

**LILYBELL LIMITED**

**AND**

**JULIET BLANCHE SMITH, GORDON  
STRATTON QUENTIN SMITH AND  
RICHARD BRIAN QUENTIN SMITH**

**AND**

**SUSTAINABLE LAND PRODUCTS  
LIMITED**

**AND**

**BARGATE HOMES LIMITED**

**TO**

**FAREHAM BOROUGH COUNCIL**

**PLANNING OBLIGATION UNDER SECTION 106 OF  
THE TOWN AND COUNTRY PLANNING ACT 1990  
RELATING TO LAND WEST OF OLD STREET  
STUBBINGTON FAREHAM AND LAND AT NEWGATE  
LANE FAREHAM**

**THIS DEED** is made on

2021

BY

- (1) **LILYBELL LIMITED** (Incorporated in the British Virgin Islands Company Registration Number 560891) care of Paris Smith LLP (Ref PJG) 1 London Road, Southampton SO15 2AE (the **Old Street Owner**);
- (2) **JULIET BLANCHE SMITH** of Lambert Farm, Langtree, Torrington EX38 8NU and **GORDON STRATTON QUENTIN SMITH** of 136 Coppice Road, Highfields, Doncaster DN6 7JB and **RICHARD BRIAN QUENTIN SMITH** of Dragonfly, Hill Lane, Colden Common, Winchester SO21 1RZ (together the **Newgate Lane South Owner**);
- (3) **BARGATE HOMES LIMITED** (company registered number 05626135) whose registered office is situated at Peninsular House, Wharf Road, Portsmouth, Hampshire PO2 8HB (the **Developer**); and
- (4) **SUSTAINABLE LAND PRODUCTS LIMITED** (company registered number 07945383) whose registered office is at Endeavour House, Viking Way, Swansea, Wales SA1 7DA (the **Newgate Lane North Owner**)

TO

**FAREHAM BOROUGH COUNCIL** of Civic Offices, Civic Way, Fareham, Hampshire PO16 7AZ (the **Borough Council**).

## **BACKGROUND**

- 0.1 The Borough Council is the local planning authority for the purposes of this deed.
- 0.2 The Old Street Owner is the freehold owner of the Old Street Land registered at the Land Registry with Title Numbers HP605635 and HP605625 and subject to the entries as set out in the Charges Register of Title Numbers HP605635 and HP605625 but otherwise free from encumbrances.
- 0.3 The Newgate Lane South Owner is the freehold owner of the Newgate Lane South Land registered at the Land Registry with Title Number HP732916 and subject to the entries as set out in the Charges Register of Title Number HP732916, including an option agreement in favour of the Developer but

otherwise free from encumbrances which would prevent the Implementation of the Newgate Lane South Planning Permission.

- 0.4 The Developer submitted the Newgate Lane South Planning Application in respect of the Newgate Lane South Land and has submitted the Newgate Lane South Appeal.
- 0.5 The Newgate Lane North Owner is the freehold owner of the Newgate Lane North Land registered with Title Number HP731073 subject to the entries as set out in the Charges Register of Title Number HP731073 and a conditional contract for purchase dated 18 January 2021 in favour of the Developer but otherwise free from encumbrances which would prevent the Implementation of the Newgate Lane North Planning Permission..
- 0.6 Fareham Land LP submitted the Newgate Lane North Planning Application in respect of the Newgate Lane North Land and has submitted the Newgate Lane North Appeal.
- 0.7 The parties have entered into this deed to impose obligations and restrictions as to the agricultural use of part of the Old Street Land in order that it provides suitable habitat for the roosting and foraging of Wading Birds and Brent Geese, to mitigate against the impact of the proposed development of the Newgate Lane Land pursuant to the Solent Waders and Brent Goose Strategy

## **AGREED TERMS**

### **1. INTERPRETATION**

The following definitions and rules of interpretation apply in this deed:

#### 1.1. Definitions:

**Commuted Sum** : the sum of £222,125 (two hundred and twenty two thousand one hundred and twenty five pounds) being the costs of compliance with the Grassland Regime and Monitoring Obligations for the Perpetuity Period, as summarised at Appendix C

- Decision Letter** : a decision in writing issued by either the Secretary of State or an Inspector determining the Newgate Lane North Appeal and/or the Newgate Lane South Appeal
- Developments** : the development authorised by the Newgate Lane North Planning Permission and the Newgate Lane South Planning Permission, in each case provided that the relevant planning permission is granted
- Dwelling** : any dwelling (including a house apartment or maisonette) constructed pursuant to the Newgate Lane North Planning Permission and/or Newgate Lane South Planning Permission
- Grassland Regime** : the grassland management regime and creation of scrapes as set out at paragraph 4.1-4.3 of the Wading Birds and Brent Geese Habitat Enhancement Scheme, to be implemented in accordance with the timetable set out at Table 4 attached to the Scheme, together with the creation and maintenance of margins pursuant to paragraph 4.3 of the Wading Birds and Brent Geese Habitat Enhancement Scheme, both of which are to be complied with for the Perpetuity Period
- Grassland Regime Implementation Notice** : Written confirmation, including a description of the works carried out and enclosing contemporaneous photographic evidence, of the flailing and preparation of the Old Street Land and the sowing of perennial rye grass and white clover seed and the creation of scrapes on the Old Street Land so as to evidence implementation of the Grassland Regime

- Implementation Development** of : the carrying out in relation of any material operation as defined by section 56(4) of the TCPA 1990 and Implemented and Implementation shall be construed accordingly
- Implementation Date** : The date that the Newgate Lane North Planning Permission or the Newgate Lane South Planning Permission is Implemented (whichever occurs first)
- Inspector** : a planning inspector appointed by the Secretary of State to consider the Newgate Lane North Appeal or Newgate Lane South Appeal under delegated powers.
- Interest** : interest at 4 per cent above the base lending rate of the Barclays Bank Plc (calculated on a daily basis from the date on which it fell due until the actual date of payment)
- Land Trust** : The Land Restoration Trust (company registration number 05077263) whose registered office is at 7 Birchwood One, Dewhurst Road, Birchwood, Warrington WA3 7GN
- Management Company** : A management company whose purpose shall be the management of the Old Street Land and the performance of the Grassland Regime and Monitoring Obligations and the shareholders of which shall be the freehold owners of the Old Street Land, the Newgate Lane North Land (if the Newgate Lane North Permission has been Implemented) and the Newgate Lane South Land (of the Newgate Lane South Permission has been Implemented) at the time that the Management Company is incorporated

