

**TOWN AND COUNTRY PLANNING ACT**  
**1990**  
**SECTION 78 APPEAL**

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Appeal Ref: APP/A1720/W/21/3271412

LPA Ref: P/18/1073/FP

Section 78 appeal against refusal of planning permission for:

Outline planning application for residential development of 225  
dwellings, bird conservation area and  
area of public open space with all matters reserved except for access.

at

Land south of Romsey Avenue, Portchester

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**ECOLOGY PROOF OF EVIDENCE**

**OF NICHOLAS SIBBETT CEcol CMLI CEnv MCIEEM**

**ON BEHALF OF FAREHAM BOROUGH COUNCIL**

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**Appendix NS1**

**Appendix NS2**

# 1 SUMMARY

## **Introduction**

1.1 My name is Nicholas Sibbett and I have been appointed by Fareham Borough Council (“the Council”) as its ecology witness for the Public Inquiry.

1.2 The Council resolved in its committee meeting of 16<sup>th</sup> September 2020 (Core Document CDC.3) to refuse the planning application, which was duly refused by a Decision Notice dated 21<sup>st</sup> September 2020 (Core Document CDC.4). The reasons relating to ecology were

*b) The proposal fails to appropriately mitigate the likely adverse effects on the integrity of European Protected Sites which would arise as a result of the effect of the development on, and loss of part of, a Primary Support Area for Brent Geese and waders;*

*d) The proposal fails to provide sufficient information to demonstrate that protected and priority species would be protected and enhanced; and*

*h) 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.*

1.3 My evidence addresses these three reasons for refusal. I will also briefly consider other Habitats Regulations Assessment issues to assist the Inspector.

## **Reason for refusal b)**

1.4 In seeking to address reason for refusal b), the appellant proposes a bird mitigation area on the southern edge of the built development, intended to provide a facility to support

the Brent Geese and waders unable to use the proposed development. The bird mitigation area is intended to provide improved foraging for Brent Geese so that it can support the birds in a smaller area. There is conflicting information from the appellant regarding the composition of grassland in the mitigation area, in terms of seed mix and provision of margins. The appellant also considers that the current Primary Support Area classification is not supported by evidence, although the process for collecting such evidence has not been followed.

1.5 I consider that mitigation is required for loss of part of the Primary Support Area under the appeal scheme, both to comply with policy and to avoid an adverse effect on the integrity of the Portsmouth Harbour SPA (and the associated SSSI and Ramsar). There are several reasons why the proposed mitigation is inadequate:

- The suggested reclassification of the site as a Low Use Site does not meet the published criteria for reclassification
- The ongoing availability of the site as a Primary Support Area in the absence of development
- A high demand for public recreation which is likely to cause disturbance to Brent Geese and waders
- Disturbance from the viewing platform / screen and from pedestrians using the proposed road immediately to the north of the mitigation land
- Small size and suboptimal shape of the mitigation land, and the presence of buildings within 500m
- Compromise of the size and openness of the countryside

gap

- Unresolved issues about badger gaps in fencing
- The lack of detail on mitigation and the failure to provide a mechanism to secure it in perpetuity
- The low use made by Brent Geese and Waders of land disturbed by the public in the vicinity
- Potential construction disturbance

1.6 Reason for refusal b) is therefore well-founded.

**Reason for refusal d)**

1.7 In seeking to address the reason for refusal d), the appellant is continuing to carry out bat and dormouse surveys which will be completed in or around October 2021. The Inspector is unable to evaluate all likely significant effects of the appeal proposal or the extent to which they can be effectively mitigated until the survey work is complete. The choice is to defer the decision until the surveys are complete and the implications are included in an updated ES, or to refuse the appeal on the grounds of incomplete information.

1.8 The current status of the badger group is unknown, and impacts of works on adjacent land might make the colony unviable cumulatively with the appeal proposals. Further and detailed study of the badger group is necessary to be able to understand impacts.

1.9 The badger sett, which is within the south-east corner of the mitigation area will be retained in the site (if the badgers persist despite cumulative impacts). Security

fencing would fence the badgers into the bird reserve, thus significantly hindering the badgers' ability to forage widely and possibly resulting in starvation in a difficult season.

- 1.10 The value of the site for reptiles is also understated in the revised ES.
- 1.11 Reason for refusal d) therefore remains with respect to badgers, and with respect to uncertainty over bats and dormouse.

**Reason for refusal h)**

- 1.12 The appellant's shadow HRA forming part of the revised ES states that the appeal site would contribute towards the Solent Recreation Mitigation Strategy in accordance with the latest tariff. However, this aspiration has not been followed by a signed S106 agreement or undertaking. In my professional opinion, if a S106 agreement or undertaking is entered into, so that the correct payment can be secured for the appeal scheme, then the development would no longer be unacceptable on the basis of this issue and reason for refusal h) would be resolved.

## 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 30 years' professional experience as an ecologist, 13 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 surveys 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), a 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) until June 2021, 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 Public Inquiries, Examinations in Public and Appeal Hearings from 2008 to the present day, including a number of cases involving the impacts of proposed housing development upon Special Protection Areas.



