

TOWN AND COUNTRY PLANNING ACT
1990
SECTION 78 APPEAL

Section 78 appeals against failure to give notice within the prescribed period of decisions on applications for:

Appeal Ref: APP/A1720/W/20/3252180 (Appeal A)
Outline planning permission for the demolition of existing buildings and development of up to 75 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure, with all matters except access reserved
at
Land at Newgate Lane (North)

and

Appeal Ref: APP/A1720/W/20/3252185 (Appeal B)
Outline planning permission for the demolition of existing buildings and development of up to 115 dwellings, open space, vehicular access point from Newgate Lane and associated and ancillary infrastructure, with all matters except access reserved
at
Land at Newgate Lane (South)

ECOLOGY PROOF OF EVIDENCE

OF NICHOLAS SIBBETT CEcol CMLI CEnv MCIEEM

ON BEHALF OF FAREHAM BOROUGH COUNCIL

CONTENTS

| | | |
|---|---------------------------------------------------|----|
| 1 | SUMMARY | 3 |
| 2 | QUALIFICATIONS AND EXPERIENCE | 5 |
| 3 | INTRODUCTION AND SCOPE OF EVIDENCE | 7 |
| 4 | PLANNING POLICIES, LEGISLATION AND OTHER GUIDANCE | 8 |
| 5 | IMPACTS ON EUROPEAN SITES | 11 |
| 6 | IMPACTS ON CHAMOMILE | 15 |

APPENDICES

1. Conservation objectives and citations for Solent SPAs
2. Natural England email 22nd October 2020

1 SUMMARY

- 1.1 My name is Nicholas Sibbett and I have been appointed by Fareham Borough Council as ecology witness for the Public Inquiry.
- 1.2 The Council resolved in its committee meeting of 24th June 2020 (Core Documents CDC.1 and CDC.2) that both planning applications were unacceptable because they failed to provide mitigation for recreational impacts upon Solent SPAs, and they both failed to provide mitigation for the loss of a Low Use site in the Brent Goose and Wader Strategy thus causing harm to land functionally linked with the SPA. The application for land at Newgate Lane (South) was also unacceptable because insufficient information was provided to protect and enhance a substantial population of chamomile.
- 1.3 A range of other ecological matters are present at both sites and have been resolved to the satisfaction of the Local Planning Authority. The scope of my evidence is therefore restricted to addressing the three reasons for unacceptability, above.
- 1.4 The appellant has offered for each appeal site to pay the requisite amount of money towards the Solent Recreation Mitigation Strategy. This payment was not secured by S106 agreement and so the mitigation has not been secured. If a S106 agreement is entered into to secure the payment the Council would no longer find the development unacceptable in respect of this reason for refusal.
- 1.5 The appellant has offered to pay the requisite amount of money to the Solent Waders and Brent Goose Strategy to

be used in mitigation for loss of the Low Use land. However there is no existing mechanism for the money to be spent and so the mitigation is not deliverable. If the appellant is able to provide a mitigation scheme which meets the Strategy requirement to increase the capacity of existing sites to support those species, or to provide new sites to provide these species, the development may become acceptable.

- 1.6 A Chamomile Management Plan prepared by WYG was received in October 2020 (CDA.136. This answers the majority of the previous queries by the LPA. Outstanding information required is a more refined design of areas managed for chamomile and areas managed as a meadow habitat, together with details of monitoring to ensure long-term continuity of the chamomile. If this information is received and is satisfactory, the LPA expects to be able to withdraw this reason for the development being unacceptable.

2 QUALIFICATIONS AND EXPERIENCE

- 2.1 My name is Mr Nicholas Edwin Sibbett. I hold an Honours degree in Ecology from the University of East Anglia and a Master of Science degree in Landscape Ecology, Design and Maintenance from Wye College, University of London.
- 2.2 I have been in practice with The Landscape Partnership since March 2008 and have almost 30 years' professional experience as an ecologist, 12 of which have been spent in consultancy. I was promoted to the position of Principal Ecologist in 2013 and to Associate in 2017. I jointly lead the company's ecology team across the practice, with particular responsibility for the Woodbridge and Bedford offices.
- 2.3 I have a wide range of experience in the field of ecology, and in particular in habitat survey and the conservation and management of designated sites; and my background is in protected species, designated site management and Habitats Regulations Assessment. For many years I taught Phase 1 Habitat Survey for the Chartered Institute of Ecology and Environmental Management national workshops programme. I hold Level 3 certification in the Botanical Society of the British Isles' Field Identification Skills Certification scheme.
- 2.4 I have been involved in providing ecological services for a wide range of developments, from major housing and infrastructure projects to minerals and waste schemes, across the UK; and have coordinated and undertaken vegetation surveys in a number of habitats, including woodland, parkland, heathland, and grassland, and for a

number of rare and protected species including bats, great crested newts, badgers and reptiles.

