iii)the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2017; or

(iv)the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010.

8) Where a plan or project requires an appropriate assessment both under this regulation and under the Offshore Marine Conservation Regulations, the assessment required by this regulation need not identify those effects of the plan or project that are specifically attributable to that part of it that is to be carried out in the United Kingdom, provided that an assessment made for the purpose of this regulation and the Offshore Marine Conservation Regulations assesses the effects of the plan or project as a whole.

(9) In paragraph (1) the reference to the competent authority deciding to undertake a plan or project includes the competent authority deciding to vary any plan or project undertaken or to be undertaken."

For Regulation 63 purposes the LPA is the competent authority, or the Secretary of State if the matter is refused and goes to appeal. It is obliged to consult Natural England and have regard to its representations, and if appropriate, take the opinion of the general public.

If the plan or project is likely to have a significant effect on the site either alone or in combination with other plans or projects then the LPA must carry out an Appropriate

Assessment based on up to date and complete best available ecological data. The proposal must be assessed on its own and in combination with other plans and projects which may affect the Natura 2000 site. This assessment must be carried out in view of the site's conservation objectives. The decision maker must therefore look at the designation's citation for the SSSI. Chichester Harbour was designated originally in 1970 and the first paragraph of the citation states:

> "*Chichester Harbour is a large estuarine basin in which a low water extensive mud and sandflats are exposed drained by channels which unite to make a common exit to the sea. The site is of particular significance for wintering wildfowl and waders and also breeding birds both within the Harbour and in the surrounding* ***permanent pasture fields and woodlands*** *(emphasis added). There is a wide range of habitats which have important plant communities"*

The Site in its original undeveloped state was predominantly grassland and woodland, some of it is ancient woodland. The figures in the Owner's survey report are that there is 3.7 hectares of ancient semi natural broadleaf woodland, with 17.2 hectares of woodland in total and 7.2 hectares of grassland. These are features which are devalued for by the Owners ecological report being of low value to nature. It is noted that the survey carried out in May 2018, when the overwintering birds would not be present. By its own admission the report was only a snapshot in time. Other than those two habitat types the site is also home to two coastal priority habitats, saltmarsh and mudflats.

CHC holds the results of winter monthly bird counts made at the Site. These confirm the presence of many species of birds including curlew, lapwing, brent geese and other waders which are likely to use the grassland around the woodland. The waders are there primarily over the winter months (September to March) it is therefore not surprising that the Owners ecological report based on a single snapshot survey made in May, did not record these overwintering birds for which the SPA is designated. The important intertidal part of the site will support all the regular waders and wildfowl for which the designations are designed to protect.

The woodland part of the Site also supports a heronry with four protected nests at The Bury. These could be susceptible to disturbance as a result of the change of use to wedding venue. It is likely that other woodland birds, such as blackcap, song thrush, chiffchaff, great spotted woodpecker and green woodpecker are likely to breed in the woodland habitat left undisturbed.

It is also very likely that other protected species are present in the woodland including dormice, water voles and bats. No specific mammal surveys were carried out by the Owner's ecologist.

The Owner's Design and Access Statement makes no reference to the fact that the Site is a Natura 2000 site, nor the fact that the buildings and clearance works have been carried out unlawfully without the necessary consents from NE.

Para 7.10.2 of the John Wenman Ecological report states:

> "*No evidence of protected species was identified during the walkover survey; however, the complex of habitats i.e. broadleaved woodland with adjoining open habitats such as wetland, grassland and salt marsh has the possibility of supporting a range of notable and protected fauna including groups in addition to birds such as invertebrates, reptiles and bats"*

In short, the Owners own Ecological expert, John Wenman, confirms that this Site is capable of supporting a range of notable and protected fauna. The introduction of a wedding venue with up to 500 guests, with camping facilities, numerous buildings and car parking, access roads all are capable of having a significant effect on the flora and fauna for which this site was designated to protect.

Added to the direct harm to the designated sites and the protected flora and fauna as a result of the unauthorised development, there is also the need to consider the other effects as a result of the intensive use:

- Pollution, both land and water
- Increased traffic movements
- Light pollution – contrary to the Joint Chichester Harbour AONB SPD
- Removal of trees
- Effect of carparks not allowing woodland regeneration
- Flooding
- Game bird pens
- Any other unauthorised activities requiring NE consents, these are contained in a NE extensive list of Operations likely to damage the special interest at Chichester Harbour (Appendix 1)

These additional factors should all potentially form part of the decision-making process as to whether or not such a proposal is acceptable under the requirements of Regulation 63. Case law has determined that all the evidence used to inform the Appropriate Assessment must be the best scientific data available. The Ecological report admits that this data was not available in May 2018 and was a requirement from NE in their letter dated 17th December 2018. If it is not possible to determine that the proposal will not have any significant effect on the site then the precautionary principle has to be applied and the application refused. These regulations are highly unusual and the bar is set very high:

namely it is for the Owner to prove no harm to the interests of nature conservation, rather than the usual requirement for the objectors to show an unacceptable harm. This has caused extreme results in other Natura 2000 sites in the Thames Basin Heaths and Dorset Heaths where there was a complete moratorium on house building until a mitigation strategy was devised. This regime is now in question again since the suite of European Court cases which started with the **People over Wind & Sweetman v Coillte Teoranta C-323/17** case which basically determined that when carrying out the Regulation 63 appropriate assessment, it was not correct to apply any mitigation measures at that stage. The correct process is to look at the proposed scheme without any mitigation.

The Habitat Regulations and the Regulation 6(3) requirement for an Appropriate Assessment has been subject to a considerable number of court cases. The law requires that the information used to inform the Appropriate Assessment must be the "Best Scientific knowledge in the field" the European Court of Justice case of **Landelijke Verenigning tot van de Waddenzee v Staatssecretaris Van Landbouw 2005 (known as the Waddenzee case)** is the starting point when considering the requirements of the legislation as regards the requirements of an Appropriate Assessment. The court decided that

> "Mere assertion by an expert, unsupported by consideration of any background facts and without reasoning to explain the assertion made" would fail to qualify as the "best scientific knowledge in the field" - which is what is required by Article 6(3) of the Directive

Any planning permission granted without strict adherence to the Habitats Regulations is an ultra vires decision and therefore open to a High Court challenge by way of Judicial Review.

The application does not have any data relating to the nature conservation interests on the site on which to base a proper Appropriate Assessment. NE has asked for more information. There is no expert data available on which to base any assessment, for this reason alone, the planning application must be refused.

Wildlife and Countryside Act 1981 and Countryside and Rights of Way Act 2000

This legislation provides the framework for designation, management and enforcement of SSSIs in the UK. The SSSI designation/citation is at Appendix 1. In particular it deals with the consenting regime for licensing activities on the SSSI which have potential to do harm to the designated site. Without such consents either obtained from NE or via a planning permission to carry out such activities on a SSSI is a criminal offence.