### 3 INTRODUCTION AND SCOPE OF EVIDENCE

3.1 I am appointed by the Council to act as its ecology witness and provide evidence at this Inquiry. Before accepting the commission, I reviewed the case so that I could be confident that the Council's refusal of the planning permission had merit.

3.2 The Council resolved in its committee meeting of 16<sup>th</sup> September 2020 (Core Document CDC.3) to refuse the planning application, which was duly refused by a Decision Notice dated 21<sup>st</sup> September 2020 (Core Document CDC.4). The reasons relating to ecology were

*b) The proposal fails to appropriately mitigate the likely adverse effects on the integrity of European Protected Sites which would arise as a result of the effect of the development on, and loss of part of, a Primary Support Area for Brent Geese and waders;*

*d) The proposal fails to provide sufficient information to demonstrate that protected and priority species would be protected and enhanced; and*

*h) 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.*

3.3 My evidence addresses these three reasons for refusal. I will also briefly consider other Habitats Regulations Assessment issues to assist the Inspector.

3.4 I viewed the site from the gate entrance on 7<sup>th</sup> June 2021 and also on that day visited the Wicor Recreation Ground, Portsmouth Harbour SPA and AFC Portchester.

3.5 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.

## **4 PLANNING POLICIES, LEGISLATION AND OTHER GUIDANCE**

### **Adopted and Emerging Local Planning Policy**

- 4.1 The Council's Local Plan Part 1: 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. Policy CS6 also makes provision for the protection of European sites.
- 4.2 The Council's Local Plan Part 2: Development Sites and Policies document of June 2015 (CDE.2) Policy DSP13 offers protection to European sites such as SPAs, as well as protected and priority species. Policy DSP14 sets out the necessity for developments to provide mitigation for development on sites supporting Brent Geese and / or waders, with the approach depending on whether a site is "uncertain" or "important". Policy DSP15 requires mitigation of recreational impacts of development in combination with other development in the vicinity of European sites.
- 4.3 The Council's revised Publication Local Plan June 2021 (CDF.5) has relevant policies, although the Council accepts that, at this stage of preparation, it currently carries limited weight. Policy NE1 gives protection to designated sites and protected and priority habitats and species, including breeding and foraging areas. Policy NE2 requires 10% net gain in biodiversity. Policy NE3 requires a contribution to the Solent Recreation Mitigation Strategy or other measures to mitigate recreational impacts from

development. Policy NE4 requires nutrient neutrality on water entering the SPAs, SACs and Ramsar sites of the Solent, and Policy NE5 requires sites used by Brent Geese and Waders to provide on-site mitigation or a contribution to off-site mitigation to prevent harm to the SPA, with the approach dependent on the status of the site in the hierarchy of the Solent Wader and Brent Geese Network.

- 4.4 The approach to Brent Geese and Waders under both the adopted and emerging Local Plans draws on the work of the Solent Waders and Brent Goose Steering Group, an expert group of organisations including Natural England and the Hampshire & Isle of Wight Wildlife Trust. Their latest strategy is the Solent Waders and Brent Goose Strategy 2020 (Core Document CDH.6) and they have also produced 2018 Guidance on Mitigation and Off-setting Requirements (Core Document CDH.7).

### **National Policy**

- 4.5 The National Planning Policy Framework (NPPF) dated February 2019, paragraph 170 provides that decisions should contribute to and enhance the natural and local environment by, among other things, protecting sites of biodiversity value (subparagraph a), and minimising impacts on and providing net gains for biodiversity (subparagraph d). Paragraph 171 relates to policy for designated sites of biodiversity importance. Proposals for any development on or affecting protected wildlife or geodiversity sites will be judged against Local Plan policies which should 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 to biodiversity 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.*

4.6 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**

- 4.7 The Council and Inspector must, under Section 40 of the Natural Environment and Rural Communities Act 2006, in exercising their functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.
- 4.8 The Council and Inspector also have a duty under Section 28G of the Wildlife and Countryside Act 1981 to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which any site of special scientific interest likely to be affected by the exercise of such functions is of special scientific interest.
- 4.9 The Conservation of Habitats and Species Regulations 2017 ("the Habitats Regulations") generally follow the Birds Directive and Habitats Directive but unlike the Directives there is now no role for the European Union; the UK Government has taken that role following the end of the Brexit transition period on 31<sup>st</sup> December 2020. Special Protection Areas and Special Areas of Conservation are defined in the Regulations as forming a national network of 'European sites'.
- 4.10 The Regulations define competent authorities as including public bodies and persons holding a public office. When determining a planning application, the local planning authority is the competent authority, but that role passes to an Inspector or the Secretary of State on appeal.

Competent authorities are required to make an appropriate assessment of any plan or project (unless directly connected with or necessary to the management of the site) they intend to permit or carry out, if the plan or project is likely to have a significant effect upon a European site. This is governed by Regulation 63 of the Habitats Regulations, which says, in relevant part, that:

“63.— (1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which-

(a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

(b) is not directly connected with or necessary to the management of that site,

must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.

(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable it to determine whether an appropriate assessment is required.

(3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.

(4) It must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.”

