



S. 78 TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND) RULES 2000
S.28 WILDLIFE AND COUNTRYSIDE ACT 1981
THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017

**Appeals By
Bargate Homes Ltd**

**Against Non-determination of two Planning Applications for
Residential Development at**

Newgate Lane, Fareham

**STATEMENT ON BEHALF OF NATURAL
ENGLAND**

22 October 2020

Application references: **P/18/1118/OA** and **P/19/0460/OA**

Appeal references: **APP/A1720/W/20/3252180** and **APP/A1720/W/20/3252185**

Our reference: **331502**

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1. NATURAL ENGLAND

- 1.1 Natural England was formed in 2006 by bringing together English Nature, the landscape, access and recreation elements of the Countryside Agency and the environmental land management functions of the Rural Development Service.
- 1.2 Natural England works for people, places and nature, to enhance biodiversity, landscapes and wildlife in rural, urban, coastal and marine areas; promoting access, recreation and public well-being, and contributing to the way natural resources are managed so that they can be enjoyed now and by future generations.
- 1.3 Natural England is a statutory consultee in respect of (amongst other things) plans and projects subject to the requirements of the various Environmental Impact Assessment Regulations in England, proposals likely to affect a Site of Special Scientific Interest (SSSI) and plans or projects likely to have a significant effect on any European site. European sites are Special Protection Areas (SPA) classified under the EC Birds Directive and Special Areas of Conservation (SAC) designated under the Habitats Directive (see further section 2 below).

2. RELEVANT NATURE CONSERVATION INTERESTS

Solent Special Protection Areas

- 2.1 A European Directive on the conservation of wild birds, known as the 'Birds Directive'¹ requires member states to protect and manage populations of wild bird species. It also requires member states to identify, classify, protect and manage those sites that are the most important for the conservation of bird populations. These protected sites across Europe are known as Special Protection Areas (SPAs). SPAs are classified by the Secretary of State to protect large assemblages of migratory birds and to protect species of birds, listed in Annex 1 of the Directive that are vulnerable or rare in a European context. The ways in which the SPAs must be protected from development projects, as required by the Birds Directive, have been transposed into English law by The Conservation of Habitats and Species Regulations 2017, known as 'The Habitats Regulations'. All previous amendments to the Regulations were consolidated in the 2017 Regulations.
- 2.2 Three designated SPAs occur within the Solent estuary including [Solent and Southampton Water SPA](#), [Portsmouth Harbour SPA](#) and [Chichester and Langstone Harbours SPA](#). Collectively, they are informally known as the 'Solent SPAs'. These sites together support internationally and nationally important populations of non-breeding Dark-bellied brent goose, various over-wintering waterbirds and waterbird assemblages. (Solent and Southampton Water SPA and Chichester and Langstone Harbour SPA also support populations of breeding tern species; these qualifying features are not relevant to this statement.)

SPA Functionally Linked Land

- 2.3 Areas of land or sea outside of the boundary of a European site may be important ecologically in supporting the populations for which the site has been designated or classified. Occasionally impacts to such habitats can have a significant effect upon the species interest of such sites, where these habitats are considered to be functionally linked to the site².

The [Solent Waders and Brent Goose Strategy](#) (SWBGS) Steering Group³ have identified a network of non-designated terrestrial wader and brent goose sites across a number of local planning authority boundaries in Hampshire, the Isle of Wight and Sussex, that support qualifying features of the Solent Special Protection Areas (SPA). The terrestrial wader and brent goose sites are located on land that falls outside of the Solent SPAs boundaries. However, as this land is frequently used by SPA species as alternative roosting and foraging sites, it supports the functionality and integrity of the designated sites for these features. This land will contribute to the achievement of the SPAs' conservation objectives and is therefore protected in this context.

¹ Council Directive on the conservation of wild birds (2009/147/EC)

² [NECR207 edition 1 - Functional linkage: How areas that are functionally linked to European sites have been considered when they may be affected by plans and projects-a review of authoritative decisions](#) (2016/02/29)

³ The Solent Waders and Brent Goose Strategy Steering Group includes representatives from the Hampshire and Isle of Wight Wildlife Trust, Natural England, RSPB, Hampshire County Ecologists and East Solent Coastal Partnership

3. EFFECTS OF DEVELOPMENT ON THE SOLENT WADERS AND BRENT GOOSE NETWORK

Direct effects

- 3.1 Permanent direct loss of supporting habitat for over-wintering SPA birds as a result of new development or changes to land management is likely to have a detrimental impact for these species by breaking the wider ecological connectivity across the Solent coast and reducing the number of safe refuges for foraging and roosting at times of high-tide during the winter months. The in-combination loss of these sites would impact on the continued ecological function of the wader and Brent goose network.