- Monitoring Obligations** : Means the deployment of two cameras at the Old Street Land for a period of five days each month from October to March (inclusive) annually for the first five years of the Grassland Regime and thereafter every ten years for the remainder of the Perpetuity Period, and annual site visits in winter for the first ten years and thereafter every five years for the remainder of the Perpetuity Period in accordance with the requirements set out at paragraph 4.4 of the Wading Bird and Brent Geese Habitat Enhancement Scheme, to be carried out on each occasion by a suitably qualified ornithologist, and **Monitoring Survey** means each occasion that a photographic survey is carried out from October to March inclusive
- Monitoring Report** : A report prepared by a suitably qualified ornithologist setting out the results of each Monitoring Survey
- Newgate Lane Land** : The Newgate Lane North Land and the Newgate Lane South Land as shown for the purposes of identification edged red on Plan 2 and Plan 3 and being the land registered at HM Land Registry with absolute title under title number HP732916 and HP731073
- Newgate Lane North Land** : Land adjacent to Newgate Lane, Fareham shown for the purposes of identification edged red on Plan 2 and being the land registered at HM Land Registry with absolute title under title number HP731073
- Newgate Lane Owners** : the Newgate Lane North Owner and the Newgate Lane South Owner

**Newgate Lane North Appeal** : the appeal against the non-determination of the Newgate Lane North Planning Application pursuant to section 78(2) TCPA 1990 submitted to the Secretary of State and allocated reference number APP/A1720/W/20/3252180

**Newgate Lane North Planning Application** : the application for 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 to be reserved, registered by the Borough Council under reference number P/18/1118/OA

**Newgate Lane North Planning Permission** : any outline planning permission to be granted by the Secretary of State or an appointed inspector pursuant to the Newgate Lane North Appeal

**Newgate Lane South Appeal** : the appeal against the non-determination of the Newgate Lane South Planning Application pursuant to section 78(2) TCPA 1990 submitted to the Secretary of State and allocated reference number APP/A1720/W/20/3252185

**Newgate Lane South Land** : Land adjacent to Newgate Lane, Fareham shown for the purposes of identification edged red on Plan 3 and being the land registered at HM Land Registry with absolute title under title number HP732916

**Newgate Lane South Planning Application** : the application for 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 to be reserved, registered by the Borough Council under reference number P/19/0460/OA.

**Newgate Lane South  
Planning Permission**

any outline planning permission to be granted by the Secretary of State or an appointed inspector pursuant to the Newgate Lane South Appeal

**Occupation**

: occupation for the purposes permitted by and pursuant to the Newgate Lane North Planning Permission and/or the Newgate Lane South Planning Permission as appropriate but not including occupation by personnel engaged in construction fitting out or decoration; marketing; or security and Occupy and Occupied shall be construed accordingly

**Occupation Date**

: The date any Dwelling on the Newgate Lane Land is first Occupied

**Old Street Land**

: Part of Land West of Old Street, Stubbington, Fareham registered at HM Land Registry with absolute title under title numbers HP605635 and HP605625 and shown for the purposes of identification only edged red on Plan 1

**Offer**

: an offer in writing for the transfer of the freehold interest in the Old Street Land on the basis of the Transfer Requirements

**Perpetuity Period**

: a period of one hundred and twenty five (125) years from the date of the Grassland Regime Implementation Notice



<b>Plan 1</b>	: the plan attached at Appendix A and labelled “Plan 1”
<b>Plan 2</b>	: the plan attached at Appendix A and labelled “Plan 2”
<b>Plan 3</b>	: The plan attached at Appendix A and labelled “Plan 3”
<b>Planting Season</b>	: March to September in a given year
<b>Secretary of State</b>	: the Secretary of State for Housing, Communities and Local Government
<b>Solent Waders and Brent Goose Strategy</b>	: The Solent Waders and Brent Goose Strategy published by the Hampshire and Isle of Wight Wildlife Trust in 2010, as supplemented by the Solent Waders and Brent Goose Strategy Guidance on Mitigation and Off-setting Requirements dated October 2018 and published by the Solent Waders and Brent Goose Strategy Steering Group
<b>TCPA 1990</b>	: Town and Country Planning Act 1990 (as amended)
<b>Transfer Requirements</b>	: the terms set out at clause 4.3 of this Deed
<b>VAT</b>	: value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax
<b>Wildlife Trust</b>	: Hampshire and Isle of Wight Wildlife Trust (Co Regn No 00676313 and registered charity number 201081) whose registered address is at Beechcroft House, Vicarage Lane, Curdridge, Hampshire, SO32 2DP

**Wading Birds and Brent Geese Habitat Enhancement Scheme** : The document entitled “Winter Bird Mitigation Strategy” dated November 2020 prepared by WYG and annexed at Appendix B to this Deed (as may be varied by agreement in writing with the Council in consultation with Natural England (or any successor body))

**Working Day** : any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England or Wales

- 1.2. Clause headings shall not affect the interpretation of this deed.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7. A reference to any party shall include that party's personal representatives, successors, permitted assigns and any person deriving title through or under that party and in the case of the Borough Council the successors to its statutory functions.
- 1.8. Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.9. Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.10. A reference to writing or written excludes faxes and e-mail.
- 1.11. A reference to this deed or to any other deed or document referred to in this deed is a reference to this deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12. References to clauses, Schedules and Appendices are to the clauses, Schedules and Appendices of this deed.
- 1.13. An obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.14. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15. Where an obligation fails to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually PROVIDED THAT:
  - 1.15.1. the obligations contained in this deed binding the Old Street Land shall only be enforceable against the Old Street Owner and its successors in title to the Old Street Land;
  - 1.15.2. the obligations contained in this deed binding the Newgate Lane North Land shall only be enforceable against the Newgate Lane North Owner and its successors in title to the Newgate Land North Land; and
  - 1.15.3. and the obligations contained in this deed binding the Newgate Lane South Land shall only be enforceable against the Newgate

Lane South Owner and its successors in title to the Newgate Lane South Land.

## **2. STATUTORY PROVISIONS**

- 2.1. This deed is made pursuant to Section 106 of the TCPA 1990 Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011.
- 2.2. To the extent that they fall within the terms of Section 106 of the TCPA 1990 the covenants, restrictions and obligations contained in this deed are planning obligations for the purposes of section 106 of the TCPA 1990 and are entered into by the Old Street Owner (in respect of the Old Street Land), the Newgate Lane North Owner (in respect of the Newgate Lane North Land) and the Newgate Lane South Owner (in respect of the Newgate Lane South Land) with the intention that they bind the interests held by those persons in the Old Street Land and the Newgate Lane Land and their respective successors and assigns, subject to clauses 3.1 and 3.2.
- 2.3. The covenants, restrictions and obligations contained in this deed are enforceable by the Borough Council in accordance with section 106 of the TCPA 1990.