4.11 If the competent authority wishes to permit a plan or project despite a negative assessment under Regulation 63, imperative reasons of overriding public interest must be demonstrated, and there should be no alternative to the scheme (Regulation 64). The permission process in that case would require involvement of the Secretary of State, and compensatory measures would be needed. In practice, there will be very few cases where a plan or project is permitted despite a negative appropriate assessment (and the appellant has not suggested that this should be the case in the event of a negative appropriate assessment for the appeal scheme).

4.12 Regulation 70 provides that Regulations 63 and 64 apply in relation to the grant of planning permission. Regulation 70(3) specifically addresses outline applications, saying



that:

“Where [Regulations 63 and 64] apply, outline planning permission must not be granted unless the competent authority is satisfied (whether by reason of the conditions and limitations to which the outline planning permission is to be made subject, or otherwise) that no development likely adversely to affect the integrity of a European site or a European offshore marine site could be carried out under the permission, whether before or after obtaining approval of any reserved matters.”

- 4.13 The tests under the Habitats Regulations are very strict. To exclude a likely significant effect under Regulation 63(1)(a) or to exclude an adverse effect on integrity under Regulation 63(5) a competent authority must be certain beyond a reasonable scientific doubt as to the absence of such effects: see *Mynydd y Gwynt v SSBEIS* [2018] P.T.S.R 1274 (Core Document CDK.9) and *R (An Taisce (the National Trust for Ireland)) v Secretary of State for Energy and Climate Change* [2015] Env LR 2 at [18] (Core Document CDK.16).
- 4.14 Although not provided for under the Habitats Regulations, Government policy under paragraph 176(b) of the NPPF is for Ramsar sites (wetlands of global importance) to be treated as if they were European sites within the planning process.
- 4.15 The principal legislative measures for species protection are Part I of the Wildlife and Countryside Act 1981 and Part 3 of the Habitats Regulations. Various Protected Species of animals are given protection from deliberate capture, injury, killing, disturbance or egg taking/capture. Their

breeding sites or resting places are also protected from damage or destruction, which does not have to be deliberate. A wide range of species are protected, with those most likely to be considered in planning applications being bats, dormouse, great crested newt and reptiles. Natural England may give a licence for actions that are otherwise illegal, subject to them being satisfied on the three tests of no alternative, overriding public interest, and maintenance of the species in favourable condition. Separate regimes also exist for certain species, such as badgers, which are protected under the Protection of Badgers Act 1992.

## 5 IMPACTS UPON EUROPEAN SITES – REASON FOR REFUSAL B)

### Introduction

- 5.1 The appeal site is part of a Primary Support Area for Waders and Brent Geese as shown on the website <https://solentwbgs.wordpress.com/page-2/> published by the Solent Waders and Brent Geese Strategy steering partners. An extract of the mapping from that website is provided as Core Document CDH.8. The Primary Support Area is labelled as F1 on the mapping and includes the appeal site and an adjacent arable field. Playing fields at the nearby Wicor Recreation Ground are a Secondary Support Area and an arable field to the west is a Low Use Site. The appeal site also forms part of a Primary Support Area as shown on the Policies Map for the emerging Local Plan (Core Document CDF.5 – the map is available at [www.fareham.gov.uk/PDF/planning/local\\_plan/PoliciesMap.pdf](http://www.fareham.gov.uk/PDF/planning/local_plan/PoliciesMap.pdf)).
- 5.2 The appeal site is shown as part of an “uncertain” Brent Geese and Wader site in Inset 12 to the Policies Maps for the Local Plan Part 2: Development Sites and Policies document. This reflects the categorisation of the site under the previous 2010 version of the Solent Waders and Brent Goose Strategy. As noted in paragraph 8.12 of the Council’s Statement of Case, Policy DSP14 expressly allows for the classification of sites to be updated, and as a Primary Support Area (the second highest categorisation after Core Areas in the current Strategy) I consider the site to be “important” for the purposes of Policy DSP14.

- 5.3 The Primary Support Areas under the current Strategy are land that, when in suitable management, make an important contribution to the function of the Solent waders and Brent Goose ecological network (Solent Waders and Brent Goose Strategy Guidance on Mitigation and Off-setting Requirements Final Report October 2018, Core Document CDH.7 at para 17). Low Use sites have the potential to be used by waders or Brent Geese and have the potential to support the existing network and provide alternative options and resilience for the future network; they are of less value to Brent Geese and waders compared to Primary Support Areas, but still of value.
- 5.4 Wading birds, or 'waders', such as curlew, oystercatcher, and others, feed upon the mudflats of the SPAs, below the high tide line. Numbers are very high in winter, with the inward migration of waders from breeding grounds much further north. The SPAs are also used for feeding by birds migrating from the Arctic to Africa. At high tides, they cannot remain on the mudflats and they fly to roost in dry places, such as fields near the SPAs. Brent Geese also migrate to the SPAs in winter, and feed upon the mudflats below the high tide level. They also feed on grasslands and agricultural land, especially preferring short, nutrient-rich grassland typical of some amenity grasslands, pastures and winter cereals.
- 5.5 The SPAs are clearly described in the appellant's Shadow HRA. Ramsar sites are co-designated with the SPAs as described in the appellant's Shadow HRA. The SPAs are based on underlying Sites of Special Scientific Interest including Portsmouth Harbour SSSI as described in the revised ES Ecology chapter, para 10.4.7.

