

LAND TO THE EAST OF DOWNEND ROAD, PORTCHESTER, FAREHAM BOROUGH

S78 APPEAL AGAINST THE DECISION BY FAREHAM BOROUGH COUNCIL TO
REFUSE PLANNING PERMISSION FOR DEVELOPMENT DESCRIBED AS:

OUTLINE PLANNING APPLICATION WITH ALL MATTERS RESERVED (EXCEPT THE
MEANS OF ACCESS) FOR RESIDENTIAL DEVELOPMENT, DEMOLITION OF EXISTING
AGRICULTURAL BUILDINGS AND THE CONSTRUCTION OF NEW BUILDINGS
PROVIDING UP TO 350 DWELLINGS; THE CREATION OF NEW VEHICULAR ACCESS
WITH FOOTWAYS AND CYCLEWAYS; PROVISION OF LANDSCAPED COMMUNAL
AMENITY SPACE, INCLUDING CHILDREN'S PLAY SPACE; CREATION OF PUBLIC
OPEN SPACE; TOGETHER WITH ASSOCIATED HIGHWAYS, LANDSCAPING,
DRAINAGE AND UTILITIES.

LPA REFERENCE: P/20/0912/OA

STATEMENT OF COMMON GROUND HABITAT REGULATIONS

LPA, FAREHAM BOROUGH COUNCIL
APPELLANT, MILLER HOMES
TECHNICAL CONSULTEE, NATURAL ENGLAND

5 July 2021

Signed on behalf of the Appellant:



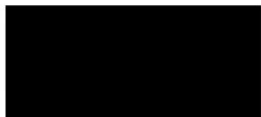
Date: 5 July 2021

Signed on behalf of the LPA:



Date: 15 July 2021

Signed on behalf of the technical consultee:



Date: 14 July 2021

Introduction

- 1.1 This statement of common ground (SoCG) has been prepared by Terence O'Rourke Limited on behalf of Miller Homes (the appellant) to be agreed with Fareham Borough Council and Natural England, regarding consideration of the requirements of the Appropriate Assessment process set out in the Conservation of Habitats and Species Regulations 2017 (as amended), in respect to the proposed residential development of land to the east of Downend Road, Portchester.

Relevant legislation

- 2.1 The effect of Regulation 63 of The Conservation of Habitats and Species Regulations 2017 (as amended), is that, before deciding to grant planning permission for proposed development which is likely to have a significant effect on a European site (either alone or in-combination with other plans/projects), the Competent Authority must make an appropriate assessment of the implications for the European site in the context of its nature conservation objectives. Permission can only be granted once the appropriate assessment has concluded that the development will not adversely affect the integrity of the European site.

Agreed matters

- 3.1 It is agreed that the development as proposed, subject to mitigation secured through conditions and legal agreement, will not adversely affect the integrity of the European sites.
- 3.2 With respect to European protected habitats there are no matters disputed between the Council, Natural England and the Appellant.

Habitats Regulation Assessment

- 3.3 FBC has undertaken a Habitats Regulations Assessment (HRA) dated 4 November 2020 which was published on the Council's website (Appendix 1).
- 3.4 At Stage 1 the HRA identified the following European sites potentially impacted by the development proposal:
- Portsmouth Harbour Special Protection Area (SPA)
 - Solent and Southampton Water SPA
 - Chichester and Langstone Harbours SPA
 - Solent Maritime Special Area of Conservation (SAC)
 - Solent and Isle of Wight Lagoon SAC
 - Portsmouth Harbour Ramsar site
 - Solent and Southampton Water Ramsar site
 - Chichester and Langstone Harbours Ramsar site
 - Solent and Dorset Coast SPA

