

Date: 27 April 2022
Our ref: 388123
Your ref: APP/21/01350



Lewis Oliver
Havant Borough Council

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BY EMAIL ONLY

Dear Lewis,

Planning consultation: Outline for erection of up to 29 dwelling units with associated highway works
Location: Land North of Oysters, Station Road, Hayling Island

Thank you for your consultation on the above dated 06 April 2022 which was received by Natural England on the same date.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

SUMMARY OF NATURAL ENGLAND'S ADVICE

FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES

As submitted, the application could have a likely significant effect on:

- Solent Maritime Special Area of Conservation (SAC)
- Chichester and Langstone Harbours Special Protection Area (SPA) and Ramsar site
- Langstone Harbour Site of Special Scientific Interest (SSSI)

Your Authority will need to undertake a Habitats Regulations Assessment (HRA) to determine whether the proposal is likely to have a significant effect on the sites named above, proceeding to the appropriate assessment stage where significant effects cannot be ruled out. The following information is required to inform a HRA:

- A comprehensive mitigation package to address the partial loss of Solent Wader and Brent Goose Strategy (SWBGS) Secondary Support Area H34E and the loss of previously secured mitigation measures for the approved The Oysters development, and details of how the mitigation will be secured for the lifetime of the development.
- An assessment of indirect and in-combination impacts to H34E and details further mitigation measures where impacts are identified.

Once the above information is obtained, please consult Natural England on any appropriate assessment your authority may decide to make.

Nutrient Neutrality – further information required

On 16 March 2022 we wrote to your authority about the availability of an updated package of tools and guidance in relation to nutrient impacts. An updated nutrient budget calculator for the Solent was released on 20 April 2022. We have written to your authority about the availability of an updated package of tools and guidance in relation to nutrient impacts. We recommend that your authority moves to using the updated generic Nutrient Neutrality Methodology and the updated catchment calculators in preference to existing methodologies whether produced by Natural England or your own authority. Your authority will be best placed to consider how it transitions to the new tools and guidance. Natural England recognises that for some existing catchments where nutrient neutrality is being implemented and mitigation is being actively progressed, authorities may need to consider the associated practicalities of moving to the new guidance whilst recognising their role as Competent Authority.

Please note, at present some elements of the guidance (national methodology, nutrient budget calculators) issued by Natural England should be considered as provisional due to the outstanding appeal to the Court of Appeal in Wyatt v Fareham BC [2021] EWHC 1434 (Admin), which although not concerned with the national methodology issued on 16th March 2022, could impact on certain elements contained within the methodology because that case considers similar (but not identical) earlier guidance for the Solent region. Natural England intends to review the national methodology following judgment in the appeal in Wyatt which may require amendments to be made.

We note that the nutrient budget for this application has been calculated in line with the Solent Nutrients Guidance, V5, June 2020. Your authority, as Competent Authority, should consider how the updated Nutrient Neutrality Methodology relates to the nutrient budget provided with this application, and any proposed mitigation.

SPA functionally linked land – further information required

The proposals will lead to the permanent loss of SPA functionally linked land, which forms part of a network of terrestrial sites located outside of the Solent SPAs boundaries used by SPA species (including qualifying features and assemblage species) as alternative areas for roosting and foraging. These sites support the functionality of the designated sites and are therefore protected in this context. Please see the Solent Wader and Brent Goose Strategy (SWBGS) for more information.

The site affected H34E is classed as a Secondary Support Area and supports large numbers of Brent Geese. The Solent Wader and Brent Goose Strategy Mitigation Guidance states that loss of or damage to Secondary Support Areas should be discouraged, and on-site avoidance and mitigation measures considered wherever possible. However, where impacts cannot be avoided or adequately mitigated on-site, there may be scope for a more flexible approach to offsetting the impacts to these sites, provided the continued ecological function of the network is maintained and significant enhancements additionally delivered, for example by improved long term management.

It is expected that in most cases the loss, or partial loss, of Secondary Support Areas will be offset by the provision of suitable replacement habitats which are supported by an agreed costed habitat management plan and funding secured in perpetuity. The provision and ongoing management of replacement habitat might be delivered by a suitable third party (such as HIWWT, RSPB, Local Planning Authority, Hampshire County Council, Land Trust etc) through a legally binding management agreement.