5.6 The appellant's Shadow HRA and similar text within Chapter 10 of the revised ES suggest that the appeal site should be reclassified as a Low Use Site and that the proposed mitigation is suitable for loss of the ability of Brent Geese and waders to use the part of the appeal site which will be used for development. For the reasons given below, I disagree.

**Should the Primary Support Area classification be revised to a Low Use Site?**

5.7 The possibility that Waders and Brent Geese sites can be re-classified is allowed for on pages 4-5 of the 2018 Mitigation Guidance (CDH.7). Paragraph 9 states that reclassification of a site will be considered if confirmed by 3 consecutive years of survey to the agreed survey methodology under appropriate habitat management conditions for waders and / or Brent Goose usage throughout the survey period. The requirement for 3 consecutive years is important, particularly given the fluctuations in population sizes that are characteristic of Brent Geese (see paragraph 3.3 on page 21 of the Solent Waders and Brent Goose Strategy 2020 (Core Document CDH.6)). The requirement that the surveys be undertaken under appropriate habitat management conditions for waders and / or Brent Goose is also important, since otherwise landowners wishing to develop Primary Support Areas would be incentivised to adopt inappropriate management conditions to achieve the re-designation or de-designation of their sites, which would risk progressive erosion of the network of Primary Support Areas.

- 5.8 The appellant has not disputed that the 2012 and 2013 bird surveys, which resulted in the classification of the site, lead to any other conclusion than this being a Primary Support Area. The counts for Brent Geese were 300 in each of 2012 and 2013 and a further count of 1 was recorded in 2017. The appellant also notes curlew and oystercatcher records in 2013 and 2014 (Shadow HRA para 3.37 to 3.38). Subsequent surveys by Lindsay Carrington Ecological Services in 2014/5 and 2016/17 as quoted in the appellant's Shadow HRA found no Brent Geese. Whether or not any waders were found is not stated in the resultant reports. In 2012 and 2013, the crops present were winter cereals, which provide good foraging for Brent Geese in winter, but from 2015 the land was maintained as bare ground from November to April, with a spring crop sown. The reason for this change given in the Revised ES chapter 10, paragraph 10.4.36, is damage by Canada Geese to winter cereals. From 2015 the land has not been under appropriate habitat management conditions for Brent Geese or waders. However, bare ground can be used by waders at high tide, although grasslands may be preferred if there are feeding opportunities.
- 5.9 I note that there have been no surveys since 2017 (Revised ES Chapter 10 para 10.3.29).
- 5.10 The surveys relied upon by the appellant were not carried out over three consecutive years, and did not take place under appropriate habitat management conditions. There is therefore no sufficient evidence to support re-classification of the land from a Primary Support Area to a Low Use site.

- 5.11 Moreover, several members of the public have provided comments to the appeal regarding Brent Geese and Waders. In particular, I would like to draw to the Inspector's attention two of these (appended at NS1 and NS2).
- 5.12 Dan Green emailed the case officer Tim Salter on 11<sup>th</sup> May 2021. In his 6<sup>th</sup> paragraph he states that he has seen and heard Brent Geese on the site in the early hours of the day in February and March, likely associated with high tides. Mike Townson emailed the case officer on 12<sup>th</sup> May 2021. In his first paragraph he states that he has heard Brent Geese on the site in the early morning in February and March; he is familiar with this species. There is no reason to doubt the two submissions. This evidence directly counters that provided by the appellant that the site is unsuitable for Brent Geese and Waders. Because the recent records of Brent Geese have been made in the early morning, it is possible that existing levels of disturbance are preventing Brent Geese and Waders from using the site at other times of day.

**How would the farm management impact Brent Geese and Waders in the absence of development?**

- 5.13 The Shadow HRA, paragraph 3.47 and 3.48, implies that in the absence of development, the site will continue to be farmed to discourage geese in winter and it will continue to have reduced suitability.
- 5.14 Choice of crops to be grown is a complex decision. Farmers respond to a number of factors, all of which change over time:

- market forces, with some crops becoming more or less valuable
- agricultural subsidies which can promote or discourage certain cropping
- agri-environment schemes which fund various types of biodiversity management
- new crop varieties and crop protection opportunities
- The pest species Canada Goose, which has caused economic damage in the past, might reduce in numbers and cause less impact

5.15 Consequently, predictions of future habitat management by the appellant are short-term only. I do not agree that in the absence of development the site will continue in the long-term to be under inappropriate habitat management conditions for Brent Geese, or, indeed, waders. The impact of the development is therefore much higher than that indicated by the appellant.

**Is the proposed mitigation design fit for purpose?**

5.16 For the reasons set out above, I consider that effective mitigation would be needed for permission to be granted.

5.17 The proposed bird reserve has been designed to provide 3.7ha of high-value Brent Goose foraging habitat for wintering Brent Geese. The Shadow HRA says that a ryegrass and clover seed mix will be used (but see my comments on the LEMP below). A shallow pool or 'scrape' has been provided to provide fresh water for Brent Geese to drink/bathe and might also provide a feature for waders.