Any site which is designated a SSSI does not have any permitted development rights under the General Permitted Development Order 2015 until a consent is granted. The requirement to obtain a consent applies to many more activities than just those deemed development under S55 of the Town and Country Planning Act 1990 as amended. NE has issued a List of Operations likely to damage the special interest of Chichester Harbour SSSI Appendix 2. This list is extensive and covers all of the unauthorised activities at the Site. To carry out these activities without the proper consents is an offence under Section 28 of the Wildlife and Countryside Act 1981.

The General Permitted Development Oder 2015 specifically removes all permissions granted under it until the necessary consents from NE are granted. This applies to the rights granted in Part 4 Class B (the 28/14 day rule). Before these rights can be exercised the Owner has to seek the necessary consents for any activities which could potentially harm the SSSI/SPA. It is a shame that this is not spelt out more clearly in that part of the Order.

Government Circular 06/2005 helpfully sets out the legal regime to protect these sites, this circular is relied on by Natural England and is still the relevant Government policy.

The whole of the Site is designated SSSI land, protected under a UK regime with different rules. These are helpfully set out in Part 2 of the Circular on page 20. The Wildlife and Countryside Act 1981 (W&CA) imposes a general duty on the Council as Local Planning Authority (LPA). This duty is referred to in para 57:

> "This general and overarching duty requires an authority to **take reasonable steps, consistent with the proper exercise of the authority's functions to further the conservation and enhancement** of the features for which the sites are of special interest. It applies whenever an authority is exercising its functions, including when it has the power to take action, and applies at every stage from the formulation of plans, to the carrying out of operations and making of decisions"

The Council has a duty to take reasonable steps to further the conservation and enhancement of the special interest features of the SSSI. Para 61 of the circular explains that the Government expects Councils (S28G authorities) to take **"appropriate action to prevent damage by third Parties".**

To comply with this duty, the Council should be refusing planning permission and taking immediate enforcement action to rectify the damage already done.

When considering a planning application, the Council must observe its obligations when considering the grant of planning permission (para 67).

Paragraph 74 of the Guidance refers to the fact that the designation for the European site (SPA/SAC) may be narrower than the interest features of the SSSI. It states that:

> "It will therefore be important for the planning authority and NE to clearly distinguish how the proposed development may affect the international interests and the interests of the SSSI in order to ensure that all the relevant legislative requirements are complied with".

The duty to consider the broader interests of the SSSI must be properly considered by the Council. These are set out in the SSSI citation for Chichester Harbour.

The limitations of the permitted development (PD) regime on the SSSI is addressed at Para 75. It confirms that it is an offence under S28P to carry out PD without obtaining consent under S28E from NE. This guidance refers to the **List of operations likely to damage the special interest features of the SSSI**. There is an extensive list prepared by NE for Chichester Harbour at Appendix 2

Para 77 on page 28 of the Guidance looks at the effect of a Lawful Development Certificate. The paragraphs states unambiguously:

> "Unauthorised development affecting the SSSI is not therefore a reasonable excuse and in addition to it being a breach of planning control may also be an offence under Section 28P of the W&C Act."

It goes on to explain that a Lawful Certificate application can be made (S191 T&CPA) after the expiry of the four/ten year specified time limits. The issue of a Lawful Certificate would then render the unauthorised development lawful, but this does not grant planning permission. It means that it is immune from enforcement action under the T&CPA, but DOES NOT provide a "reasonable excuse" for an offence under section 28P of the W&CA. It is therefore NEs role to deal with the necessary prosecutions. Immunity under the Town and Country Planning Act (if it exists) does not give the Owner immunity from prosecution under the Wildlife and Countryside Act 1981.

If it is possible to satisfy the rigorous tests in Regulation 63 and the overarching duty contained in the W&CA, the LPA must then look at its own adopted Core Strategy policies. This is the correct legal approach as laid down by S38(6) Planning and Compulsory Purchase Act 2004 which amended the Town and Country Planning Act 1990 which states:

" S38(6) 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"

Havant Borough Core Strategy Relevant Policies

The most important adopted policies for this exercised are "permissive policies" stating development will be permitted where certain criteria are fulfilled. How these policies are to be applied is a matter which has been before the Courts. The recent case of **Gladman v Canterbury City Council [2019] EWCA Civ 669** the Court of Appeal looked at how permissive planning policies which are criteria driven, as are most of the policies which are relevant to this application and the rest of Chichester harbour.

As this is a Court of Appeal case, the principles set out are applicable to other relevant cases.

In that case, the Court considered the situation where the Inspector had looked at the policies and decided that they were permissive rather than restrictive and had granted planning permission on the basis that, whilst the development did not specifically accord with the policies, they did not in themselves preclude such development.

The High Court overturned this interpretation of the policies saying the Inspector had misinterpreted and misapplied the policies. The Court of Appeal agreed. The court found that the proposal did not accord with any specific policy of the adopted local plan and applying the law that the development application should be determined in accordance with those policies planning permission should have been refused. The Inspector had failed in his statutory duty and had applied the presumption in favour of sustainable development, rather than the presumption in favour of the development plan. Hence the decision was fatally flawed and was quashed.

Therefore, if HBC determines that this application does not comply with any of the relevant adopted plan policies it should be refused unless material considerations indicate otherwise and there is a departure from the adopted plan.

It is my opinion that on a correct application of all the policies set out below, which are engaged by this application it is not possible for the application to comply with the adopted policy framework and should be refused.

The objective of the Core Strategy for the Harbour is stated on page 28 as to protect Chichester Harbour. Further on page 65 it states as part of caring for the Borough it will carry out effective stewardship of the unique qualities of the Borough's built and historic heritage and natural environment.

The most relevant Core Strategy Policies at Appendix 3

These objectives are enshrined in the Core Strategy policies: for this application the relevant Core Strategy Policies are:

DM8 Conservation Protection and Enhancement of Existing Natural Features.

This policy only permits development if it meets **ALL** the criteria set out in the policy, including criteria 1 which requires development that protects natural features of nature conservation, for example trees woodlands hedgerows from destruction and deterioration in quality. It cannot meet the policy requirement for acceptable development. The current application does not meet any of the criteria for this policy.

DM9 Development in the Coastal Zone

This policy states that planning permission will only be granted for development in the coastal Zone which addresses **ALL** of the relevant criteria, including criteria 1 which requires no harmful effects on nature conservation within Chichester and Langstone Harbour SSSIs and SPA, SAC and Ramsar site or any SINCS and Local Nature Reserve. This is a more stringent test as the policy will support a refusal based on harmful effects rather than the more onerous significant effects in the Habitats Regulations. There is no doubt that this proposal will be harmful. There are seven criteria in this policy which have to be satisfied. This application satisfies none of them.