- 3.5 At Stage 2 (screening assessment) the HRA concluded that there would be no likely significant effects on any of the European sites arising from disturbance from construction activities, hydrological changes (including water quality, foul water and water resource related effects), air quality changes or shortened view-lines for overwintering birds. However, the HRA screening did conclude that there would be a likely significant effect on the Portsmouth Harbour SPA and the Solent and Southampton Water SPA (and associated Ramsar sites) through the in-combination effects of increased recreational activity and a likely significant effect on the Portsmouth Harbour SPA and Ramsar site and Solent and Dorset Coast SPA arising from the potential increased risk of flooding.
- 3.6 Stage 3 of the HRA (appropriate assessment) determined that, subject to mitigation in relation to recreational disturbance and flood risk, the development would not adversely affect the integrity of European sites.
- 3.7 Natural England were consulted on the Habitats Regulations Assessment and on 20 November 2020 confirmed by letter (Appendix 2) that provided the appropriate measures concerning recreational disturbance and maximum water usage are secured and implemented, they agreed with the conclusions drawn in the assessment – i.e. that mitigation measures would ensure there are no adverse likely significant effects on the integrity of the designated sites either alone or in-combination.
- 3.8 This SoCG takes into account the High Court judgment dated 28 May 2021 in the case between Brook Lane Residents against FBC [2021] EWHC 1434 (Admin). It is agreed that, given the application is in outline and therefore in the absence of sufficient detail to support a bespoke occupancy rate, the development proposed is of a nature, in terms of density and capacity, that the use of a 2.4 person average occupancy rate in undertaking the relevant assessment calculations is robust.

Recreational pressure

- 3.9 In respect to addressing the issue of recreational pressure on the European sites from new development within the borough, Fareham Borough Council formally adopted the Solent Recreation Mitigation Strategy (SRMS) in March 2018. The SRMS provides a strategic solution to ensure the requirements of the Habitats Regulations are met with regard to the in-combination effects of increased recreational pressure on the Solent SPAs arising from new residential development.
- 3.10 FBC's appropriate assessment of the proposed development at Land east of Downend Road (Appendix 1) includes the consideration of recreational pressure. Mitigation by way of developer's financial contributions (secured through a legal agreement) towards the measures set out in the SRMS (at the rates set out in the strategy) is identified as appropriate to ensure there are no likely significant effects on the European sites, either alone or in-combination.
- 3.11 In the letter of 20 November 2020 (Appendix 2), Natural England confirms that they concur with the findings of FBC's appropriate assessment, that subject to securing and implementing the mitigation measures, the proposal will not adversely affect the integrity of the European sites.

Flood risk

- 3.12 FBC's appropriate assessment of the proposed development includes the consideration of increased flood risk. The proposed development will alter the

drainage regime of the site by increasing the impermeable surface area and so, without mitigation, would increase the rate, volume and potential contamination of surface water runoff. To mitigate this, the proposed development will incorporate a sustainable drainage system (SuDS) to discharge surface water to infiltration basins, with additional treatment by source control devices. This will remove heavy metals, hydrocarbons, rubber dust and silts from runoff by settlement prior to discharging into the ground.

- 3.13 The proposed drainage system will be designed to cater for the 1-in-30 year storm event, providing attenuation to store flood waters on-site during flood events up to, and including, the 1 in 100 year (plus 40% climate change) rainfall event. With these measures in place, FBC's appropriate assessment concludes that there will not be any likely significant effects on the integrity of the European sites as a result of increased flood risk.

Nutrient / nitrogen neutrality

- 3.14 The Information to Support a Habitat Regulations Assessment submitted in as part of the planning application included the Natural England's standard nitrogen neutrality calculation spreadsheet¹. This spreadsheet identified a deficit in the nitrogen budget for the proposed development, on the basis of maximum water use of 110 litres per person per day (as required under section G2 of the Building Regulation 2010 for new dwellings). No likely significant effect alone or in combination with other plans and projects was therefore concluded.
- 3.15 FBC's HRA of 4 November 2020 (Appendix 1) verifies that Natural England reviewed the methodology used for the calculation of the nitrogen budget for the proposed development and confirmed that the methodology is acceptable.
- 3.16 This position is cemented in Natural England's response to the HRA (letter 20 November 2020, appendix 2 of this SoCG). The correspondence confirmed that as long as a maximum water usage of 110l/day per person can be achieved (and was secured through a legal agreement), they would be satisfied that neutrality has been achieved and there is no likely significant effect on the designated sites.