- 2.5 I am a Chartered Ecologist (CEcol), a Chartered Environmentalist (CEnv), Chartered Landscape Architect (CMLI) and a founder member of the Chartered Institute of Ecology and Environmental Management (MCIEEM). I hold various licences from Natural England, including for bat survey (level 2, CL18), trainer for bat roost visitors (CL16), great crested newt survey (CL08), and I have held mitigation licences for development projects where mitigation measures were required for bats and great crested newts.
- 2.6 Before joining The Landscape Partnership I worked for Natural England in its Suffolk office for seventeen years. I was responsible for providing evidence to support notification of new SSSIs, advising landowners on SSSI management, advising regulators such as Local Planning authorities on applications made to them, and managing three National Nature Reserves.
- 2.7 My work with The Landscape Partnership has involved undertaking projects for both private and public sector clients. I have made representations at Examinations in Public and Appeal Hearings from 2008 to the present day, including a case in which proposed housing development within a Local Plan was considered likely to adversely impact a Special Protection Area / SSSI.
- 2.8** The evidence I have prepared for this Inquiry is true and has been prepared, and is given in accordance with, the guidance of my professional institutions, and I confirm that the opinions expressed are my own professional opinions.

3 INTRODUCTION AND SCOPE OF EVIDENCE

3.1 I am appointed by Fareham Borough Council to act as its ecology witness and provide evidence at this Inquiry.

3.2 The Council resolved in its committee meeting of 24th June 2020 (Core Documents CDC.1 and CDC.2) that both planning applications were unacceptable because

j) In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise due to the impacts of recreational disturbance

k) In the absence of a legal agreement to secure such, the proposal fails to appropriately secure mitigation of the likely adverse effects on the integrity of European Protected Sites which, in combination with other developments, would arise as a result of the loss of a Low Use site for Brent geese and waders

3.3 In addition, The Committee also resolved that the planning application for Land at Newgate Lane (South) was unacceptable because

i) The proposal provides insufficient information to protect and enhance the biodiversity interests of the site which includes a substantial population of Chamomile

3.4 A range of other ecological constraints and related issues pertain to both sites and have been resolved to the satisfaction of the Local Planning Authority. The scope of my evidence is therefore restricted to addressing impacts upon the three reasons for unacceptability, above.

3.5 I visited the sites on 28th October 2020 to become familiar with them. I entered the grassland containing chamomile in Land at Newgate Lane (South) and viewed the arable land and other habitats from adjacent roads.

4 PLANNING POLICIES, LEGISLATION AND OTHER GUIDANCE

Local Planning Policy

- 4.1 Fareham Borough Council's Core Strategy of August 2011 (CDE.1) Policy CS4 provides protection for designated sites, including European designated sites, and recognises that a strategy to mitigate recreational impacts arising from residential development on European sites is required.
- 4.2 Fareham Borough Council's Development and Sites Policies Local Plan document (2015) (CDE.2) Policy DSP13 offers protection to European sites such as SPAs. Policy DSP14 sets out the necessity for developments to provide mitigation for development on site supporting Brent Geese and / or waders, and Policy DSP 15 introduces a requirement for mitigation of recreational impacts of development in combination with other development in the vicinity of European sites.
- 4.3 Fareham Borough Council's Publication Local Plan October 2020 (CDF.6) Policy NE1 gives protection to designated sites. Local Plan Policy NE2 requires 10% net gain in biodiversity. Policy NE3 requires a contribution to the Solent Recreation Mitigation Strategy. Policy NE4 requires nutrient neutrality on water entering the Solent SPA, and Policy NE5 requires sites of 'low' use by Brent Geese and Waders to provide on-site mitigation or a contribution to off-site mitigation to prevent harm to the SPA. The accompanying Policies Map shows both sites as part of a Brent Goose and Waders 'Low Use' area in respect of Policy 5.

4.4 The National Planning Policy Framework (NPPF) dated February 2019, paragraphs 171 and 172 relate to policy for designated sites of biodiversity or landscape importance. Proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged against Local Plans policies which will distinguish between the hierarchy of international, national and locally designated sites and allocate land with the least environmental or amenity value and maintain and enhance networks of habitats and green infrastructure. Paragraph 175 states that when determining planning applications Local Planning Authorities should apply the following principles:

- a) If significant harm resulting from a development cannot be avoided (through locating it on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused,*
- b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;*
- c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and*
- d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate*

biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

- 4.5 Paragraph 177 states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a 'habitats site' (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the 'habitats site'.

Legislation

- 4.6 The Council must, under Section 40 of the Natural Environment and Rural Communities Act 2006, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.
- 4.7 The Council has a duty under Section 28G of the Wildlife and Countryside Act 1981 to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.

5 IMPACTS UPON EUROPEAN SITES

Introduction

- 5.1 A shadow Habitats Regulations Assessment dated May 2020 (CDA.64 -north; CDA.135 - south) has been provided by the appellant for both appeal sites. It identifies four potential impacts upon the Solent SPAs. 'Solent SPAs' is a coverall name for several European designated sites including Solent and Southampton Water SPA, Solent and Southampton Water Ramsar, Portsmouth Harbour SPA, Portsmouth Harbour Ramsar, and Chichester and Langstone Harbour SPA. I agree with the conclusions in the shadow HRA that air quality effects and the effects of nutrient nitrogen in waste water would not have an adverse affect upon the integrity of any European site. The impact of recreation upon European sites, and the impact of the development on the displacement of Brent Geese and Waders are described below.