DM10 Pollution

Again, this is a policy which has six criteria **ALL** of which need to be satisfied before development that may cause pollution of water, air or soil or pollution through noise, smell fumes gases steam dust vibration light heat. The introduction of a wedding venue with up to 500 guests, the permanent buildings, car parks, the camp site, vehicular traffic, loud music, wedding detritus such as fireworks, balloons, confetti and other litter left by guests as well as the introduction of lighting and music, food, catering, increase in nitrates as a result of the development and its requirement for a foul waste treatment package all has potential to breach the requirements of this policy. This development is not necessary for the social and economic needs of the Borough as referred to in the explanatory text.

It should be noted that the environmental health officer raised no objection to the noise levels proposed, but this was only assessed against the nearest residential dwellings, it did not assess the potential impact of the noise and disturbance etc on the fauna on the site. The Owners Design and Access statement acknowledges the waste generated by the activity and says that it is cleared up as soon as possible. Do you have any evidence of windblown or dropped litter, pollution caused by run-off from this or other sites around the harbour that could be used to support any such concerns?

DM11 Planning for More Sustainable Transport

This policy attempts to ensure that opportunities are taken to increase integration of sustainable travel modes and availability of non-motorised modes

The Core Strategy recognises that the road access to Hayling Island, particularly to the southern part of the Island is a real issue. It states that:

> *" access on and off the Island presents a particular problem".*

There has been no objection from the Highway Authority for the reason that it will not interfere with the peak hour traffic. However, the greatest demand for weddings is on weekends in the summer. Surely, that is the time when the traffic onto and off Hayling Island becomes gridlocked. The location of this venue in south east Hayling Island is not in a sustainable location, everyone who attends these events will have to arrive by motorised transport. The D&A Statement submitted by the Owner suggests that the aim is to have 200 weddings per year, these will be concentrated in the summer and at weekends when congestion is a real problem acknowledged by the Core Strategy

The reality is that up to 500 guests in their finery are not going to get on their bikes or the bus (if there is one) to get to this venue. The guests who are camping will have luggage etc and realistically will all come by car or coach. This will put increased pressure on the site to make sufficient car parking, which leads to further destruction of the woodland and has a detrimental on the nature conservation interests as well as further damaging the AONB.

DM12 Mitigating the Impacts of Travel

This policy runs on from DM11 and requires all new development to mitigate their travel impact. It is hard to see how in this location and with this specific use where people will be there until midnight, this is ever going to be achieved. Whilst the highway network might cope with the traffic movements late at night, what are the effects likely to be on the SSSI and AONB?

There is a further transport policy:

CS20 Transport and Access Strategy

This policy is designed to ensure there is no increase in congestion and promotes better use of the existing transport networks.

The Owners Design and Access Statement does not address any of these transport requirements. There is no separate transport report submitted.

CS12 Chichester Harbour Area of Outstanding Natural Beauty

This policy is designed to protect the AONB. It requires careful assessment of the impacts of the proposal and their cumulative effect on the AONB and its setting, Further the policy requires that the development is appropriate for the environmental wellbeing of the area. It refers to the conservation and enhancement of the special qualities of the Chichester

Harbour AONB (as defined in the Chichester Harbour AONB Management Plan Management Plan). This is most helpful as it draws into the planning balance the policies in the CHC Management Plan and leaves no doubt that these policies are material considerations.

The recent case of **Monkhill Limited v SoS HCLG and Waverley Borough Council [2019]EWHC1993** is most instructive and concerns the protection of trees within the AONB and the application of the AONB policy in the National Planning Policy Framework(NPPF) para 172. The NPPF states that

> *"Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to these issues…."*

This case was as the result of an appeal being dismissed in Waverley Borough Council. It was an application for housing in an area with a recognised shortfall in the five-year housing land supply. This fact meant that normally great weight should be given to the shortfall and the "tilted balance" in favour of a grant of permission should be applied under para 11(d) of the NPPF. However, the Inspector was very concerned about the potential loss of trees within the AONB as a result of the development and refused. The Court upheld this decision, in effect confirming the importance in Government planning policy of protection to the AONB. At para 53 the Court confirms that paragraph 172 of the NPPF is capable of sustaining a clear reason for refusal in the general exercise of development management powers.

Therefore, in this case, the damage to the woodland, loss of trees, introduction of buildings etc which do not conserve or enhance landscape and scenic beauty of the AONB is sufficient to support a refusal of this application.

A new access road to the Site has already been constructed. This is scalpings at present, the intensification of the use of the Site may increase pressure to put in a more urban type of access with tarmac and lighting as can be seen at other leisure sites on Hayling Island. This may be particularly desirable as the proposal will include a considerable number of winter events.

CS11 Protecting and Enhancing the Special Environment and Heritage of Havant Borough

This policy is another permissive policy which requires the development to Protect and where possible enhance the Boroughs designated landscape, habitats and features of biological hydrological or geological interest. Clearly this policy does not assist with this application.

In conclusion, a correct analysis of the Core Strategy planning policies will not support the grant of planning permission for this application

National Planning Policy Framework

This contains Government Guidance, it is not the law, but becomes a material consideration when looking at a planning application. It is a common fault with LPAs who fail to consider their own policies but jump to the NPPF to support/refuse an application. This is incorrect procedure and can lead to a decision being successfully challenged.

There are many policies within the NPPF which are applicable to this application. I have not set them out in this Advice but will if CHC officers require such an analysis. The golden thread running through the NPPF is achieving sustainable development, this includes an environmental objective including helping improving biodiversity, minimising waste and pollution, mitigating and adapting to climate change, including moving to a low carbon economy. The political shift that is going on at present indicates that these objectives are rapidly becoming much more important. The application does not fulfil any of these objectives.

I have already referred to paragraph 172 and would also refer you to paragraph 175 (b) and (c)

Chichester Harbour Management Plan 2019 -2024

This plan is a material consideration. I think the fact that it is referred to within HBC Core Strategy Policy CS12, it could be argued that its policies do therefore form part of the development plan when exercising the correct decision-making process under S38(6). In any event it should be given great weight. It should be relied upon by the decision maker when making an assessment of the effect on the AONB and Chichester Harbour. To ignore it could make the decision maker open to challenge.