The habitats are of an appropriate quality for these species. However, the appropriate quality of habitat does not in itself meet all the criteria for mitigation of loss of Primary Support Areas as described on pages 6 – 8 of the Solent Waders Brent Geese Mitigation Guidance 2018 CDH.7) as described below.

- 5.18 Mitigation habitat should be free from recreational disturbance and unmanaged public access. The appeal site is currently used by the public for dog walking and as a thoroughfare for access to the shore sometimes with fences being removed to facilitate access (Shadow HRA, para 3.43). An increase in residential development and a reduction in the size of the Primary Support Area is likely to result in greater recreational pressure on the remaining Brent Goose and Waders area. A boundary fence goes some way to address this issue, although there are no proposals to monitor the fence regularly, such as weekly or lesser interval. The public are currently actively removing obstructions to their regular walk, and indeed I found an informal pedestrian route from AFC Portchester into the appeal site which I visited on 7<sup>th</sup> June 2021. It is likely that some members of the public will walk around the fenceline in view of the mitigation land, and any weaknesses in the boundary fence are likely to be rigorously tested. The position of the mitigation land, with Public Open Space immediately to its east, housing directly to the north, a recreation site on the south-east, and a footpath just one small field to the west, means that it would be an island of recreational opportunity surrounded by a sea of demand.
- 5.19 The rather vague proposal for a bird viewing hide / platform / screen might superficially act as a deterrent to access, if

people felt overlooked by the users. In practice however, there is no proposal to manage this facility and it is likely instead to attract anti-social activity. The anti-social activities could well act as a point source of disturbance to birds. A low hedgerow to be planted along the northern boundary of the bird reserve is unlikely to be sufficient to screen people using the adjacent road shown on indicative plans such as in revised ES Appendix F4.

- 5.20 Factors correlating to site use by waders and Brent Geese are tabulated in Table 3, page 24, of Whitfield (2020) Solent Waders and Brent Goose Strategy (CDH.6). Sites being 'smaller' rather than 'larger' indicate a lesser suitability. The appellant proposes a much smaller bird reserve than currently exists as a Primary Support area. Regular square shapes are more suitable than those with irregular long and thin shape; the proposed bird reserve is intermediate between those extremes. The area of buildings within 50 – 500m of a site makes the site less suitable for Brent Geese. All of the current Primary Support Area is within 500m of buildings, but the proposed development would exacerbate this for the remaining undeveloped portions.
- 5.21 The size and openness of the wider countryside gap of around 40ha in which the site is located would also be compromised and there is uncertainty whether the mitigation land would minimise the effect.
- 5.22 I conclude that the mitigation design might contain appropriate habitat quality but overall it is not fit for purpose. It is unlikely to mitigate for loss of the Primary Support Area land due to:

- Disturbance from the viewing platform / screen which may be used for anti-social activities, and disturbance from pedestrians using the proposed road immediately to the north of the mitigation land
- Small size and suboptimal shape
- Presence of buildings within 500m
- The recreational disturbance it is likely to be subject to would make it unusable for most of the day
- Compromise of the size and openness of the countryside gap.

5.23 I also draw the Inspector's attention to Natural England's letter of 26<sup>th</sup> August 2020 (Core Document CDB.9c) in which uncertainty is expressed regarding the ability of the mitigation land to protect the integrity of the European site.

### **Badger fencing**

5.24 A badger sett within the south-east corner of the mitigation area will be retained in the site (Revised ES chapter 10, para 10.6.7). Security fencing would fence the badgers into the bird reserve, thus significantly hindering the badgers' ability to forage widely and possibly resulting in starvation in difficult seasons. Of course, having read this, the appellant may offer to dig holes under the security fence to allow the badgers to pass through to the wider area. By doing so, the fence would then become permeable to smaller dogs, which would be a source of disturbance in itself and which would also provide an incentive to owners to cut open the fence to be able to enter to retrieve their dog.

### **Is the proposed mitigation secured?**

- 5.25 To be relied upon in deciding whether to grant permission, mitigation must not only be effective but also secured in perpetuity. In the absence of a costed Management and Monitoring Plan, it is unclear if the appellant has considered the cost and practical issues required, such as weekly fence monitoring and repair, ongoing public engagement to dissuade trespass, etc as well as bird monitoring and habitat management. Furthermore, the management of the bird reserve has not been included in the appellant's draft Unilateral Undertaking. This raises doubt as to the financial viability of the mitigation and its likely efficacy and there is no mechanism to secure it. Certainty is needed before granting permission, and it is therefore not acceptable for fundamental details of the proposed mitigation to be parked for consideration at reserved matters stage.

### **Use of amenity land by Brent Geese**

- 5.26 The appellant has provided examples in its Shadow HRA of amenity land which is open to the public and used by Brent Geese (although not waders). These examples are intended to provide reassurance that disturbance is not a factor in the use of land by Brent Geese. In the absence of experimental closures, however, it is not clear if the Brent Geese usage of these areas would be greater in the absence of disturbance or if existing use is restricted to times when the areas are not in use such as the early morning.