## **3. CONDITIONALITY AND LIABILITY**

- 3.1 This deed and the performance of the obligations set out in this deed are conditional upon the grant and issue of either the Newgate Lane North Planning Permission or the Newgate Lane South Planning Permission (whichever occurs first).
- 3.2 Any person who has disposed of their interest in the Old Street Land and/or Newgate Lane Land shall upon such disposal be released from all liability pursuant to this deed in relation to the Old Street Land and/or Newgate Lane Land as appropriate or the relevant part to which the disposal relates except in respect of any breach subsisting prior to parting with such interest.
- 3.3 If a Decision Letter concludes that any of the obligations or restrictions set out in this deed do not meet the three tests of Regulation 122 of the Community

Infrastructure Levy Regulations 2010 and therefore would not comprise a reason for granting planning permission in respect of one or both of the Newgate Lane North Appeal and the Newgate Lane South Appeal, then the relevant obligation(s) shall from the date of the Decision Letter immediately cease to have effect in so far as it relates to the Newgate Lane North Appeal and/or the Newgate Lane South appeal as appropriate, and the Old Street Owner and/or one or both of the Newgate Lane Owners as appropriate shall be under no obligation to comply with it/them.

3.4 The obligations in this deed that relate to the Newgate Lane South Land shall cease to have effect if before the Implementation of the Newgate Lane South Planning Permission one of the following events occurs:

3.4.1 the Newgate Lane South Planning Permission expires;

3.4.2 the Newgate Lane South Planning Permission is revoked other than at the request of the Newgate Lane South Owner; or

3.4.3 the Newgate Lane South Planning Permission is quashed following a successful legal challenge.

3.5 The obligations in this deed that relate to the Newgate Lane North Land shall cease to have effect if before the Implementation of the Newgate Lane North Planning Permission one of the following events occurs:

3.5.1 the Newgate Lane North Planning Permission expires;

3.5.2 the Newgate Lane North Planning Permission is revoked other than at the request of the Newgate Lane North Owner; or

3.5.3 the Newgate Lane North Planning Permission is quashed following a successful legal challenge.

3.6 In the event that the Newgate Lane South Appeal or the Newgate Lane North Appeal are dismissed then the relevant obligation(s) in this deed shall from the date of the Decision Letter immediately cease to have effect in so far as they

relates to the Newgate Lane North Land and/or the Newgate Lane South Land as appropriate.

#### **4. COVENANTS IN FAVOUR OF THE BOROUGH COUNCIL**

4.1. The Old Street Owner undertakes to the Borough Council, so as to bind the Old Street Land only:

4.1.1. to implement the Grassland Regime in the first Planting Season prior to the Implementation Date

4.1.2 to send to the Newgate Lane Owners and the Borough Council a Grassland Regime Implementation Notice within 14 days of the implementation of the Grassland Regime;

4.1.3 following its implementation to thereafter comply with the Grassland Regime for the Perpetuity Period or the lifetime of the Developments, whichever is the longer

4.1.4 following its implementation to thereafter comply with the Monitoring Obligations for the Perpetuity Period;

4.1.5 to issue the Monitoring Report to the Newgate Lane Owners and the Borough Council within 4 weeks of the conclusion of each Monitoring Survey;

and

4.1.6 to pay the Borough Council's reasonable administrative costs in reviewing each Monitoring Report received, and, if any cost is properly incurred by the Borough Council in seeking the review of Natural England, to also pay such cost.

4.2 Following the Implementation Date the Old Street Owner undertakes to the Borough Council, so as to bind the Old Street Land only, to seek to dispose of the Old Street Land to a suitable management body as follows:

4.2.1 Within 7 days of the Implementation Date the Old Street Owner shall send the Offer to Hampshire County Council

4.2.2 If either:

- (a) the Offer is either rejected by Hampshire County Council or no response is received from Hampshire County Council within 2 months of the date of the Offer; or
- (b) (if the Offer is accepted by Hampshire County Council) despite the Old Street Owner using reasonable endeavours the transfer of the Old Street Land to Hampshire County Council pursuant to the Offer has not completed within 6 months of the date of the Offer

Then the Old Street Owner may notify the Borough Council in writing of those circumstances and send the Offer to the Wildlife Trust

4.2.3 If either:

- (a) the Offer is either rejected by the Wildlife Trust or no response is received from the Wildlife Trust within 2 months of the date of the Offer; or
- (b) (if the Offer is accepted by the Wildlife Trust) despite the Old Street Owner using reasonable endeavours the transfer of the Old Street Land to the Wildlife Trust pursuant to the Offer has not completed within 6 months of the date of the Offer

Then the Old Street Owner may notify the Borough Council in writing of those circumstances and send the Offer to the Land Trust.

4.2.4 If either:

- (a) the Offer is either rejected by the Land Trust or no response is received from the Land Trust within 2 months of the date of the Offer; or

- (b) (if the Offer is accepted by the Land Trust) despite the Old Street Owner using reasonable endeavours the transfer of the Old Street Land to the Land Trust pursuant to the Offer has not completed within 6 months of the date of the Offer

Then the Old Street Owner may notify the Borough Council in writing of those circumstances and send the Offer to such third party as may be nominated in writing by the Borough Council (or at the Borough Council's election Natural England) ("the Third Party") to take the Old Street Land within 2 months of the Borough Council receiving written notice from the Old Street Owner pursuant to this clause 4.2.4.

4.2.5 If either:

- (a) no written third party nomination by the Borough Council is received within that two month period by the Old Street Owner;
- (b) the Offer is either rejected by the Third Party or no response is received from the Third Party within 2 months of the date of the Offer; or
- (b) (if the Offer is accepted by the Third Party) despite the Old Street Owner using reasonable endeavours the transfer of the Old Street Land to the Third Party pursuant to the Offer has not completed within 6 months of the date of the Offer

Then the Old Street Owner may notify the Borough Council in writing of those circumstances as shall as soon as practicable following such written notification transfer the freehold interest in the Old Street Land to the Management Company pursuant to the Transfer Requirements.



4.2.5 The Old Street Owner shall on the date of the completion of any transfer of the Old Street Land pursuant to this clause 4.2 pay the Commuted Sum to the transferee.