In addition we note that the management of H34E and H34D site to the north were both secured by S106 as mitigation for previously approved and constructed development 'The Oysters' (APP/15/00919) which led to partial loss of H34E. On this point Havant Borough's Biodiversity Strategy (Jan 2019) states that "as the provision of these mitigation sites was fundamental in making those specific developments acceptable in planning terms, their subsequent use for further development or mitigation would not be acceptable, as this would constitute 'double counting'. The development of such land would therefore contravene the Habitats Regulations.

Specific mitigation requirements for this development were set out in an approved Brent Goose Mitigation Strategy for management and enhancement measures in compensation for the partial loss H34E. These were:

- ensuring no access into the remainder of H34E from the new development;
- ensuring H34D is farmed in such a way (as H34E and H34C) that it supports suitable habitat for foraging geese and waders;
- maintaining clear, open sight lines between H34D and H34E; and
- controlling access from the Hayling Billy Trail onto H34C, with fencing to prevent residents and their dogs gaining access and recreating informal paths within the field."

It is Natural England's view that the Council as competent authority must satisfy itself that any development at this site will not impact on these previously agreed mitigation measures. Further assessment of this aspect is required, where impacts are identified further mitigation or compensation measures will be required.

The supporting Ecological Impact Assessment (Tyler Grange Oct 2021) sets out that a detailed offsite compensation strategy will be agreed during the determination period and will involve the delivery of a mitigation site/refuge on a Core site within 1km of the application site, which is within the applicant's control.

Where the site is intended to provide mitigation for development impacting the SWBG network it will be important to demonstrate with certainty how the site can be enhanced/uplifted for the affected species. It is recommended a management and monitoring plan is submitted that demonstrates the following:

- **Recreational disturbance** – will the site be publicly accessible? If so, how will disturbance of feeding/roosting SPA birds be managed over the winter months – particularly from dog walkers traversing the site
- **Land management** – how will habitats across the site be managed favourably for SPA over wintering birds (e.g. sward and clover-rich grass for the geese; meadow/floodplain for waders etc)
- **Monitoring and reporting** – overtime recreational use of the site may change, and monitoring will be key to understanding how the sites function within the wider SWBG network. Where forming mitigation to address impacts on SPA supporting habitat, it will be important to have a formalised monitoring strategy in place to help inform measures over time. E.g. how will monitoring of use of high tide roosts across the site occur and how will this be used as part of a feedback mechanism to inform management going forward.
- **Timing of delivery** – confirmation is required that the mitigation area will be operational at the time it is required. Essentially, 'in time' to offset the adverse effects which are being addressed. Natural England recommends that the infrastructure works for the bird refuge are progressed at the earliest opportunity and prior to commencement of construction. This will need to be secured with any planning permission.
- **Details of who will manage the bird refuge** - whether this will through transfer of ownership or long-term lease. It is our preference that land ownership is transferred to a suitable third party such as the RSPB.

The compensation strategy should also address indirect impacts to the remaining area of H34E, which should include an in-combination assessment with the concurrent applications at Saltmarsh Lane (APP/21/01351) and Land north of Sinah Lane (APP/20/01093). Indirect effects may arise from increased recreational pressure and access to sensitive sites; overshadowing and lighting from new buildings; or noise and visual disturbance from construction work on land adjacent to sensitive sites. These activities and the presence of built form may reduce the functional area of a site available to roosting and foraging SPA birds. Natural England is concerned that in-combination these applications will surround the remainder of H34E creating an isolated island which is less suitable for foraging brent geese.

A comprehensive mitigation and compensation strategy will be required to inform your authority's appropriate assessment in order to ensure mitigation will be delivered in a timely manner and is effective for the lifetime of the development.

Our advice is that this needs to be confirmed by the Council, as the competent authority, via an appropriate assessment to ensure there is no adverse effect on the integrity of the site(s) in accordance with the Conservation of Habitats and Species 2017 (as amended).

Appropriate assessments cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned. Complete information is required to ensure that the proposal will not affect the integrity of the international sites.

We recommend the applicant seeks advice from Natural England via our [Discretionary Advice Service](#).