5.27 In the Portchester context, it is notable that the Wicor Recreation Ground is a Secondary Site area and AFC Portchester, despite matches being only intermittent throughout the season, is not classified (extract from <https://solentwbgs.wordpress.com/page-2/> published by the Solent Waders and Brent Geese Strategy steering partners is provided as Core Document CDH.8). It is therefore clear that local disturbance is sufficient to suppress Brent Geese and Waders on this amenity land; the grassland itself seems otherwise suitable for use by Brent Geese and Waders. The examples provided by the appellant do not overcome this local disturbance and do not therefore support the appellant's view as to the adequacy of the proposed mitigation in this case.

### **Disturbance during construction**

5.28 Paragraph 10.6.5. of the revised ES, chapter 10, states that there would be no site construction works in the periods October to February inclusive, to avoid the sensitive period for birds of Portsmouth Harbour SPA. This would be a satisfactory way of avoiding disturbance harm to those birds during construction.

5.29 The Framework Construction Traffic Environmental Management Plan (CTEMP) dated June 2021 (Ref 6729/CTEMP Issue 02) does not repeat this ES commitment and so it is unclear if the ES commitment is intended to be met. The CTEMP in its para 2.21 introduces a Noise Sensitive Zone for construction between October and February, which is contradictory to the ES commitment to not construct in that period. A 70dB noise limit is proposed but it is not clear at which point the noise is to be

measured (at the SPA or in the construction site) and it is not clear why construction over 300m away which provides noise over 70dB is acceptable.

### **Conclusions on Mitigation**

5.30 As set out above, there are several reasons why the proposed mitigation is not satisfactory:

- The suggested reclassification of the site as a Low Use Site does not meet the published criteria for reclassification
- The ongoing availability of the site as a Primary Support Area in the absence of development
- A high demand for public recreation which is likely to cause disturbance to Brent Geese and waders
- Disturbance from the viewing platform / screen and from pedestrians using the proposed road immediately to the north of the mitigation land
- Small size and suboptimal shape of the mitigation land, and the presence of buildings within 500m
- Compromise of the size and openness of the countryside gap
- Unresolved issues about badger gaps in fencing
- The lack of detail on mitigation and the failure to provide a mechanism to secure it in perpetuity
- The low use made by Brent Geese and Waders of land disturbed by the public in the vicinity
- Potential construction disturbance

5.31 In my professional opinion, there is significant doubt that the proposed bird reserve will be able to satisfactorily mitigate for the loss of part of a Primary Support Area for Waders and Brent Geese either at all or in perpetuity.

**Overall conclusions on reason for refusal b)**

5.32 For the reasons set out above, I advise the Inspector that she is unable to ascertain beyond reasonable scientific doubt that the development would not have an adverse effect upon the integrity of Portsmouth Harbour SPA (and the associated SSSI and Ramsar) as a result of impacts on Brent Geese and waders. As a result, permission cannot be granted unless the derogation tests under Regulation 64 of the Habitats Regulations are met (which the appellant has not suggested would be the case).

5.33 Granting permission would also be contrary to Core Strategy Policies CS4 and CS6, Local Plan Part 2 Policies DSP13 and DSP14, emerging Local Plan policies NE1 and NE5, the Solent Waders and Brent Goose Strategy and Mitigation Guidance, and NPPF paragraphs 170 and 175 (and whether or not the derogation tests under Regulation 64 of the Habitats Regulations are met, the tilted balance would be disapplied by paragraph 177 of the NPPF).

5.34 Dismissal of the appeal would also be consistent with the Inspector's duty under Section 28G of the Wildlife and Countryside Act 1981 (see paragraph 4.8 above). The reasons for notification of Portsmouth Harbour SSSI include wintering Brent Geese and waders, so any impact on the SPA would also impact the underlying SSSI.

## 6 PROTECTED SPECIES – REASON FOR REFUSAL D)

### **Introduction**

- 6.1 The Revised Environmental Statement dated 14<sup>th</sup> June 2021 has to some extent improved the understanding of protected species present on site and how the appellant will manage their conservation as part of the development. There is, however, a fundamental problem regarding ongoing species surveys which means that currently a planning permission may not be given; there is a difficulty regarding the conservation of badgers in a sett for which no solution is apparent; and there are issues regarding reptiles which are resolvable.

### **Ongoing species surveys**

- 6.2 The revised ES, Chapter 10, paras 10.3.26, 10.3.27, 10.3.28, explains that the main survey data for habitats and species from 2014-2018 is now out of date and that bat activity surveys and dormouse surveys are ongoing. The Court has held that a decision to grant permission must be taken in full knowledge of the likely significant effects of a project for the EIA regulations to be complied with (e.g. *R v Cornwall County Council ex parte Jill Hardy* [2001] Env LR 25) (Core Document CDK.12).
- 6.3 In this case, significant gaps remain and the Inspector is unable to evaluate all likely significant effects of the appeal proposal or the extent to which they can be effectively mitigated until the survey work is complete. The choice is to defer the decision until the surveys are complete and the implications are included in an updated ES, or to refuse the appeal on the grounds of incomplete information.



