

Note to Inspector

Appeal:	Land at Newgate Lane, Fareham
Appeal Nos:	APP/A1720/W/20/3252180 & 3252185
Author:	Nick Sibbett on behalf of Fareham Borough Council
Date:	24 th February 2021



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I would like to correct some advice given to the Inspector in the Ecology round table discussion on Thursday 18th February, which I now consider was wrong.

We discussed for SAC sites the qualifying features which are 'primary reasons for selection' and those which 'are present as a qualifying feature but not a primary reason for selection'. The Inspector was advised in the discussion that he was only to consider the features which were primary reasons for selection.

I have checked in the Habitat Regulations Handbook published by David Tyldesley, which is a very well respected source of advice on Habitats Regulations. I now understand that the Inspector should consider all qualifying features equally, regardless of whether they are a primary reason for selection or not. Although it will make no practical difference to the mitigation requirements in this case, I would like the procedural advice to the Inspector corrected so that his Appropriate Assessment does not include this technical irregularity.

Attached is the Title Page and page 'D2 page 1' of the Habitat Regulations Handbook. The relevant text is the bottom paragraph in the left-hand column.

Prior to writing this note I discussed the matter with David West, the appellant's ecologist.

Nick Sibbett CEcol MCIEEM CEnv CMLI
The Landscape Partnership Ltd
The Granary
Sun Wharf
Deben Road
Woodbridge
Suffolk IP12 1AZ

**The
Habitats Regulations Assessment
Handbook**

England and Wales

**Practical guidance on the assessment of the effects of plans
and projects on:
Special Areas of Conservation, Special Protection Areas and
Ramsar sites**

Authors

David Tyldesley FRTPI, FCIEEM, FRSA

Dr Caroline Chapman MCIEEM

Legal Adviser

Graham Machin of Counsel



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D.2.1 Introduction

Each European site is designated as a SAC, classified as an SPA, or listed as a Ramsar site in respect of specific 'qualifying features'. These are essentially the reasons (habitats, mosaic of habitats, species or assemblage of species, and combinations of these) for which the site is to be protected and managed for conservation purposes (see further the introduction to designations in Part A of this Handbook). The 'qualifying features' are listed in the 'citation' or other description of the site, explaining why it is designated, classified or listed.

The Joint Nature Conservation Committee (JNCC) website provides the most comprehensive source of information on the qualifying features for European sites in the UK. The following link takes you to the 'protected sites' page on the JNCC website (link provided on the web page)

Firstly select 'Special Areas of Conservation', 'Special Protection Areas' or 'Ramsar' from the left hand menu and then in the sub-menu you can view the site list for England or Wales, including the sites which lie partly in England and partly in Wales (or where relevant partly in England and partly in Scotland, or partly in inshore and partly in offshore waters). Clicking on the country list will produce a list of all the relevant sites listed in alphabetical order. Clicking on the EU code for the site (its reference number on the list held by the European Commission) will present the information required in terms of the qualifying features and provide links to the 'standard data form' submitted by the UK to the European Commission and mapped information (see further section D.4 below).

D.2.2 Special Areas of Conservation – qualifying features

The qualifying features for SACs are the habitats listed in Annex I of the Habitats Directive and the species listed in Annex II of the Directive, for which the site is designated. Each qualifying feature has a code number, for example 1170 'Reefs' or 1365 'Common seal' drawn from the respective Annexes.

For special areas of conservation, the citation on the JNCC webpage refers to qualifying features that are 'a primary reason for selection' and those which are 'present as a qualifying feature, but not a primary reason for selection'. For assessment purposes, the distinction can be ignored because it related to the iteration between the Government and the European Commission during the designation process. All the qualifying features listed should be treated equally. The webpage includes a specific note confirming this which states 'when undertaking an appropriate assessment of impacts at a site, **all** features of European

importance (both primary and non-primary) need to be considered'.

For the purposes of clarification there is, however, an important distinction between 'priority' habitats and species and those which are not.

'Priority' habitats and species are those which Article 1 of the Directive considers to be the habitat types in danger of disappearance and the species which the European Community has particular responsibility for the conservation of, in view of the proportion of the natural range which falls within the European Union territory. On the webpage they are clearly marked with a suffix asterisk '**' (as they are in the Annexes to the Habitats Directive) followed by the words 'priority feature' in smaller font.

These 'priority' features do have an effect on the Habitats Regulations Assessment process. For example, in the event of a conflict between the conservation objectives for a priority species or habitat and those of a non-priority species or habitat, the conservation of the former would generally prevail over the latter. Also, in stage 4 of the Habitats Regulations Assessment process, during the consideration of imperative reasons of overriding public interest (see section C.14), the reasons that may override an adverse effect on the integrity of a priority habitat or species are more restricted than those which may override a non-priority feature.

There is no connection between features which are the 'primary' reason for site selection and these priority habitats or species. Features which are primary reasons may or may not be 'priority' habitats or species. The 'primary' label is not related to the status of habitats or species and, as explained above, there is no distinction to be drawn in the assessment process between 'primary' and 'non-primary' qualifying features in the way that there may be a need to distinguish between 'priority' and non-priority qualifying features.

The citation of the SAC will also briefly explain why each qualifying feature is designated for that SAC. For example in the citation for the Wash and North Norfolk Coast SAC, the citation for the Common seal reads as follows.

'1365 Common seal Phoca vitulina The Wash, on the east coast of England, is the largest embayment in the UK. The extensive intertidal flats here and on the North Norfolk Coast provide ideal conditions for common seal Phoca vitulina breeding and hauling-out. This site is the largest colony of common seals in the UK, with some 7% of the total UK population.'