Construction impacts – further information required

Natural England advises a Construction Environmental Management Plan (CEMP) should be submitted to and approved in writing by the district ecologist/biodiversity officer that identifies the steps and procedures that will be implemented to avoid or mitigate constructional impacts on species and habitats. The CEMP should address the following impacts:

- Storage of construction materials/chemicals and equipment;
- Dust suppression
- Chemical and/or fuel run-off from construction into nearby watercourse(s)
- Waste disposal
- Noise/visual/lighting/vibrational impacts
- Visual screening (for SPA birds)

'Wherever possible, percussive piling or works with heavy machinery (i.e. plant resulting in a noise level in excess of 69dbAmax – measured at the sensitive receptor) should be avoided during the bird overwintering period (i.e. October to March inclusive). If such a condition is problematic to the applicant than Natural England will consider any implications of the proposals on the SPA bird interests on a case by case basis through our Discretionary Advice Service. Note: The sensitive receptor is the nearest point of the SPA or any SPA supporting habitat (e.g. high tide roosting site)'

The approved CEMP should be secured via an appropriately worded condition attached to any planning consent and shall be adhered to at all times, unless otherwise first agreed in writing with the Local Planning Authority.

Solent recreational disturbance – no objection subject to mitigation

This application is within 5.6km of Chichester & Langstone Harbours SPA and will lead to a net increase in residential accommodation. Natural England is aware that your authority has adopted planning policy to mitigate against adverse effects from recreational disturbance on the Solent SPA

sites, as agreed by the Solent Recreation Mitigation Partnership (SRMP), also known as Bird Aware Solent.

Provided that the applicant is complying with the policy and the Bird Aware Definitive Strategy, Natural England are satisfied that the applicant has mitigated against the potential adverse effects of the development on the integrity of the European site(s), and has no objection to this aspect of the application.

Please note, your authority's appropriate assessment should reflect the current developer contribution rates, which are updated every April in line with the Retail Price Index.

Further general advice on the protected species and other natural environment issues is provided at Annex A.

Please note that if your Authority is minded to grant planning permission contrary to the advice in this letter and aforementioned letter sent to your Head of Planning, you are required under Section 28I (6) of the Wildlife and Countryside Act 1981 (as amended) to notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, your Authority has taken account of Natural England's advice. You must also allow a further period of 21 days before the operation can commence.

Yours sincerely,

Rachael Clemson
Sustainable Development Lead Adviser
Thames Solent Area Team
Natural England

Annex A – Additional advice

Natural England offers the following additional advice:

Landscape

Paragraph 174 of the [National Planning Policy Framework](#) (NPPF) highlights the need to protect and enhance valued landscapes through the planning system. This application may present opportunities to protect and enhance locally valued landscapes, including any local landscape designations. You may want to consider whether any local landscape features or characteristics (such as ponds, woodland, or dry-stone walls) could be incorporated into the development to respond to and enhance local landscape character and distinctiveness, in line with any local landscape character assessments. Where the impacts of development are likely to be significant, a Landscape & Visual Impact Assessment should be provided with the proposal to inform decision making. We refer you to the [Landscape Institute](#) Guidelines for Landscape and Visual Impact Assessment for further guidance.

Best and most versatile agricultural land and soils

Local planning authorities are responsible for ensuring that they have sufficient detailed agricultural land classification (ALC) information to apply NPPF policies (Paragraphs 174 and 175). This is the case regardless of whether the proposed development is sufficiently large to consult Natural England. Further information is contained in [GOV.UK guidance](#). Agricultural Land Classification information is available on the [Magic](#) website on the [Data.Gov.uk](#) website. If you consider the proposal has significant implications for further loss of 'best and most versatile' agricultural land, we would be pleased to discuss the matter further.

Guidance on soil protection is available in the Defra [*Construction Code of Practice for the Sustainable Use of Soils on Construction Sites*](#), and we recommend its use in the design and construction of development, including any planning conditions. Should the development proceed, we advise that the developer uses an appropriately experienced soil specialist to advise on, and supervise soil handling, including identifying when soils are dry enough to be handled and how to make the best use of soils on site.

Protected Species

Natural England has produced [standing advice](#)¹ to help planning authorities understand the impact of particular developments on protected species. We advise you to refer to this advice. Natural England will only provide bespoke advice on protected species where they form part of a Site of Special Scientific Interest or in exceptional circumstances.

Local sites and priority habitats and species

You should consider the impacts of the proposed development on any local wildlife or geodiversity sites, in line with paragraphs 175 and 179 of the NPPF and any relevant development plan policy. There may also be opportunities to enhance local sites and improve their connectivity. Natural England does not hold locally specific information on local sites and recommends further information is obtained from appropriate bodies such as the local records centre, wildlife trust, geoconservation groups or recording societies.