Environmental Impact Assessment

This site is 4.8 hectares. It is located in a "sensitive area" and likely therefore to engage the requirements of the Town and Country Planning (*Environmental Impact Assessment) Regulations 2017. The LPA should undertake the exercise of determining whether or not this proposed development falls within Schedule 2 part 12, Tourism and Leisure before it considers determining this application

Conclusion

A robust refusal of this application could be fully justified in law for the following reasons:

- Fails to provide adequate scientific data on which to base the required Appropriate assessment under Regulation 63 of the Habitats Regulations
- Likely to have a significant impact on the SSSI/SPA/SAC/RAMSAR site, particularly as there is a direct loss of habitat
- The precautionary principle must be applied until the decision maker is satisfied that the development will not have a significant effect on the Natura 200 site
- The adopted planning policies will not support this type of development in this location
- The fact that it is retrospective does not change the way the Council must look at this application. It should be considered as agricultural land of huge nature conservation interest.
- Any decision must be in accordance with the development plan, the relevant policies that are engaged by this development would not permit such a scheme.
- The relevant policies contained in the National Planning Policy Framework would not support such a scheme

Nicolette Pike

Solicitor

5th December 2019

In the matter of

Retrospective Planning Application for

Change of use from agriculture to

Wedding venue at Tournerbury Woods

Tournerbury Lane Hayling Island

Hampshire

APP/18/00943

APPENDIX 1

SSSI CITATION CHICHESTER HARBOUR

COUNTY: WEST SUSSEX/HAMPSHIRE SITE NAME: CHICHESTER HARBOUR

DISTRICT: CHICHESTER/HAVANT

Status: Site of Special Scientific Interest (SSSI) notified under Section 28 of the Wildlife and Countryside Act 1981.

Local Planning Authority: CHICHESTER DISTRICT COUNCIL; HAVANT BOROUGH COUNCIL

National Grid Ref: SU 760 000 Area: 2657 ha 6566.7 acres W Sussex
3695 ha 9130.3 acres Total

Ordnance Survey Sheet 1:50,000:197 1:10,000: SU 70 NW,NE,SW,SE, SU 80 NW, SW,SE, SZ 79 NW,NE, SZ 89 NW

Date Notified (Under 1949 Act): 1970 Date of Last Revision: 1980

Date Notified (Under 1981 Act): 1984 (Hants) 1985 (W Sussex)

Other Information: This site lies within the South Coast Plain. It includes Nutbourne Marshes Local Nature Reserve. The site is listed in 'A Nature Conservation Review' and is a Geological Conservation Review site.

Reasons for Notification:

Chichester Harbour is a large estuarine basin in which at low water extensive mud and sandflats are exposed, drained by channels which unite to make a common exit to the sea. The site is of particular significance for wintering wildfowl and waders and also breeding birds both within the Harbour and in the surrounding permanent pasture fields and woodlands. There is a wide range of habitats which have important plant communities.

The intertidal area is fragmented in the upper reaches of the harbour by intruding tongues of land giving a very long and varied coastline. The harbour exhibits a wide range of intertidal and associated terrestrial habitats and with the neighbouring Langstone and Portsmouth Harbours is unusual in providing a large volume of sheltered saline water fed by a few streams of only low volume. The extensive intertidal mudflats are the feeding grounds, at the relevant times of year for internationally important numbers of ringed plover, grey plover, redshank, black-tailed godwit, dunlin, sanderling, curlew and greenshank (the latter two in autumn particularly). Bar-tailed godwit numbers are of European importance. Amongst the wildfowl, shelduck, teal and dark-bellied brent goose numbers are of international importance with 5% of the world population of the latter. The unimproved permanent pasture behind the sea wall provides alternative feeding sites for the geese and major high tide wader roosts. Some of this pasture is floristically rich being a red fescue *Festuca rubra* sward with scarce species such as green-winged orchid *Orchis morio* and adder's tongue fern *Ophioglossum vulgatum*.

The lower saltmarsh habitat fringing the mud flats is dominated by cord grass *Spartina anglica* and in most places the upper saltmarsh is rather restricted by the sea wall but there are some pure stands of sea purslane *Halimione portulacoides* while in some areas there is also sea lavender *Limonium vulgare*, sea aster *Aster tripolium* and other saltmarsh species.

Shingle occurs as spits and islands and most are rather unstable permitting little vegetation to become established. This habitat forms the main breeding grounds in the harbour for ringed plover, blackheaded gull and three species of terns. The extensive sand dunes at East Head are dominated by marram grass *Ammophila arenaria* although the degree of ground cover varies from 90% to 10% on the more recently established dunes.

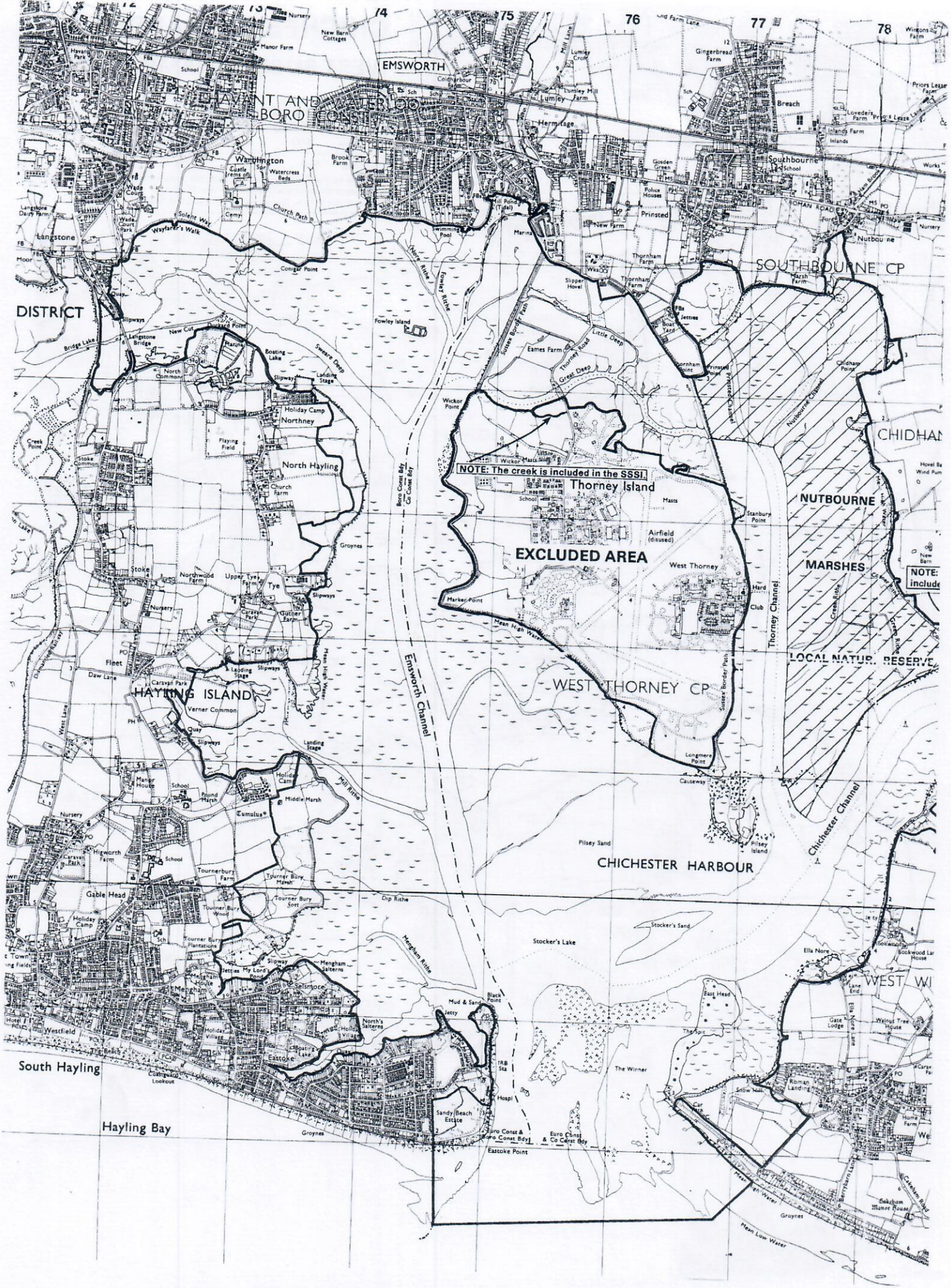
At the head of Fishbourne Channel saltmarsh grades through a reed *Phragmites australis* bed into fresh marsh