## **Badgers**

- 6.4 The assessment of impacts upon badgers has not considered the impacts on this species of the adjacent residential development to the east, constructed recently under outline permission 15/0260 and subsequent Reserved Matters. The badger sett in this site was planned to be closed with a replacement sett provided, according to the ecology report<sup>1</sup> provided with the outline application. This report is included as Core Document CDH.10. The group of badgers which uses that sett is the same group of badgers which uses the sett on the appeal site (Revised ES chapter 10, para 10.4.20). The current status of the badger group is unknown, and impacts of works on adjacent land might make the colony unviable cumulatively with the appeal proposals. Further and detailed study of the badger group is necessary to be able to understand impacts.
- 6.5 The badger sett, which is within the south-east corner of the mitigation area will be retained in the site (Revised ES chapter 10, para 10.6.7) [if the badgers persist despite cumulative impacts]. Security fencing would fence the badgers into the bird reserve, thus significantly hindering the badgers' ability to forage widely and possibly resulting in starvation in a difficult season. If the appellant offers to dig holes under the security fence or provide badger gates to allow the badgers to leave the bird reserve, the fence would then become permeable to smaller dogs. This would provide an incentive to dog owners to cut open the fence

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<sup>1</sup> Lyndsey Carrington Ecological Services (August 2016 updated November 2016)  
Ecological construction and Management Plan Land at Cranleigh Road Fareham.

to be able to enter to retrieve their dog and compromise the function of the fence as a barrier.

### **Reptiles**

- 6.6 The Revised Environmental Statement underplays the significance of the reptile population on site. Criteria for the selection of Sites of Importance for Nature Conservation (Core Document CDH.11) states on its page 2 that a site supporting one or more notable species should be selected. Notable species are described as including species covered under schedules 1, 5 and 8 of the Wildlife and Countryside Act 1981. Slow worms are included on schedule 5 of that Act, and a good population of that species is present on the appeal site (Revised ES chapter 10, para 10.6.13). The appeal site therefore qualifies as a Site of Importance for Nature Conservation.
- 6.7 Mitigation for reptiles is given in revised ES para 10.6.13 as relocation of reptiles into retained grassland, and fencing to prevent reptiles entering the construction zone. The appellant provided a revised Phase 1 habitat survey map (ES Appendix F3 rev B) on 14<sup>th</sup> July 2021, which shows the location of the grassland whereas the previous version of this figure did not. It is possible now to understand the reptile mitigation more clearly. The matter would be suitable to be dealt with as a condition if the appeal is allowed.

### **Overall conclusions on reason for refusal d)**

- 6.8 For the reasons set out above, although some progress has been made in the revised ES, I consider that reason for refusal d) remains well-founded. Permitting the proposal

on current information would be in breach of the EIA Regulations as well as Local Plan Part 2 Policy DSP13, emerging Local Plan policy NE1, and paragraphs 170 and 175 of the NPPF.

## **7 THE IMPACT OF RECREATION ON EUROPEAN SITES – REASON FOR REFUSAL H)**

- 7.1 The appellant's shadow HRA correctly identifies that there would be an increase in public recreation at two Special Protection Areas, collectively called 'Solent SPAs' as a result of both the development and other development within 5.6km of the SPAs. These are Solent and Southampton Water SPA (and Ramsar site), and Portsmouth Harbour SPA (and Ramsar site). 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 (Core Document CDH.9). 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.
- 7.2 The appellant's shadow HRA states that the appeal site would contribute towards the Solent Recreation Mitigation Strategy in accordance with the latest tariff. However, this aspiration has not been followed by a signed S106 agreement or undertaking. The Council determined that the development was unacceptable because there was no mitigation in place to prevent harm through recreational impacts.

### **Conclusions on reason for refusal h)**

- 7.3 In my professional opinion, if a S106 agreement or undertaking is entered into, so that the correct payment

can be secured for the appeal scheme, then the development would no longer be unacceptable on the basis of this issue.

- 7.4 If, however, the payment is not secured, then the proposal would risk harm to the integrity of the Solent SPAs, such that permission could not be granted in the absence of satisfying the derogation tests under Regulation 64 of the Habitats Regulations (which the appellant has not suggested would be satisfied here). Granting permission would also be contrary to Core Strategy Policies CS4 and CS6, Local Plan Part 2 Policies DSP13 and DSP15, emerging Local Plan policies NE1 and NE3, and NPPF paragraphs 170 and 175 (and whether or not the derogation tests under Regulation 64 of the Habitats Regulations are met, the tilted balance would be disapplied by paragraph 177 of the NPPF).