4.3 The Transfer Requirements are as follows:

4.3.1 full title guarantee;

4.3.2 purchase price of £1;

4.3.3 subject to any existing encumbrances save to the extent they are incompatible with the use of the Old Street Land pursuant to this Deed;

4.3.4 the grant of sufficient rights over a designated route (which shall be capable of being varied by the transferor or its successors in title from time to time) to allow pedestrian and vehicular access from the public highway to the Old Street Land for the purposes of implementing and thereafter complying with the Grassland Regime and Monitoring Obligations

4.4 The Newgate Lane North Owner undertakes to the Borough Council, so as to bind the Newgate Lane North Land only:

4.4.1 to notify the Old Street Owner and the Borough Council in writing at least 28 days in advance of the intended date that the Newgate Lane North Planning Permission is to be Implemented; and

4.4.2 not to Implement nor permit the Implementation of the Newgate Lane North Planning Permission until a valid Grassland Regime Implementation Notice has been sent to the Borough Council by the Old Street Owner

4.5 The Newgate Lane South Owner undertakes to the Borough Council, so as to bind the Newgate Lane South Land only:

- 4.5.1 to notify the Old Street Owner and the Borough Council in writing at least 28 days in advance of the intended date that the Newgate Lane South Planning Permission is to be Implemented; and
- 4.5.2 not to Implement nor permit the Implementation of the Newgate Lane South Planning Permission until a valid Grassland Regime Implementation Notice has been sent to the Borough Council by the Old Street Owner

## **5. DEVELOPER'S CONSENT**

The Developer consents to the completion of this deed and declares that its interest in the Old Street Land the Newgate Lane North Land and the Newgate Lane South Land shall be bound by the terms of this deed PROVIDED THAT the Developer shall not be personally liable for any breach of the obligations unless or until the Developer completes the purchase of a freehold or leasehold interest in the Old Street Land the Newgate Lane North Land and/or Newgate Lane South Land as appropriate.

## **6. LOCAL LAND CHARGE**

This deed is a local land charge and may be registered as such by the Borough Council.

## **7. BOROUGH COUNCIL COSTS**

The Developer shall pay on or before the date of this deed the Borough Council's reasonable and proper legal costs together with all disbursements incurred in connection with the preparation, negotiation, completion and registration of this deed.

## **8. OWNERSHIP**

- 8.1. From the Implementation Date and until the covenants, restrictions and obligations in clause 4 have been complied with, the Old Street Owner will give to the Borough Council within 20 Working Days, the following details of any conveyance, transfer, lease, assignment, mortgage or other disposition entered into in respect of all or any part of the Old Street Land:

8.1.1. the name and address of the person to whom the disposition was made; and

8.1.2. the nature and extent of the interest disposed of.

## **9. THIRD PARTY RIGHTS**

A person who is not a party to this deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

## **10. VALUE ADDED TAX**

10.1. Each amount stated to be payable pursuant to this deed is exclusive of VAT (if any).

## **11. INTEREST ON LATE PAYMENTS**

Any amount due under this deed which is not paid on the due date shall be payable with Interest.

## **12. GOVERNING LAW**

This deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by **BARGATE HOMES LIMITED** acting by a director, in the presence of:

..... Director

Name:

Address:

Occupation:

Executed as a deed by **SUSTAINABLE LAND PRODUCTS LIMITED** acting by a director, in the presence of:

..... Director

Name:

Address:

Occupation:

Executed as a deed by **LILYBELL LIMITED**, a company incorporated in the British Virgin Islands, acting by Ban Su – Mei, a director who in accordance with the laws that territory, is acting under the authority of the company

.....  
Signature in the name of the company

.....  
Signature of authorised signatory

Executed as a deed by **JULIET BLANCHE SMITH**

in the presence of:

.....

Name:

Address:

Occupation:

Executed as a deed by **GORDON STRATTON QUENTIN SMITH**

in the presence of:

.....

Name:

Address:

Occupation:

Executed as a deed by **RICHARD BRIAN QUENTIN SMITH**

in the presence of:

.....

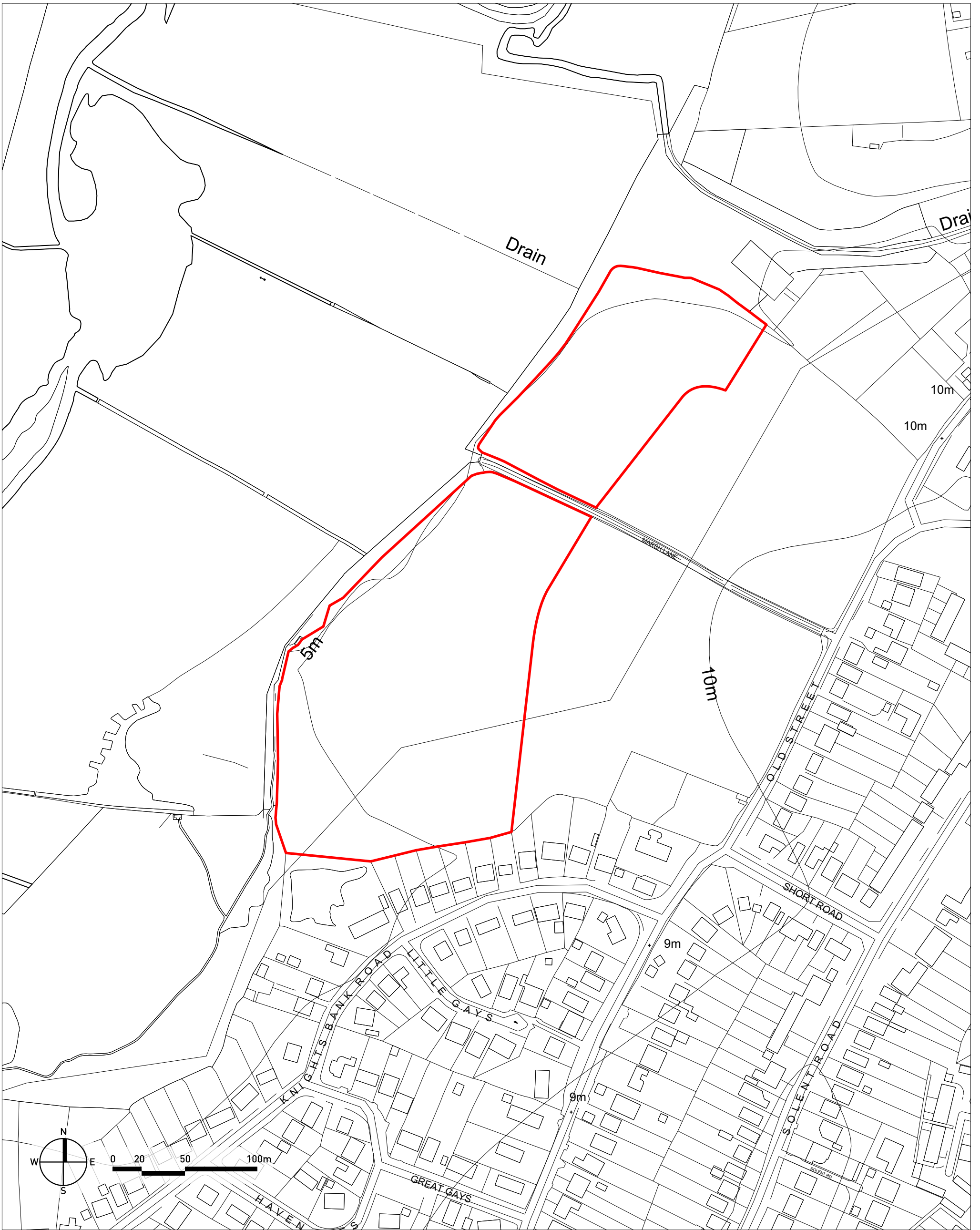
Name:

Address:

Occupation:

**APPENDIX A**  
**Plans 1 2 and 3**

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**KEY: SITE LOCATION PLAN**

 APPLICATION BOUNDARY

**OLD STREET, FAREHAM - SITE LOCATION PLAN**

**Pegasus**  
Design



-  APPLICATION BOUNDARY - NORTH
-  PARKS AND AMENITY OPEN SPACE TO MEET POLICY CS21 - 0.58HA
-  LOCAL EQUIPPED AREA FOR PLAY (LEAP) - MINIMUM 0.04HA (400sq.m) - 20M BUFFER TO HABITABLE DWELLINGS
-  ADDITIONAL OPEN GREEN SPACE





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LAND ADJACENT TO NEWGATE LANE, FAREHAM - INDICATIVE PUBLIC OPEN SPACE PLAN - NORTHERN PARCEL







-  APPLICATION BOUNDARY - SOUTH
-  PARKS AND AMENITY OPEN SPACE TO MEET POLICY CS21 - 1.27HA
-  LOCAL EQUIPPED AREA FOR PLAY (LEAP) - MINIMUM 0.04HA (400sq.m) - 20M BUFFER TO HABITABLE DWELLINGS
-  ADDITIONAL OPEN GREEN SPACE

Pegasus Design Ltd. Design and/or construction of any public open space or amenity area shall be subject to the relevant planning and/or other statutory requirements. The design and construction of any public open space or amenity area shall be subject to the relevant planning and/or other statutory requirements. The design and construction of any public open space or amenity area shall be subject to the relevant planning and/or other statutory requirements.

LAND ADJACENT TO NEWGATE LANE, FAREHAM - INDICATIVE PUBLIC OPEN SPACE PLAN - SOUTHERN PARCEL



**APPENDIX B**  
**Wading Birds and Brent Geese Habitat Enhancement Scheme**

<b>Site:</b>	Old Street, Stubbington
<b>Client:</b>	Fareham Land LLP and Bargate Homes
<b>Job Number:</b>	A117387
<b>Survey Type(s):</b>	Winter Bird Mitigation Strategy
<b>File Location:</b>	I:\Projects\Projects A117000 on\A117387 Land West of Newgate Lane\Reports

## 1.0 Introduction

WYG were commissioned by Fareham Land LLP and Bargate Homes to prepare a Winter Bird Mitigation Strategy, covering the proposed creation of a Winter Bird Mitigation area at Old Street, Stubbington. The purpose of this is to provide compensation for the partial loss of F15, a Low Use site within the Solent Wader and Brent Goose strategy which has been used historically by lapwing *Vanellus*.

The ownership and long-term management of the Winter Bird Mitigation Area as shown in Figure 1, will be secured via legal agreement.

### 1.1 Site Location

The site is located on land to the west of Old Street in the village Stubbington, Hampshire and is centred at Ordnance Survey National Grid Reference: SU 54133 02880. The survey area, hereafter referred to as 'the site', is shown on Figure 1 and comprises of two fields; the northern field is horse-grazed with semi-improved grassland, and the southern field is an abandoned arable field with tall ruderal vegetation and grassland, also grazed. Both fields have borders that are partially lined with trees and hedgerows.

### 1.2 Development Proposals

The proposals are to create a Winter Bird Mitigation Area measuring 5.0 ha maintained in perpetuity, to compensate for the loss of 11.84 ha of F15 across the proposed developments at Newgate Lane East, Land at Newgate Lane (South) and Land at Newgate Lane (North). Following these three developments, there would be 13.26 ha of F15 remaining.

## 2.0 Baseline

The site was subject to a series of ecological surveys and assessments as part of a proposed planning application (and subsequent appeal which was dismissed) in 2018 (ref: P/17/1451/OA). These were undertaken by Hampshire Ecological Services (HES) and WYG and comprise:

- Land west of Old Street, Stubbington: Ecological Appraisal Report (HES, 2017)
- Land west of Old Street, Stubbington: Wintering Bird Survey Report (HES, 2017)
- Land west of Old Street, Stubbington: Breeding Bird Survey Report (HES, 2017)
- Old Street, Stubbington: Bat Activity Report (WYG, 2017)
- Old Street, Stubbington: Bat Tree Assessment Report (WYG, 2017)
- Old Street, Stubbington: Dormouse Presence / Likely Absence Report (WYG, 2017)
- Old Street, Stubbington: Reptile Presence / Likely Absence Report (WYG, 2017)

# Winter Bird Mitigation Strategy



A summary of the ecological baseline is given in Table 1.