influenced by a chalk spring. Most of the other fresh marshes behind the sea wall are small but at Thorney Deeps reclaimed saltmarsh has given way to extensive fresh water marsh vegetation influenced by salt water intrusion; here the reed is fringed by extensive areas of rushes *Juncus* species and invasive willow *Salix* scrub. A number of small ponds occur one of which contains the rare annual beard grass *Polypogon monspeliensis*. Significant blocks of scrub, mainly hawthorn *Crataegus monogyna* and blackthorn *Prunus spinosa* occur which are important for breeding and roosting birds. Hedgerows of oak *Quercus robur* are common and in some places the oak roots are strongly influenced by salt water. Semi-natural broadleaved woodland associated with the Harbour is important for breeding birds and supports two heronries. Oak is the major tree species usually with hazel *Corylus avellana* coppice, as at Old Park Wood, although Tournerbury Wood has well spaced oaks with the occasional beech *Fagus sylvatica*, holly *Ilex aquifolium* and yew *Taxus baccata* with a fairly dense ground flora of bramble *Rubus fruticosus* and bracken *Pteridium aquilinum*.

Notable invertebrates include the long-winged conehead *Conocephalus discolor* and the moths, starwort shark *Cucullia asteris*, the sand dart *Agrotis ripae*, shore wainscot *Mythimna litoralis* and lunar hornet *Sphecia bemeciformis*.

Geology and Physiography

East of Langstone, at SU 725053, a low cliff line at high water mark exhibits a complex of Brickearth and Coombe Rock deposits and at East Head, SZ 769991 there is a sizeable sand dune and shingle system both of which are of geomorphological importance.


NOTE: The creek is included in the SSSI.
EXCLUDED AREA
Thorney Island
SOUTHBOURNE CP
NUTBOURNE
MARSHES
LOCAL NATUR. RESERVE
WEST THORNEY CP
CHICHESTER HARBOUR
HAYLING ISLAND
Emsworth Channel
Chichester Channel
Thorney Channel
Nutbourne Channel
Prinsted Channel
Sussex Border Path
Euro Const & Co Const Bdy
Mean High Water
Mean Low Water
Groynes
Eastoke Point
Hayling Bay
South Hayling
DISTRICT
EMSWORTH
HAVANT AND WATERLOO BORO CONST
Langstone
Northney
North Hayling
Stoke
Fleet
Tye
Eastoke
Westfield
Mengham
Selsmore
Sandy Beach Estate
Stocker's Lake
Stocker's Sand
Pilsey Sand
Pilsey Island
Longmere Point
Stanbury Point
Chidham Point
Wicker Point
Marker Point
Black Point
Mud & Sand
Fowley Island
Thornham Point
Prinsted
Southbourne
Nutbourne
Hermitage
Lumley
Breach
Gingerbread Farm
Wittering
Bridge Lake
Langstone Bridge
Solent Way
Waylander's Walk
Church Path
Coniger Point
Sweare Deep
Great Deep
Little Deep
Thornham Road
Eames Farm
Thornham Farm
Slipper Hovel
Boat Yard
Jetties
Slipways
Quay
Marina
Boating Lake
Holiday Camp
Playing Field
Church Farm
Northwood Farm
Upper Tye Farm
Caravan Park
Gutter Farm
Verner Common
Maner House
Pound Marsh
Middle Marsh
Tumulus
Tournerbury Farm
Tourner Bury Marsh
Tourner Bury Sort
Tourner Bury Wood
Tourner Bury Plantations
Mengham Salterns
My Lord's Pond
Mengham Rithe
Dip Rithe
Mill Rithe
Fowley Rithe
North's Salterns
Holiday Village
Boating Lake
Lookout
Groynes
Causeway
Ella Nore
East Head
The Spit
The Winner
Gate Lodge
Walnut Tree House
Roman Landing
Snow Hill
Car Park
Home Farm
Sockbridge Manor House
Bartlemas Lane
Chichester Road
Sockwood Lane House
Hard
Club
Masts
Airfield (disused)
West Thorney
Gosden Green
Police Houses
Priors Leaze Farm
Lovedens Farm
Inlands Farm
Wittons Farm
Manor Farm
New Barn Cottages
Coldharbour Farm
Lumley Mill Farm
Watercress Beds
Brook Farm
Wade Court
Langstone Dairy Farm
Nursery
School
Cemy
Hotel
Creek Point
Stoke Common
North Common
Daw Lane
Caravan Park
Nursery
Higworth Farm
Gable Head
Holiday Camp
Westfield
Hotel
Beach
Hospl
IRB Sta
Jetty
Eastoke
Mean Low Water