The impact of recreation on European sites

- 5.2 The appellant's shadow HRA correctly identifies that there would be an increase in public recreation at Solent SPAs as a result of both developments and other development within 5.6km of the SPAs. The increase in recreation may result in increased disturbance of birds and trampling of habitat which supports the birds, leading to harm to the SPAs. Fareham Borough Council is a partner in the Solent Recreation Mitigation Strategy (CDE.7). There is a team of rangers to help coastal visitors and communities understand the importance of the different bird species and the impact of disturbance, and encouraging responsible dog walking and visits to less sensitive parts of the coast.

Implementation of the strategy is funded by developer contributions.

- 5.3 The appellant's shadow HRA states that each appeal site would contribute towards the Solent Recreation Mitigation Strategy through a S106 agreement in accordance with the latest tariff. However, this aspiration has not been followed by a signed S106 agreement. The Council determined that the developments were each unacceptable because there was no mitigation in place to prevent harm through recreational impacts. In my professional opinion, if a S106 agreement is entered into, so that the correct payment can be made for each appeal site, then the developments would no longer be unacceptable on the basis of this issue.

The impact of the developments on Brent geese and waders

- 5.4 The shadow HRA provided by the appellant correctly identified that the appeal sites were functionally linked to the Solent SPAs as a Low use site. The Publication Local Plan (CDF.6) identifies both appeal sites as of Low use for Brent Geese and Waders. These birds, which are qualifying features of the SPA may at times use the appeal sites as part of their lifecycle, and so the appeal sites contribute towards the survival of the birds. They also provide alternative options and resilience for the future.
- 5.5 Fareham Council and others initiated the Solent Waders and Brent Goose Strategy Guidance on Off-setting and Mitigation Requirements in October 2018 (CDE.6) which requires developers to provide mitigation for the loss of Low Use sites by means of on-site mitigation, increasing the capacity of existing sites used by these birds elsewhere,

or by providing new sites which can be used by the birds. According to the Strategy Guidance, developers may provide the capacity increases or the new sites, or alternatively may pay into a fund managed by the Local Authority to achieve the same result.

- 5.6 The appellants in their Shadow HRA agreed to pay the appropriate sum into a fund for the mitigation works to be provided. Unfortunately, the fund for providing mitigation works has not yet been set up in Fareham Borough, and so there is no reasonable likelihood of the payment actually providing the mitigation requirement. The development is therefore unacceptable because there is a demonstrable harm to the Solent SPAs for which no achievable mitigation has been proposed. The development therefore fails Adopted Local Plan policies CS4, DSP13 and DSP14. It also fails Publication Local Plan NE1 and NE5.
- 5.7 I advise the Inspector that for each development I conclude that it cannot be ascertained that there would be no adverse affect of the integrity of Solent and Southampton Water SPA, Solent and Southampton Water Ramsar, Portsmouth Harbour SPA and Portsmouth Harbour Ramsar, and Chichester and Langstone Harbours SPA in the light of the Conservation Objectives for these sites (CDH.10).
- 5.8 Natural England has consolidated its comments on the planning applications and updated its views in light of the appeals. Its comments, dated 22nd October 2020 (CD B.8c), advises that the appellant may provide its own mitigation scheme in place of a contribution to a Local Authority managed scheme provided that it addresses all requirements. If the appellant does provide its own

mitigation scheme, which satisfactorily provides an alternative site for the appropriate species of birds with management secured for the long term, I will be able to advise the Inspector that the development would be found to have satisfied the relevant policies and met the requirements of an Appropriate Assessment.

5.9 The mitigation scheme should describe:

- Provision and/or enhancement of suitably sized areas with habitats and features for waders and/or brent geese. Enhancement features can include the provision of scrapes for loafing and as freshwater sources;
- Consideration of recreational or other disturbance. Access management and screening measures may be necessary;
- The provision and ongoing management of the scheme specifically for the waders and / or geese, delivered and managed by a suitable third party (such as LPA or NGO partner (or similar stable management body such as Land Trust) in perpetuity);
- A protocol for long term monitoring and how any adaptive measures will be secured.

5.10 Such measures should be supported by an agreed and costed habitat management plan with appropriate level of funding secured in perpetuity.

5.11 A mitigation scheme would also need to demonstrate how it performs against other policies such as the nutrient neutrality (policies CS4, NE4) and 10% biodiversity net gain (policy NE2).

6 Impacts on Chamomile

- 6.1 A Chamomile Management Plan by WYG was received in October 2020 (CDA.136). This answers the majority of the previous queries raised by the LPA and leaves very little in doubt as to the effectiveness of the proposals developed by the appellant in order to fully protect and enhance the biodiversity interests of the chamomile and the grassland within which it is found. My site visit on 28th October was also helpful in my understanding of the Chamomile Management Plan.

- 6.2 Outstanding information required is a more refined design of areas managed for chamomile and areas managed as a meadow habitat, together with details of monitoring to ensure long-term continuity of the chamomile. If this information is received and is satisfactory, the LPA expects to be able to withdraw this reason for the development being unacceptable.