**Table 1:** Survey completed and month conducted

Survey Type	Month Survey Conducted	Summary of Results
Ecological Appraisal	13 <sup>th</sup> April 2016	<p>The site consisted of two agricultural fields separated by hedgerows and a track (Marsh Lane). The northern field comprised horse-grazed semi-improved grassland while the southern field was arable land. The northern boundary of the site were agricultural fields; the eastern and southern boundaries were residential housing; and the western boundary was Titchfield Haven National Nature Reserve (NNR).</p> <p>The Ecological Appraisal also identified an active badger sett consisting of 9 holes at the western site boundary of the southern field.</p>
Wintering Bird Survey	Ten wintering bird survey visits were carried out between the 22 <sup>nd</sup> December 2015 and 30 <sup>th</sup> March 2016.	<p>A total of 34 bird species were recorded during the surveys within the site. Six amber list Birds of Conservation Concern, one of which (bullfinch) is also a UK BAP species were noted. The remaining amber list species are black-headed gull, common gull, dunnock, great black-backed gull and stock dove. eight red listed species were noted, of which five were UK BAP species (herring gull, house sparrow, lapwing, song thrush and starling). Other red list species include fieldfare, mistle thrush and redwing.</p> <p>The majority of the species recorded at the site were typical of farmland and improved grassland habitat. No significant numbers of wintering birds were recorded during the surveys and all species occurring on site are either common or fairly common within Hampshire and the surrounding area.</p>
Breeding Bird Survey	Five breeding bird survey visits were carried out between 26 <sup>th</sup> April and 24 <sup>th</sup> June 2016.	<p>A total of 37 bird species were recorded during the surveys within the site. Three amber list species (Dunnock, Reed Bunting and Stock Dove) and seven red list species (Cuckoo, House Sparrow, Lapwing, Linnets, Mistle Thrush, Skylark and Starling) were thought to likely be breeding on site. However, no birds were confirmed to be breeding on site during the surveys.</p>



		<p>One Schedule 1 species was recorded (Cetti's Warbler) during the surveys. The species was noted along the western boundary hedgerow.</p> <p>The majority of the species present are typical of semi-improved grassland and farmland habitat.</p> <p>No significant numbers of notable species were recorded during the surveys.</p>
Bat Activity Surveys	Activity surveys were conducted on the following days - 12 <sup>th</sup> July, 31 <sup>st</sup> August 4 <sup>th</sup> October 2017.	At least six, but up to 7 species of bat were recorded using the habitats across the site during the surveys. The site was considered to be of importance of up to <i>District, local or parish level</i> for foraging and commuting bats.
Bat Tree Assessment	11 <sup>th</sup> September 2017	All trees present within the site boundaries were assessed as providing negligible or low suitability to support roosting bats.
Dormouse Presence / Likely Absence	27 <sup>th</sup> July, 16 <sup>th</sup> August, 8 <sup>th</sup> September and 6 <sup>th</sup> October 2017.	During the survey conducted on 6 <sup>th</sup> October, a dormouse and dormouse nest was recorded within a nest tube located within the northern hedgerow boundary of the northern field.
Reptile Presence/ Likely Absence Survey	8 <sup>h</sup> September – 26 <sup>th</sup> September 2017	A low population of slow worms, grass snake and common lizard were recorded on-site, distributed around the boundaries of the southern field.

An updated site visit on 28<sup>th</sup> October 2020 confirmed that there had been no significant change in the site conditions since the surveys undertaken in 2017. The northern field remains horse grazed. The southern field remains a partially overgrown arable field which is not subject to grazing by horses. Therefore it is considered that there will be no significant change to the populations of notable and protected species identified on site and, taking into account the proposals for the site, these conclusions remain valid for the purposes of assessing potential impacts.

## 3.0 Proposed Mitigation

The purpose of the mitigation is to compensate for the loss of loss of 11.84 ha of Low Use Site (F15) identified in the Solent Wader and Brent Goose Strategy (SWBGS) (Solent WBGS, 2019). The SWBGS identifies a network of sites which lie outside the coastal European sites but which support the functionality and integrity of these sites (for example through providing high-tide foraging habitat). F15 is identified as a Low Use Site for supporting at least 13 lapwing during winter of 2014-15. It is part of the network of functionally linked habitat for the Solent and Southampton Water Special Protection Area (SPA) and Ramsar Site which is designated for supporting populations of European importance of breeding terns and overwintering waterfowl. As detailed in the SWBGS, Low Use Sites are those with the potential to be used by waders or brent geese and provide alternative options and resilience for the network.



As per the strategy, while Low Use sites have records of birds the numbers involved are low enough to ensure there is only a negligible risk of not successfully offsetting the loss of a Low Use site through enhancements of the wider network. Nevertheless, all Low Use sites have the potential to be used by waders and brent geese and the unmitigated loss of these sites would in combination negatively affect the long term resilience of the network.

Typically, mitigation for the loss of Low Use Sites is through the payment of a financial contribution of £35,610 which is secured via Section 106 agreement to enhance, manage and monitor the wider Solent Wader and Brent Goose Network. This funding is to be managed by the respective local authority and used to support schemes across the network, including in neighbouring authorities. Due to the lack of an established strategy within Fareham Borough, Natural England have requested further information to demonstrate a clear link between impact and mitigation, i.e. detail of how the financial contribution would be used to enhance the wider network.

This strategy sets out the creation and management of a Winter Bird Mitigation Area which will enhance the wader and brent goose network, and provide a buffer to Titchfield Haven NNR (part of the Solent and Southampton Water SPA).

## 3.1 Objectives

Based on the findings of the previously undertaken bird surveys, and the impact of the associated developments, objectives are:

- To create suitable foraging habitat for overwintering waders (in particular) lapwing; and
- To provide secondary biodiversity benefits such as for breeding farmland birds including lapwing.

## 3.2 Site Selection

Following the surveys in 2016 and 2017, it was concluded that the site had negligible importance for wintering birds (substantiated by the fact it is not currently included within the wader and brent goose network), therefore the provision of habitat in this location would constitute enhancement of the wader and brent goose network.

The proposed mitigation area will measure 5.0 ha and is larger than many existing Low Use sites within the wader and brent goose network in Fareham Borough. For example, F06, F12, F17J, F23, F29, F32, F48J, F79, F80 and F81 all measure less than 5.0 ha and are similarly bounded by mature tree and hedgerow margins.

The location of the mitigation area is appropriate, lying immediately adjacent to the SPA. Furthermore, two lapwing were recorded on site in March 2016 within the proposed mitigation area during surveys in support of application P/17/1451/OA (Hampshire Ecological Services, 2017). This gives high confidence that with the provision of suitable habitat the mitigation area will be used.



## 3.3 Management Principles

According to Sheldon *et al.* (2004)<sup>1</sup> a study of lapwing found 50% of birds and flocks during winter were found on crops, stubble and bare tillage, compared to 25% on pasture. Primarily foraging takes place at night for earthworms, with a resulting need for clear foraging areas. However, according to Edwards and Bohlen (1996)<sup>2</sup>, on average permanent pasture supports the highest earthworm density, with lower densities in winter cereals. It is theorised by Gillings (2003)<sup>3</sup> that foraging density may therefore be higher in arable cropped fields because a greater foraging effort is required. Taking this together with other potential environmental effects (in particular the need to minimise impacts from nitrogen outputs from the land), is proposed that the mitigation area is managed primarily as permanent pasture.