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APPENDIX 2

NATURAL ENGLAND LIST OF OPERATIONS

LIKELY TO DAMAGE THE SPECIAL INTEREST OF

CHICHESTER HARBOUR

Operations likely to damage the special interest

Site name: Chichester Harbour

OLD1003245

Ref. No.	Type of Operation
1	Cultivation, including ploughing, rotovating, harrowing, and re-seeding.
2	The introduction of grazing and changes in the grazing regime (including type of stock, intensity or seasonal pattern of grazing and cessation of grazing).
3	The introduction of stock feeding and changes in stock feeding practice.
4	The introduction of mowing or other methods of cutting vegetation and changes in the mowing or cutting regime (including hay making to silage and cessation).
5	Application of manure, fertilisers and lime.
6	Application of pesticides, including herbicides (weedkillers).
7	Dumping, spreading or discharge of any materials.
8	Burning.
9	The release into the site of any wild, feral or domestic animal*, plant or seed.
10	The killing or removal of any wild animal*, including pest control.
11	The destruction, displacement, removal or cutting of any plant remains, including tree, shrub, herb, hedge, dead or decaying wood, moss, lichen, fungus, leaf-mould and turf.
12	The introduction of tree and/or woodland management+ and changes in tree and/or woodland management+.
13a	Drainage (including the use of mole, tile, tunnel or other artificial drains).
13b	Modification of the structure of watercourses (eg rivers, streams, springs, ditches, dykes and drains), including their banks and beds, as by re-alignment, re-grading and dredging.
13c	Management of aquatic and bank vegetation for drainage purposes.
14	The changing of water levels and tables and water utilisation (including irrigation, storage and abstraction from existing water bodies and through boreholes).
15	Infilling of ditches, dykes, drains, ponds, pools, marshes or pits and dune slacks.
16a	The introduction of freshwater fishery production and/or management and changes in freshwater fishery production and/or management, including sporting fishing and angling.
16b	Coastal fishing or fisheries management and seafood or marine life collection, including the use of traps or fish cages.
17	Reclamation of land from sea, estuary or marsh.
18	Bait digging in intertidal areas.
19	Erection of sea defences or coast protection works, including cliff or landslip drainage or stabilisation measures.
20	Extraction of minerals, including shingle, sand and gravel, topsoil, subsoil, shells and spoil.
21	Construction, removal or destruction of roads, tracks, walls, fences, hardstands, banks, ditches or other earthworks, or the laying, maintenance or removal of pipelines and cables, above or below ground.
22	Storage of materials.
23	Erection of permanent or temporary structures, or the undertaking of engineering works, including drilling.

24 Modification of natural or man-made features, clearance of boulders, large stones or loose rock and battering, buttressing or grading rock-faces and cuttings, infilling of pits, quarries and re-grading of dune and beach land forms.

26 Use of vehicles or craft likely to damage or disturb features of interest.

27 Recreational or other activities likely to damage features of interest including sand dune and beach land forms.

28 The introduction of game or waterfowl management and changes in game and waterfowl management and hunting practice.

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* 'animal' includes any mammal, reptile, amphibian, bird, fish or invertebrate.

\+ including afforestation, planting, clear and selective felling, thinning, coppicing, modification of the stand or underwood, changes in species composition, cessation of management.

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APPENDIX 3

HAVANT BOROUGH COUNCIL CORE STRATEGY

POLICIES RELEVANT TO DEVELOPMENT IN

CHICHESTER HARBOUR

appropriate to consider the use of further screening to reduce noise levels and the visual impact of stored equipment.

Caring For Our Borough - The Coast and Natural Environment

10.28 The borough has a rich and diverse natural environment with an extensive coastline including two harbours, rivers, streams, open spaces and woodlands. The council recognises the importance of this unique environment and the need to protect and enhance it for both its nature conservation value and its recreation and public access opportunities. At the same time, the current standard of flood protection and water quality needs to be maintained.

DM8 Conservation, Protection and Enhancement of Existing Natural Features

Development will only be permitted where it protects and enhances local habitats and landscape distinctiveness and which addresses all of the relevant criteria as set out below:

1. **Protects natural features of nature conservation and/or amenity importance on the site, for example trees, woodlands, hedgerows, soils, streams, stream corridors, springs, ditches or ponds from damage, destruction and a deterioration in quality.**
2. **Sympathetically incorporates existing features into the overall design of the scheme including measures taken to ensure their continued survival.**
3. **Provides new landscape works that integrate successfully with the local environment and existing natural features, using local materials and plant species and making provision for future maintenance of new landscape works associated with new developments.**
4. **Ensures sequences of greenspaces are maintained and protects the attractiveness and visual amenity of all green open spaces that contribute to the identity of the borough.**

Where else to look:

Havant Borough Townscape, Landscape and Seascape Character Assessment: The council requires all development proposals to include a landscape scheme which should be incorporated into the layout design from the start using the guidance in the Havant Borough Townscape, Landscape and Seascape Character Assessment.

The Havant Borough Council Landscape Checklist for New Development: Explains what is expected of developers submitting proposals to the council to meet the relevant landscaping conditions.

Havant Borough Council Landscape Assessment Sensitivity Report: Is an integrated landscape sensitivity approach used to inform the settlement expansion in Havant Borough.

Tree preservation orders and trees within conservation areas: Trees can define spaces, routes or views, screen out noise or unsightly development, provide shelter on a site and improve local air quality. Existing trees, woodlands and hedgerows are significant to the overall landscape quality of an area, both as landscape features and as individual habitats. Some of these features have protection under the Hedgerow Regulations, Tree Preservation Orders or by being situated in a conservation area. The council will introduce tree preservation orders as necessary to protect existing trees. If the removal of one or more trees is permitted as part of a development a condition may require that replacement trees be planted on or near the site. Developers will be required to protect existing trees to be retained during site clearance and building operations.

DM9 Development in the Coastal Zone

Planning Permission will only be granted for development in the coastal zone which addresses all of the relevant criteria as set out below as shown on the Proposals Map:

1. **Has no harmful effects on nature conservation within the Chichester and Langstone Harbour SSSIs and SPA, Solent Maritime SAC and Ramsar site, or any SINCs and Local Nature Reserves.**
2. **Maintains and enhances the appearance and distinctiveness of existing settlements and landmarks along the coast.**
3. **Contributes positively to the landscape and has regard to best practice on the design of new buildings in coastal locations.**
4. **Upgrades existing footpaths and ensures that public access is retained and provided to connect existing paths along the waterfront where appropriate.**
5. **Would result in improvements to or redistribution of moorings, marine berths or launch on demand facilities (dry berths) in the harbours.**
6. **Would not be detrimental to infrastructure for, and quality of, water-based recreation, or be detrimental to the safety of navigation.**
7. **Provides recreational opportunities that do not adversely affect the character and appearance of the coast.**

conjunction with water-based recreational activities.

Emsworth Village Design Statement: Design statements are produced by communities to identify local character and set out design guidance to help guide new development.

Northney and Tye Village Design Statement: Design statements are produced by communities to identify local character and set out design guidance to help guide new development.

East Solent Shoreline Management Plan: Like all Shoreline Management Plans, the East Solent SMP is a non-statutory document intended to both inform and be supported by the statutory planning processes. As such it takes account of the diverse interests in the shoreline and establishes a coastal defence strategy that is technically, economically and environmentally sustainable. In due course, the East Solent SMP will be replaced by the North Solent SMP.