Indirect effects

- 3.2 There is the potential for new development on land adjacent to or in close proximity to Solent Waders and Brent Goose sites to impact on the ecological function of the network. 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.
- 3.3 In this way, the fragmentation of the network and increased disturbance is likely to alter bird behaviour, causing increased stress and energy expenditure from having to seek alternative suitable areas for foraging and refuge, energy which would otherwise be put into feeding and putting on weight for migration. This in turn can lead to wider effects on breeding rates back in the birds' breeding grounds with consequential effects on the populations in general.

Unmitigated, it is therefore considered development affecting the Solent Waders and Brent Goose network may have a detrimental impact on SPA qualifying features by leading to a permanent loss of supporting habitat and/or increasing disturbance.

Solent Waders and Brent Goose Strategy

- 3.4 Where avoidance of impacts on these sites is not possible, it is Natural England's advice mitigation will be required. The SWBGS Steering Group produced the [Solent Waders and Brent Goose Strategy](#) which sets out a framework of guidance on mitigation and offsetting requirements to address land take and recreational pressure on the network associated with new development. Development proposals coming forward are examined on a case by case basis under the Habitats Regulations, and where impacts on the network are deemed likely, proposals are advised to design mitigation in line with the guidance. The level of mitigation and off-setting required is dependent on the importance of the site within the ecological network and how these non-designated sites support the wider designated Solent SPA network. The Strategy provides further information on the SWBG network classifications and suitable mitigation options.

4. NATURAL ENGLAND'S RESPONSE TO THE APPELLANTS CASE

- 4.1 In this case, the two applications that are the subject of this appeal propose residential development that will result in the partial loss of part of the Solent Waders and Brent Goose Strategy (SWBGS) Low Use site 'F15'. This site is known to support low numbers of over-wintering lapwing.
- 4.2 The level of mitigation and off-setting required is dependent on the importance of the site within the ecological network and how these non-designated sites support the wider designated Solent SPA network. All Low Use sites have the potential to be used by waders or Brent geese. These sites have the potential to support the existing network and provide alternative options and resilience for the future network. In all cases proportionate mitigation, off-setting and/or enhancement measures will be required.
- 4.3 Where on-site mitigation is not possible, Natural England strongly recommends that the developer sets out the level of compensatory funding proposed for agreement with Natural England and the local planning authority. The SWBG Strategy includes an approach for calculating the compensatory funding for the loss of the functional area of a Low Use site. Alternative approaches to calculating the cost of replacement sites can be put forward to be examined on a case-by-case basis.
- 4.4 Natural England understands the applicant in both cases has recognised the issue and offered proportionate contributions in line with the SWBG Strategy, to be secured through a legal agreement, towards the management and enhancement of the wider waders and Brent geese ecological network.

Further detail required on mitigation

- 4.5 Where there is a likelihood of significant effects (excluding any measures intended to avoid or reduce harmful effects on the European site), or there are uncertainties, a competent authority should fully assess (by way of an "appropriate assessment") the implications of the proposal in view of the conservation objectives for the European site(s) in question. 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.
- 4.6 Therefore it is also Natural England's advice that further detail is required to inform the Appropriate Assessment with regards to how the financial contribution will directly mitigate the impact from the partial loss of the Low Use site; i.e. how it will be used to maintain and enhance the wider network within the Borough in a timely manner.
- 4.7 It is Natural England's advice that the proposed funding should be managed by the respective local authority to support schemes across the network, this includes those in neighbouring authority boundaries. Where no such strategic schemes are currently available, the onus falls to the applicant to provide a suitable mitigation solution.

Suitable mitigation solution requirements

- 4.8 The aim of the Strategy is to ensure that the current geographical spread of sites across the network is maintained and enhanced. In order to safeguard the network from long-term degradation of number and importance (classification) of sites, mitigation will need to be appropriately designed to address the loss and ensure the continued ecological function of the network in a timely manner.

- 4.9 Mitigation can come in the form of a new 'bird refuge' situated in an appropriate locality within the network. Alternatively, proposals can come forward that seek to enhance, manage and raise the importance of an existing site within the network.
- 4.10 Each mitigation scheme will be assessed on its own merits and on a case by case basis, based on the submitted evidence. A suitable mitigation scheme will need agreement by Natural England and the competent authority as necessary and further detail of offsetting areas is included in the Solent Waders and Brent Goose Strategy guidance note.
- 4.11 The mitigation scheme should consider:
- 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.
- 4.12 Such measures should be supported by an agreed and costed habitat management plan with appropriate level of funding secured in perpetuity.
- 4.13 Where a deliverable and funded mitigation scheme comes forward that addresses the above requirements, Natural England considers the impacts on the SWBG network as a result of the proposals can be suitably addressed.