Lapwing require areas of bare ground or short vegetation from mid-March to June and will nest in grassland. There is also the potential for the grassland area to be used by other SPA qualifying species such as dark-bellied brent geese *Branta bernicla bernicla*.

Therefore, the mitigation area will be established with a grass mix of hard-wearing grasses suitable for grazing geese (including perennial rye grass *Lolium perenne*) with a high proportion of white clover *Trifolium repens*. The addition of clover into the mix will remove any need for artificial fertiliser as clover acts to fix nitrogen within the soil, and also helps to support a rich invertebrate biomass. Grassland will be managed through twice-yearly cuts with the final cut in September to make sure of a suitably short sward for winter foraging.

A 6m uncultivated margin will be maintained around the periphery of the arable areas. This will provide potential nesting and foraging habitat for birds during summer, and provide habitat for invertebrates and reptiles (recorded on site). The provision of this margin will also avoid potential damage or disturbance of boundary woodland and hedgerow habitats which are known to support reptiles, hazel dormice, bats and badgers.

## 3.4 Impacts to On-Site Biodiversity

As set out in Section 2, the site predominately supports semi-improved grassland and arable habitats with non-significant populations of wintering and breeding birds, foraging and commuting activity by up to six species of bat, presence of hazel dormice within site boundary hedgerows and a low population of reptiles. It is predicted that the proposed management will result in a qualitative gain for on-site biodiversity as discussed in Table 2.

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<sup>1</sup> Sheldon, R., Bolton, M., Gillings, S. and Wilson, A. (2004), Conservation management of Lapwing *Vanellus* on lowland arable farmland in the UK. *Ibis*, **146**: 41-49.

<sup>2</sup> Edwards, C.A. & Bohlen, P.J. (1996). *Biology and Ecology of Earthworms*, 3rd edn. London: Chapman & Hall.

<sup>3</sup> Gillings, S. (2003). Diurnal and nocturnal ecology of Golden Plovers *Pluvialis apricaria* and Lapwings *Vanellus vanellus* wintering on arable farmland. PhD Thesis, University of East Anglia, Norwich.

# Winter Bird Mitigation Strategy



**Table 2:** Impacts to On-site Biodiversity

Feature	Impact	Rationale
Wintering Birds	Beneficial	The primary aim of the proposals is to create overwintering foraging habitat for wading birds (in particular lapwing). In addition to waders, the provision of short pasture, scrapes and uncultivated margins will provide foraging opportunities for other farmland birds.
Breeding Birds	Beneficial	The majority of the potential breeding birds identified were associated with boundary features which will be unaffected by the proposals. In addition the proposed grassland will provide potential habitat for ground nesting birds, although it is acknowledged that the mature tree boundaries may limit uptake. The uncultivated margins will provide foraging habitat for a wide range of farmland species in the form of seeds and invertebrates.
Bats	Beneficial	It is anticipated that the proposals, in particular the provision of uncultivated (but managed) field margins will increase the availability of invertebrate prey for bats.
Badger	Neutral	A badger sett is present at the western boundary of the site. The provision of a 6m uncultivated margin will avoid damage to the sett during management operations. Badgers currently forage within the southern field and the provision of uncultivated margins will maintain suitable foraging habitat (in addition to the managed fields).
Hazel dormice	Neutral	The provision of a 6m uncultivated margin will protect hazel dormouse habitat from damage or disturbance during management operations.
Reptiles	Beneficial	The provision of a 6m uncultivated field margin (which will be managed) will increase habitat suitability for reptiles by providing habitat variation for refuge, basking and foraging.

Consideration has also been given to quantitative biodiversity gain using the Biodiversity Metric 2.0. Pre and post-development habitats have been quantified in accordance with the Biodiversity Metric 2.0 Calculation Tool and Technical Supplement<sup>4</sup>.

<sup>4</sup> Natural England, (2019). The Biodiversity Metric 2.0 auditing and accounting for biodiversity Technical Supplement Beta Edition





The proposals will result in the loss of 1.39 ha of grassland (modified grassland) from the northern field and 3.14 ha of cropland (cereal crops other) from the southern field. Modified grassland is the UKHab equivalent to poor semi-improved grassland (as assessed in the Ecological Appraisal). Cereal crops other has been selected to represent the southern field which is former arable land which has not been recently cultivated (and is now grazed). This is considered appropriate as all cropland habitats (with the exception of those managed specifically for wildlife such as under a stewardship scheme, or traditional orchards) are assigned low distinctiveness. Alternatively, the field could be assessed as sparsely vegetated land (ruderal/ephemeral), however this too is of low distinctiveness.

In accordance with the Technical Supplement, both habitats are assigned a condition score of 1 (poor) with no condition assessment required. Both also score 1 for connectivity (due to low distinctiveness) and 1 for strategic significance.

These habitats therefore have a value of 9.06 biodiversity units, all of which will be lost.

The proposals will result in the creation of 3.82 ha of grassland (modified grassland) and 0.71 ha of cropland (arable field margins tussocky). Modified grassland is low and the margins medium distinctiveness and in accordance with the Technical Supplement, both habitats are assigned a condition score of 1 (poor) with no condition assessment required. Both also score 1 for connectivity (due to low distinctiveness), 1 for strategic significance, 0.965 for time to target condition (1 year) and 1 for difficulty of creation.

This results in a post-development value of 10.11 biodiversity units, a gain of 1.05 units or 11.62%.

## 4.0 Management Actions

There will be three sets of management actions, covering the central grassland, wader scrapes and management of uncultivated margins. It should be noted that specific timings for operations such as sowing and cutting will be subject to weather and growing conditions. These areas are shown in Figure 1.

It is important that the management regime is adaptive to account for future changes in the feature bird populations, climate change etc. Therefore, either in response to external data or monitoring results, the management body is permitted to make alterations to the management actions if agreed by the LPA and Natural England.

### 4.1 Cropping Regime

The fields within the mitigation area will be flailed to ground-level to remove existing vegetation and dead growth. This will be using a tractor-mounted flail. These areas will then be prepared for seeding using a disc harrow to a maximum of 150 mm depth to prevent fertile soil being moved below root depth. If necessary, a chain harrow will be used to remove arisings from flailing and prevent smothering of seedlings (this will also help seed-to-soil contact).