DM10 Pollution

Development that may cause pollution of water, air or soil or pollution through noise, smell, smoke, fumes, gases, steam, dust, vibration, light, heat, electromagnetic radiation and other pollutants will only be permitted where all of the following relevant criteria can be met:

1. **The health and safety of existing and future users of the site, or nearby occupiers and residents is not put at risk.**
2. **National air quality standards or objectives would not be breached.**
3. **The water environment would not be detrimentally affected.**
4. **It would not lead to an unacceptable deterioration in the quality or potential yield of coastal, surface and ground water resources.**
5. **External lighting is of the minimum level of illumination and duration required for security and operational purposes.**
6. **External lighting would not interfere with safe navigation in either Chichester or Langstone Harbours and other coastal locations.**

10.29 Some forms of development which can result in pollutants are necessary to the economic and social needs of the borough. This would include some industrial uses which, although necessary, may be detrimental to amenity. Only in instances where the risk is appropriately managed will development be permitted. Consideration will be given to any mitigating measures that could be implemented into development schemes to ensure its effects are sufficiently alleviated. It must be clearly demonstrated that any proposed mitigation measures will be effective and suitably reduce any harm. In some instances this may be through the provision of a buffer zone between conflicting land uses which can minimise harmful effects and can reduce the need for more stringent mitigating measures.

Waterlooville Urban Design Framework: Provides supplementary planning guidance for new development in Waterlooville.

Safer Places: The Planning System and Crime Prevention (2004): Considers crime prevention and prompting community safety through the planning system.

Infrastructure - Transport

DM11 Planning for More Sustainable Travel

The council will seek to ensure that every opportunity is taken to increase integration of sustainable travel modes and availability of non-motorised modes by appropriate measures including:

1. **Securing on-site and/or off-site interventions that promote integrated travel and access by non-motorised modes.**
2. **Requiring safe and secure vehicular and cycle parking and turning facilities to adopted standards.**
3. **Securing appropriate improvements to public and community transport (including infrastructure requirements) in accordance with the Hampshire Local Transport Plan and (where applicable) the relevant sub-regional transport strategy.**
4. **Proposals for reducing opportunities for informal parking in the area surrounding the development where this would impact on the capacity, operation and safety of the local highway network and/or the amenity of the locality.**
5. **Ensuring that new developments are located and designed at the outset to encourage lower vehicle speeds and safe, permeable, inclusive layouts that integrate with existing pedestrian, cycle and public transport routes. This will facilitate and encourage short distance trips by cycle and walking, including to public transport interchanges.**

DM12 Mitigating the Impacts of Travel

New developments will be required to mitigate their travel impact, including the environmental impacts of travel (such as noise, air and visual pollution) and impacts on amenity, health and climate change by ensuring that, where relevant, the following criteria are met:

1. **Adequate provision is made for integrated and improved transport infrastructure or appropriate mitigation measures, through direct improvements and S106 contributions in accordance with the Hampshire County Council Transport Contributions Policy.**
2. **The submission of a transport assessment and travel plan alongside any planning application on proposals for major development or where a proposal is likely to have significant transport implications.**
3. **The submission of a transport statement must accompany planning applications to explain changes to travel demand.**
4. **A bond is provided which will be used to mitigate negative travel impacts of the development, should the travel plan fail to achieve its targets. This bond will be held by the relevant local transport authority.**
5. **In relation to outline planning applications, a framework for the preparation of travel assessments and travel plans will be submitted with the planning application proposals.**

assesses the non-transport infrastructure requirements to support the proposed new development.

The South East Regional Partnership Board has produced a number of guides, including one on transport infrastructure.

9.07 In South Hampshire and in the borough in particular we have good existing infrastructure networks. The new development proposed in the Core Strategy will put increased pressure on those infrastructure networks, especially when combined with all the other proposals in the sub-region. Research has shown that in general there is existing capacity in most infrastructures. The main areas of concern are water supply, waste water treatment, strategic road network capacity, telecommunications, cultural and community facilities and the provision of green infrastructure to mitigate the impact of the growth on designated habitats.

9.08 The Core Strategy addresses the infrastructure concerns most directly through the strategic site allocations at Havant Thicket reservoir to provide water and green infrastructure and the Public Service Village providing cultural and community facilities. The strategic sites at Dunsbury Hill Farm and Waterlooville will provide public transport improvements to reduce vehicular traffic on the strategic road network, as well as jobs and green infrastructure. Waste water is mainly processed at Budds Farm, which has capacity for some new development; however some development in Emsworth is processed at Thornham sewage treatment works where there is limited capacity.

9.09 All the policies of the Core Strategy contribute to the provision of infrastructure, for example requiring all types of development to be sustainably constructed so reducing the need for energy, water use and waste, supporting healthy lifestyles that will reduce the need for health infrastructure; reducing the need to travel by car by locating development close to existing facilities and caring for our borough so that there is green infrastructure and a sense of place and safeguarding infrastructure (as shown on the Proposals Map).

Bosmere Health Centre

9.10 Details of the infrastructure that will be delivered over the plan period in terms of when and how it will be provided is set out in the Strategic Infrastructure Implementation Table (Table 9.2 at the end of this chapter).

Policy CS20 Transport and Access Strategy

Development will be permitted that:

1. **Is consistent with and contributes to the implementation of the 'Reduce, Manage and Invest' strategy.**
2. **Does not increase congestion and promotes better use of existing transport networks.**
3. **Improves accessibility to goods, services and employment and promotes equality in the transport system.**
4. **Provides transport management measures to ensure the safe and efficient operation of the strategic and local road network.**
5. **Ensures that highway design responds positively to the characteristics of the area and delivers a high quality public realm for all users.**
6. **Maintains or improves the range of transport modes accessible to the users of the development site with specific emphasis on public transport, especially high quality/frequency buses and includes walking and cycling where appropriate.**

The Natural Environment and Our Heritage

Policy CS11 Protecting and Enhancing the Special Environment and Heritage of Havant Borough

Planning permission will be granted for development that:

1. **Ensures the key landscape and built form principles set out in the Havant Borough Townscape, Landscape and Seascape Character Assessment are protected and where possible enhanced by partnership working with developers, groups and the wider community.**
2. **Protects and where possible enhances the borough's statutory and non-statutory designated landscape, habitats and features of biological, hydrological or geological interest. Protection and enhancement will be achieved by appropriate adaptation and mitigation measures including wardening, education and information and the creation of new habitats, water bodies/courses planting of new trees and woodland.**
3. **Has particular regard to the following hierarchy of nature conservation designations within the borough (as identified on the Proposals Map):**
   (i) Special Protection Areas (SPA), Special Areas of Conservation (SAC) and Ramsar [International].
   (ii) Sites of Special Scientific Interest (SSSI) and National Nature Reserves [National].
   (iii) Sites of Importance for Nature Conservation (SINC), Local Nature Reserves (LNR), other Ancient Woodland not identified in (ii) above [Local].
4. **Protects and where appropriate enhances the borough's statutory and non-statutory heritage designations by appropriately managing development in or adjacent to conservation areas, listed buildings, scheduled ancient monuments, historic parks and gardens, archaeological sites, buildings of local historic or architectural interest.**
5. **Supports an ongoing programme of survey of habitats and species and designation of Sites of Importance for Nature Conservation.**
6. **Incorporates partnership working with conservation organisations to improve public understanding of biodiversity and to manage public access to designated sites, particularly on the coast, to reduce harm to nature conservation interests.**
7. **Incorporates partnership working with landowners and developers to ensure land management practices restore, enhance and where appropriate create new valued landscapes, habitats and their soil structure, particularly the ancient woodland remnants of the Forest of Bere and coastal salt marsh.**
8. **Protects wildlife habitats and wildlife corridors to prevent the fragmentation of existing habitats and to allow species, for example Brent Geese, to respond to the impacts of climate change by making provision for habitat adaptation e.g. coastal managed realignment and species migration.**
9. **Maintains undeveloped gaps between the settlements of Emsworth/Havant; Havant/Waterlooville; Havant/Portsmouth; Emsworth/Westbourne and Leigh Park/Rowlands Castle as shown on the Proposals Map.**
10. **Protects the best and most versatile agricultural land that has the greatest potential for local food security.**
11. **Responds to the emerging evidence from the Solent Disturbance and Mitigation Project, the published recommendations, and future related research.**

their supporting features, as a result of increased recreational pressure. The Solent Disturbance and Mitigation Project, coordinated by the Solent Forum is currently under way to improve the understanding of the current and future impacts of recreational pressure on the Solent international sites. The council is committed to working with other local authorities to develop and implement a strategic approach to protecting international sites within and adjacent to the borough, in accordance with the recommendations of this research.

7.10 It is anticipated that strategic mitigation/avoidance measures will be necessary across South Hampshire, in order to prevent additional recreational pressure on the International sites from the cumulative effects of increased housing and other development in the sub-region. Necessary measures are likely to include access management of the international sites (e.g. increased wardening), and the creation/enhancement of green infrastructure specifically designed to improve local access to informal open spaces in less sensitive areas, which are easily accessible to the present and future populations living in South Hampshire, and provide a similar quality experience to that found at the international sites. Once established, the implementation and effectiveness of this strategic approach will be monitored and reviewed concurrently with reviews of the delivery of housing provision. Such measures are likely to require support from developer contributions. The necessary developer contributions may include a wide interpretation of the types of infrastructure set out in Table 9.1, depending on the research findings and the merits of individual proposals.

7.11 The council is committed to working with neighbouring authorities and relevant partners to enable protected coastal habitats to adapt to climatic and sea level changes. This will be linked to Green Infrastructure (GI) provision being identified in the PUSH GI strategy, including the realignment of important habitats landward. The council considers that PUSH is ideally placed as a sub-regional organisation to create a framework within which the necessary mitigation measures can be funded and delivered.

7.12 The policies of the Core Strategy are backed up by a range of studies that set out the key features of the borough. One of the most significant is the Havant Borough Townscape, Landscape and Seascape Character Assessment 2007, which assesses the distinctive character of the borough. The study brings together landscape, ecological, historical and cultural assessments to define 41 landscape character areas. The key characteristics of each area are defined in the study and landscape and built form guidelines are set out to assist in the conservation, enhancement and restoration of each area. This detailed study is complemented by more local studies such as the Village Design Statements produced by local groups in Emsworth and Northney and Tye. Chichester Harbour Conservancy has produced a management plan for the Area of Outstanding Natural Beauty (AONB), together with landscape and dwelling/extension design advice.

Shelter belts, North Hayling landscape character area

Policy CS12 Chichester Harbour Area of Outstanding Natural Beauty (AONB)

Development will be permitted where it:

1. **Carefully assesses the impact of individual proposals, and their cumulative effect, on the Chichester Harbour AONB, and its setting.**
2. **Is appropriate to the economic, social and environmental wellbeing of the area or is desirable for the understanding and enjoyment of the area.**
3. **Conserves and enhances the special qualities of the Chichester Harbour AONB (as defined in the Chichester Harbour AONB Management Plan).**
4. **Meets the policy aims of the Chichester Harbour AONB Management Plan and**

5. Provides mitigation of any detrimental effects including where appropriate the improvement of existing damaged landscapes relating to the proposal.

7.13 National planning policy, as set out in PPS7 'Sustainable Development in Rural Areas' confirms AONBs as having the highest status of protection in relation to landscape and scenic beauty. Particular reference is made to major development proposals affecting AONBs.

7.14 Chichester Harbour AONB is a unique landscape comprising sheltered open water areas with contrasting narrow channels. The movement of the tide exposes bare mudflat and saltmarsh creating a wide, open and remote wilderness. The undeveloped character of the harbour is almost unique on the south coast and is complemented by its status as an internationally important area of nature conservation. The largely flat hinterland includes highly productive farmland, as well as woodlands and hedgerows that contribute to the rural character of the area. The flatness of the landscape makes the AONB particularly vulnerable to visual intrusion from inappropriate development, both within or adjacent to the boundary, which can often be seen from significant distances across inlets, the main harbour channels, or open countryside. Havant Borough Council will have particular regard to these characteristics in determining development proposals affecting the AONB.

7.15 Chichester Harbour Conservancy has produced an AONB Management Plan, which is adopted by Havant Borough Council, Chichester District Council, West Sussex County Council and Hampshire County Council. The Conservancy has also produced an AONB Landscape Character Assessment and Design Guidelines for New Dwellings and Extensions, both of which have been endorsed by Havant Borough Council. The AONB Management Plan and its supporting documents identify the distinctive features and characteristics of the landscape and provide the framework for the management and ongoing spatial planning of Chichester Harbour AONB. Proposed development affecting the AONB should be of the highest design quality and applicants are encouraged to seek pre-application advice from Chichester Harbour Conservancy.

Where else to look:

Details of the borough's Areas of Outstanding Natural Beauty, nature designations, historic parks and gardens and scheduled monuments can be found on the government mapping website Magic Map

Natural England: Has more details on landscape and nature conservation designations

English Heritage: Has more details about listed buildings and heritage protection

Details of the borough's own listed buildings and conservation areas can be found on the Havant Borough Council website

Biodiversity Opportunity Areas: Have been identified for the South East Region and these have been further detailed at the Hampshire County level

National Parks and Access to the Countryside Act 1949: Provides the legislative background to AONB designations.

Countryside and Rights of Way Act 2000: Brought in the requirement for local authorities to have a 'duty of regard' to the purpose of AONBs and to produce an AONB Management Plan.