Planning conditions

- 3.17 The following three conditions relevant to satisfy the requirements of the Habitat Regulations have been discussed and were attached to the officer report. The first two conditions require the incorporation of SuDS within the proposed development and preparation of a Construction Environmental Management Plan (CEMP) to prevent increases in runoff and water pollution.

5) No development hereby permitted shall commence in any development parcel, as shown on the Development Parcel Plan approved pursuant to Condition 3 above, until a detailed surface water drainage strategy for that development parcel has been submitted to and approved in writing by the Local Planning Authority. The strategy shall include the following:

a) The detailed design of Sustainable Drainage Systems (SuDS) to be used on the site in accordance with best practice and the CIRIA SuDS Manual (C753) as well as details on the delivery, maintenance and adoption of those SuDS features;

¹ <https://www.push.gov.uk/2020/03/18/natural-englands-latest-guidance-on-achieving-nutrient-neutrality-for-new-housing-development/>

- b) An assessment of local geology to determine risks to saturating the railway cutting face located to the south of the site, the likely change to rate of water infiltration into the cutting and the adequacy of the current track to accommodate any additional infiltration;
- c) Identification of any proposed amendments to the principles detailed within the Flood Risk Assessment and Drainage Strategy rev D;
- d) A summary of surface run-off calculations for rate and volume for pre and post development;
- e) Evidence of sufficient attenuation on site for a 1 in 100 year plus climate change event;
- f) Evidence that Urban Creep has been considered in the application and that a 10% increase in impermeable area has been used in calculations to account for this;
- g) Information evidencing that the correct level of water treatment exists in the system in accordance with the CIRIA SuDS Manual C753;
- h) Maintenance regimes of entire surface water drainage system including individual SuDS features, including a plan illustrating the organisation responsible for each element, evidence that those responsible/adopting bodies are in discussion with the developer and evidence of measures taken to protect and ensure continued operation of drainage features during construction;

The development shall be carried out strictly in accordance with the approved strategy unless otherwise agreed in writing by the local planning authority.

REASON: To ensure satisfactory disposal of surface water from the site; to ensure no adverse effects on the integrity of designated sites for nature conservation purposes. The details secured by this condition are considered essential to be agreed prior to the commencement of development on the site so that appropriate measures are in place to avoid potential adverse impacts.

7) No development hereby permitted shall commence in any development parcel, as shown on the Development Parcel Plan approved pursuant to Condition 3 above, until a Construction Environmental Management Plan (CEMP) for that development parcel has been submitted to and approved in writing by the local planning authority. The submitted CEMP shall include (but shall not necessarily be limited to): ...

- p) A construction-phase drainage system which ensures all surface water passes through three stages of filtration to prevent pollutants from leaving the site;
- q) Safeguards for fuel and chemical storage and use, to ensure no pollution of the surface water leaving the site.

REASON: ...In the interests of protecting protected species and their habitat; In the interests of protecting nearby sites of ecological importance from potentially adverse impacts of development. The details secured by this condition are considered essential to be agreed prior to the commencement of development on the site so that appropriate measures are in place to avoid potential adverse impacts.

- 3.18 The final condition seeks to ensure that the assumptions made in the nitrogen budget in relation to water consumption are realistic.

16) No dwelling hereby permitted shall be occupied until details of water efficiency measures have been submitted to and approved in writing by the Local Planning Authority. These water efficiency measures should be designed to ensure potable water consumption does not exceed a maximum of 110L per person per day. The development shall be carried out in accordance with the approved details.

REASON: In the interests of preserving water quality and resources.

Appendix 1: FBC Habitat Regulations Assessment (4 November 2020)

Appendix 2: Natural England's consultation response to the HRA (20 November 2020)