The seed mix to be sown will be a suitable grazing mix dominated by hard-wearing grasses (e.g. perennial rye grass *Lolium perenne*) and a minimum of 10% white clover *Trifolium repens*. Seeding will take place by broadcast at a density of approximately 18 kg/ha. Seed should be sown within 10 mm of the soil surface. Due to the inclusion of a high density of white clover in the seed mix, it is not considered necessary to include artificial fertiliser application.



Following sowing, the seed bed will be rolled. This will improve seed-to-soil contact, moisture retention and will minimise establishment of pest species.

Every 10 years, the grassland will be supplemented if necessary by additional overseeding using the same seed mix. Overseeding will be preceded by a light harrow, or chain harrow, to prepare the seedbed without causing significant damage to the established grassland. This will refresh the seed bank and make sure that perennial rye grass and white clover remain the dominant species within the sward.

Management will predominately be through cutting for hay or silage. This will comprise a first cut in late July / August (following majority of breeding bird activity) and a second cut in late September (to achieve a winter sward height of 50-60mm). Alternatively, low-intensity grazing could be conducted.

## 4.2 Wader Scrapes

To improve the habitat suitability for other wading birds (either qualifying species for the SPA or part of the qualifying assemblage) three wader scrapes will be created within the mitigation area. These will be of irregular shape with an average area of 50m<sup>2</sup>. To create a range of conditions and support different species the scrapes will be of variable depth with shallow margins and a deeper centre of 0.5m depth. Water supply for the scrapes will come from rainfall and surface water runoff.

The primary objective is to hold perched water during the winter, but it is anticipated that deeper areas will also hold water for part of the summer and provide an enhancement for breeding birds. The deeper central section of the scrape will occupy approximately 50% of the total area to maximise the likelihood of water retention. Scrapes will be created using an excavator with arisings piled adjacent to the margins to improve water retention and provide bare ground areas suitable for invertebrates.

Locations of scrapes will be chosen by the developers ecologist by observing ground conditions during winter monitoring surveys, but will be located close to the north western boundary of the site where levels are lower. The developers ecologist will then supervise the scrape construction. If necessary following observations of water perching, the scrapes will be constructed with a compacted clay liner to aid water retention.

Scrape banks will be strimmed to ground level every three years in late September / early October to prevent scrub or ruderal species from becoming established.

During this clearance period scrapes will also be inspected for silt build-up and to make sure they still hold water. If necessary, additional excavation will be undertaken to remove material. Additional lining material will be added if necessary to aid water retention.

## 4.3 Margins

Margins of 6m width will be maintained around the periphery of the cropped areas. These will be maintained in accordance with RSPB stewardship guidance for rough grass margins.

After Year 1, margins will be cut no more than once every five years in autumn. To maintain habitat variation, cuts of the margins in the northern and southern fields will be separated by one year.

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The 3m of the margin adjacent to the cropped areas will be cut annually in autumn to maintain diversity within each area for invertebrates and reptiles.

Spraying or fertilising must be avoided within the margins to avoid dominance of undesirable species such as thistles and docks.

## 4.4 Monitoring

Long-term monitoring is proposed which is proportionate to the impact (partial loss of a Low Use site) and takes into account the negligible risk of not successfully offsetting the loss of a Low Use site through enhancements of the wider network (per the Solent Wader and Brent Goose Strategy).

It is proposed that long-term monitoring is undertaken using remote camera surveys. These will take place annually for Years 1 – 5 followed by every 10 years from Years 10 to 80. Two cameras will be deployed for a period of five days each month from October to March, one in the north of the mitigation area and one in the south. Cameras will be set to take photographs at 30 minute intervals. These will subsequently be checked by an ornithologist to confirm the presence or absence of SPA qualifying bird species. Results will be reported to the Owner and LPA.

This will be supplemented by monitoring of the implementation of the above management operations. This will comprise annual site visits during winter in Years 1-10 followed by visits every 5 years from Years 10 – 80 to monitor compliance.

Results will be reported to the Owner and LPA. Should remote camera monitoring determine that corrective action is required, this will be undertaken and a further period of manual monitoring may be required to monitor its effectiveness. This will be agreed with the LPA.

## Timing of Actions

Table 4 sets out the timing of on-site management and monitoring operations.

**Table 4:** Timing of operations

Timing	Operation	Year
Mid-February / Mid-March	Prepare seedbed (plough or harrow to 120-200mm).	Annually
	Sow spring barley via drilling.	Years 1-3, 5-7 etc.
	Broadcast sow ryegrass and clover ley (c. 18kg/ha).	Years 4, 8 etc.
	Consolidate seed bed via rolling if required.	Annually
	Create wader scrapes	Year 1
Late July / August	Cut grassland to 150 mm in height.	Years 4, 8 etc.
	Introduce grazing at low density if required.	

# Winter Bird Mitigation Strategy



August	Harvest spring barley.  Leave as stubble.	Years 1-3, 5-7 etc.
Late September	Cut grassland to 60 mm in height.	Years 4, 8 etc.
Late September	Cut 3m of margin adjacent to crops to 150 mm in height.	Annually
Late September	Cut entire northern field margin to 150 mm in height.	Years 5, 10, 15 etc.
Late September	Cut entire southern field margin to 150 mm in height.	Years 6, 11, 16 etc.
Late September / Early October	Strim banks of wader scrapes for scrub encroachment.  Inspect sediment build-up and remove if necessary.	Years 3, 6, 9 etc.
October to March	Site visit to monitor compliance.	Years 1-10 then 15, 20, 25 etc.
October to March	Remote camera monitoring (5 days per month).	Years 1-5 then 10, 20, 30 etc.


## Quality Control

Version: 1

FINAL

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Version:	Date:	Updated by:	Verified by:	Description of changes:
2	November 20	J. Simper	D. West	Altered long-term management from arable to grassland following discussions with Natural England.

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## **Figure 1: Winter Bird Mitigation Plan**

**APPENDIX C**  
**Commuted Sum Breakdown**

Management activities	Annual Sum	Total over 125 years.	Explanatory Notes
Grassland agricultural management	£1,150	£143,750	Supporting establishment of grassland in first 10 years and maintaining via two cuts per year with baling for 125 years.
Scrape management (Brushcutting)	£100	£12,500	Based on one visit every three years
Hedgerow cutting	£117	£14,625	Based on a cost of £700/day. Hedgerow length = 100m so 1/2 day every three years.
Monitoring & report	£400	£51,250	Monitoring comprises camera surveys from years 1-5 then every 5 years. Estimated at £1,600 per survey. Additional habitat monitoring years 6-10 (£250 per survey)
Total annual cost	£1,767	£222,125	