Priority habitats and Species are of particular importance for nature conservation and included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. Most priority habitats will be mapped either as Sites of Special Scientific Interest, on the Magic website or as Local Wildlife Sites. List of priority habitats and species can be found [here](#)². Natural England does not routinely hold species data, such data should be collected when impacts on priority habitats or species are considered likely. Consideration should also be given to the potential environmental value of brownfield sites, often found in urban areas and former industrial land, further information including links to the open mosaic habitats inventory can be found [here](#).

¹ <https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

² <http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>

Ancient woodland, ancient and veteran trees

You should consider any impacts on ancient woodland and ancient and veteran trees in line with paragraph 180 of the NPPF. Natural England maintains the Ancient Woodland [Inventory](#) which can help identify ancient woodland. Natural England and the Forestry Commission have produced [standing advice](#) for planning authorities in relation to ancient woodland and ancient and veteran trees. It should be taken into account by planning authorities when determining relevant planning applications. Natural England will only provide bespoke advice on ancient woodland, ancient and veteran trees where they form part of a Site of Special Scientific Interest or in exceptional circumstances.

Environmental gains

Development should provide net gains for biodiversity in line with the NPPF paragraphs 174(d), 179 and 180. Development also provides opportunities to secure wider environmental gains, as outlined in the NPPF (paragraphs 8, 73, 104, 120, 174, 175 and 180). We advise you to follow the mitigation hierarchy as set out in paragraph 180 of the NPPF and firstly consider what existing environmental features on and around the site can be retained or enhanced or what new features could be incorporated into the development proposal. Where onsite measures are not possible, you should consider off site measures. Opportunities for enhancement might include:

- Providing a new footpath through the new development to link into existing rights of way.
- Restoring a neglected hedgerow.
- Creating a new pond as an attractive feature on the site.
- Planting trees characteristic to the local area to make a positive contribution to the local landscape.
- Using native plants in landscaping schemes for better nectar and seed sources for bees and birds.
- Incorporating swift boxes or bat boxes into the design of new buildings.
- Designing lighting to encourage wildlife.
- Adding a green roof to new buildings.

Natural England's [Biodiversity Metric 3.0](#) may be used to calculate biodiversity losses and gains for terrestrial and intertidal habitats and can be used to inform any development project. For small development sites the [Small Sites Metric](#) may be used. This is a simplified version of [Biodiversity Metric 3.0](#) and is designed for use where certain criteria are met. It is available as a beta test version.

You could also consider how the proposed development can contribute to the wider environment and help implement elements of any Landscape, Green Infrastructure or Biodiversity Strategy in place in your area. For example:

- Links to existing greenspace and/or opportunities to enhance and improve access.
- Identifying opportunities for new greenspace and managing existing (and new) public spaces to be more wildlife friendly (e.g. by sowing wild flower strips)
- Planting additional street trees.
- Identifying any improvements to the existing public right of way network or using the opportunity of new development to extend the network to create missing links.
- Restoring neglected environmental features (e.g. coppicing a prominent hedge that is in poor condition or clearing away an eyesore).

Natural England's [Environmental Benefits from Nature tool](#) may be used to identify opportunities to enhance wider benefits from nature and to avoid and minimise any negative impacts. It is designed to work alongside [Biodiversity Metric 3.0](#) and is available as a beta test version.

Access and Recreation

Natural England encourages any proposal to incorporate measures to help improve people's access to the natural environment. Measures such as reinstating existing footpaths together with the creation of new footpaths and bridleways should be considered. Links to other green networks and, where appropriate,

urban fringe areas should also be explored to help promote the creation of wider green infrastructure. Relevant aspects of local authority green infrastructure strategies should be delivered where appropriate.

Rights of Way, Access land, Coastal access and National Trails

Paragraphs 100 and 174 of the NPPF highlight the importance of public rights of way and access. Development should consider potential impacts on access land, common land, rights of way and coastal access routes in the vicinity of the development. Consideration should also be given to the potential impacts on the any nearby National Trails. The National Trails website www.nationaltrail.co.uk provides information including contact details for the National Trail Officer. Appropriate mitigation measures should be incorporated for any adverse impacts.

Biodiversity duty

Your authority has a [duty](#) to have regard to conserving biodiversity as part of your decision making. Conserving biodiversity can also include restoration or enhancement to a population or habitat. Further information is available [here](#).