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Our ref: 382149
Your ref: APP/21/01434



David Eaves
Havant Borough Council

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

T 0300 060 3900

BY EMAIL ONLY

Dear David

Planning consultation: Outline application for development of up to 300 dwellings (including affordable housing). The proposal includes provision for structural planting and landscaping; informal public open space; children's play areas; sustainable drainage system (SuDS); a new vehicular access from St Mary's Road; and associated ancillary works. All matters re-served except for means of vehicular access. Accompanied by an Environmental Statement

Location: Rook Farm, land off St Marys Road, Hayling Island

Thank you for your consultation on the above dated 01 February 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 potential significant effects on:

- Solent Maritime Special Area of Conservation (SAC)
- Solent and Southampton Water Special Protection Area (SPA) and Ramsar site
- Portsmouth Harbour SPA and Ramsar site
- Chichester and Langstone Harbours SPA and Ramsar site
- Solent and Dorset Coast SPA
- Solent and Isle of Wight Lagoon SAC

Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation.

The following information is required:

- Habitat Regulations Assessment (HRA)
- Further detail on the Nitrogen and Wintering Bird Mitigation site

Without this information, Natural England may need to object to the proposal.

Please re-consult Natural England once this information has been obtained.

Natural England's further advice on designated sites/landscapes and advice on other issues is set

out below.

Additional Information required

HRA & Appropriate Assessment

The consultation documents provided by your authority do not include information to demonstrate that the requirements of Regulations 63 and 64 of the [Conservation of Habitats and Species Regulations 2017 \(as amended\)](#) have been considered by your authority, i.e. the consultation does not include a Habitats Regulations Assessment.

In advising your authority on the requirements relating to Habitats Regulations Assessment, it is Natural England's advice that the proposal is not necessary for the management of the European site. Your authority should therefore determine whether the proposal is likely to have a significant effect on any European site, proceeding to the Appropriate Assessment stage where significant effects cannot be ruled out.

Please note that, recent case law ('Sweetman II') outlines that mitigation measures should not be assessed through a Habitats Regulations Assessment (HRA) to 'screen out' impacts at the stage of considering Likely Significant Effects (LSE), rather avoidance / mitigation measures should be considered through an Appropriate Assessment. Therefore in this case, as mitigation measures are proposed to avoid a likely significant effect your authority's HRA will need to include an Appropriate Assessment under Regulation 63(1) of the [Conservation of Habitats and Species Regulations 2017 \(as amended\)](#). Please note Natural England are a statutory consultee for Appropriate Assessments and should be re-consulted once your authority has completed its HRA.

Recreational disturbance

Since this application will result in a net increase in residential accommodation, impacts to the coastal Special Protection Area(s) and Ramsar Site(s) may result from increased recreational disturbance. Your authority has measures in place to manage these potential impacts through the agreed strategic solution which we consider to be ecologically sound. Subject to the appropriate financial contribution being secured, Natural England is satisfied that the proposal will mitigate against the potential recreational impacts of the development on the site(s). 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 \(as amended\)](#).

Solent Wader and Brent Goose network – SPA supporting habitat mitigation

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 H46B is classed as a Core Area and supports high numbers of Brent Geese. The Solent Wader and Brent Goose Strategy Mitigation Guidance states that for Core Areas where impacts cannot be avoided, any risk of potential damage to or deterioration of the integrity of the Core Areas will be considered likely to have a significant effect on the SPAs and should be subject to an Appropriate Assessment under the Habitat Regulations in order to ascertain whether an adverse effect on the site integrity can be excluded.

In order for such developments to demonstrate no adverse effect on the integrity of the SPA(s) then, as a minimum, the full criteria for the replacement of Primary Support Areas must be met along with the following additional requirements:

- A suitable replacement site of an equal, or in some circumstances greater, size and quality must be provided in close enough proximity to the Core Area affected to fully replace its ecological function.
- The freehold or long term lease (in perpetuity) of the replacement site must be passed to an appropriate conservation body, or the LPA, in a suitable condition and managed in perpetuity as a nature reserve for waders and / or brent geese.

The shadow HRA sets out that as mitigation a permanent Hayling Island Brent Goose and Wader Refuge on another nearby Core Area on Hayling Island, we note that details on the location have been redacted in the report. 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) and how will it be ensured the 5kg rate for N mitigation will not be exceeded overall across the site
- **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.

This detail is required to inform your authority's appropriate assessment in order to ensure the bird refuge will be delivered in a timely manner and is effective for the lifetime of the development.

We recommend the applicant seeks advice from Natural England via our Discretionary Advice Service.

Additionally in order to ensure that the Wintering Bird Mitigation Area is completed to the required standard, Natural England strongly recommends that a condition is attached to any outline permission that secures a sign-off visit by Natural England, prior to the commencement of development. For your information, this visit would fall under our Discretionary Advice Service.

Nitrogen mitigation

It is noted that the nutrient budget also includes the area of the proposed offsetting site, the calculation should firstly be done for the development site alone and then separately for the proposed offsetting site in order to ensure that the area is sufficient.

We note that as mitigation it proposed to use the same parcel of land as the wintering bird refuge, we are very supportive of the principles of the scheme to help development within the Borough achieve nitrogen neutrality and protect and enhance the SPA high tide roosts network across the area.

It is recommended further detail is provided to cover the following aspects:

- **Land management** - how the site will be managed at the 5kgN/ha/yr rate (e.g. conservation grade grazing/low density stocking; no application of fertiliser/supplementary feeding/ploughing or subsoiling)
- **Monitoring and reporting** – how will such management, for purposes of N mitigation, be monitored over time – what indicators will be used, how frequently will monitoring occur. Some description of the reporting protocol should be incorporated to outline the governance of the land and how any ‘breaches’ in management that may lead to exceeding the 5kg rate be rectified.
- **Nitrogen credits framework** – what are the available N credits to development for the scheme and how will the allocation of credits be tracked - a description of the accompanying legal framework to be employed would be useful in clearly demonstrating how this land will function as an N mitigation.

Air Quality

The proposals are likely to generate additional nitrogen emissions as a result of increased traffic generation which can be damaging to the natural environment.

The effects on local roads in the vicinity of the proposed development on nearby designated nature conservation sites (including increased traffic, construction of new roads, and upgrading of existing roads), and the impacts on vulnerable sites from air quality effects on the wider road network in the area (a greater distance away from the development) can be assessed using traffic projections and the 200m distance criterion followed by local Air Quality modelling where required. We consider that the designated sites at risk from *local impacts* are those within 200m of a road with increased traffic^[1], which feature habitats that are vulnerable to nitrogen deposition/acidification.

Regarding effects on general air quality (regional or national), we advise that in addition to assessing local air quality effects, consideration should also be given to national air quality impacts resulting from diffuse pollution over a greater area. The UK Government has international commitments to reduce national emissions of pollutants and consideration should be given to impacts that occur on a regional, national and international scale and which also contribute to background concentrations.

The above issues will also impact on SSSIs. Please note that if your authority is minded to grant planning permission contrary to the advice in this letter, you are required under Section 281 (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.

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

For any queries regarding this letter, for new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk. Should the applicant wish to discuss the further information required and scope for mitigation with Natural England, we would be happy to provide advice through our [Discretionary Advice Service](#).

Please consult us again once the information requested above, has been provided.

Yours sincerely

Rachael Clemson
Sustainable Development Lead Adviser

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>

Annex A – Additional advice

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.

Annex A – Additional advice

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 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](#).