## **8 OTHER HABITATS REGULATIONS MATTERS**

- 8.1 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.
- 8.2 To aid the Inspector in her appropriate assessment in relation to nutrient neutrality, I would like to point out an error in the appellant's calculations. The nutrient budget calculations were provided as part of the planning application, dated 4<sup>th</sup> August 2020. In stage 3 of the calculations, on the second page, it identifies 4.5ha of 'nature reserve' land being proposed. 'Nature Reserve' land provides a nominal output of 5kg of nitrogen leaching per hectare per year, according to Natural England's latest guidance of June 2020 (Core Document CDH.4), its paragraphs 4.62 and 4.63. The bird reserve is however designed to be a nutrient rich grassland, with nutrient input coming from clover rather than artificial fertilizer. Nitrogen leaching will be greater than that of 'nature reserve' with a classification of lowland grazing being more appropriate. 'Lowland grazing' produces nitrogen at 13.0kg/ha/year according to NE's guidance (paragraph 4.47).
- 8.3 Since the 'Lowland grazing' figure is lower than the 31.2kg/ha/year figure for 'Cereals' for the current land use (NE guidance para 4.47) the total nitrogen budget for the proposed development remains negative (albeit less strongly negative than under the appellant's calculation), with no requirement for mitigation to avoid an adverse effect on the integrity of any European site. However, to avoid any risk of erroneous information being used to

inform the HRA for the current proposal, or future HRAs for alternative proposals, it is recommended that the Inspector uses the correct land use types for her work.

## **9 ANALYSIS OF THE FRAMEWORK LANDSCAPE & ECOLOGICAL SPECIFICATION & MANAGEMENT PLAN**

- 9.1 The Framework Landscape & Ecological Specification & Management Plan rev B of 24<sup>th</sup> June 2021 (LEMP) adds confusion and contradictions to the previous work. Part of the confusion may come from cut and paste errors from previous documents, such as where it refers to the site containing bodies of water and steep slopes (its para 1.7), and other less obvious cut and paste errors may be present.
- 9.2 The LEMP seeks to address the BNG score of 5.95% in the revised ES (its para 1.3), suggesting (Chapter 3) that modifications could be made to achieve a +10.04% BNG, which would comply with Policy NE2 of the emerging Local Plan. A revised ES Appendix F6 Rev B was provided on 14<sup>th</sup> July 2021 which shows the use of lower nutrient grassland in a 7m wide band along two sides of the Waders and Brent Goose Mitigation Area. This grassland type replaces some of the nutrient-rich grassland with lower nutrient grassland of lesser value to Brent Geese along field margins. The area of this changed grassland may be in the region of 0.2ha according to my rough estimate. The impact of this change of area on the value of the mitigation area for Brent Geese has not been assessed but it is reasonable to consider that the value of the site for Brent geese would be reduced.
- 9.3 The Improved Grassland seed mix described in the LEMP paragraph 5.6 specifies an Emorsgate seed mix which I cannot find with that name on the Emorsgate website at [www.wildseed.co.uk](http://www.wildseed.co.uk). In paragraph 5.8 it describes that seed mix as having 'many perennial species', contradicting



the Revised ES chapter 10, paragraph 10.6.40 which suggests that just dominant clover and perennial rye grass would be planted. The LEMP species mix, although unclearly specified, seems to be inadequate compared to the previous ES proposals. The LEMP seed mix apparently will take 12 – 18 months to knit together as turf (LEMP para 5.8) thus adding a delay to the construction start; the Revised ES chapter 10 para 10.6.6 points out that the bird mitigation reserve should be in place before residential construction commences. The LEMP also commits to protect the seed mix for the bird mitigation reserve from seedling destruction by pedestrians (LEMP paras 5.8 and 5.16), which appears inconsistent with the bird reserve being closed to the public as proposed in the revised ES.

9.4 The LEMP contains management prescriptions in Section 6, table 1, for native woodland and wet woodland, but I cannot see those habitats on the landscape proposals in the LEMP appendix.

9.5 My conclusion is that, in certain key respects, the LEMP does not support the revised ES or Shadow HRA and is inconsistent with them. It does not resolve the reasons for refusal and gives rise to additional environmental concerns as outlined above.

## **10 CONCLUSION**

10.1 For the reasons set out above, which are summarised in section 1, I consider the Council's objections to the appeal scheme on environmental grounds to be well-founded and invite the Inspector to dismiss the appeal.

## **Appendix NS1**

Email from Dan Green to the case officer Tim Salter on 11<sup>th</sup> May 2021

## Nick Sibbett

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**From:** Dan Green <[REDACTED]>  
**Sent:** 11 May 2021 20:47  
**To:** Salter, Tim  
**Subject:** Comments re APP/A1720/W21/3271412 Land south of Romsey Avenue.

Dear Tim,

Please add me to the interested parties to take part as an observer in the hearing on the 10th August.

As a resident of Romsey Avenue I have already lodged my objections with the local planning committee and would again urge the Government planning committee to refuse the appeal on the following grounds:

1. Fareham Borough Council have a draft local plan ready for consultation identifying the requisite housing numbers to meet current quotas without using this site.
2. National Planning Policy protects building on the highest quality agricultural land. Independence from EU should reinforce the need for retaining the best and most valuable agricultural land, of which this land is classified.
3. Natural England describe the site as being on the urban fringe forming part of a wider countryside gap of 40 hectares . FBC are reviewing the landscape assessment of this site, which forms an ecological coastal corridor essential for supporting plant and wildlife biodiversity.
4. The appellant describes the site as heavily influenced by urban development. No residents, visitors, planners or environmental organisations would agree with this statement as views are overwhelmingly of open farmland, countryside and coast.
5. The appellant states the site will have no impact on Portsmouth Harbour as a special European site. Natural England, FBC, Hampshire CC Ecologists and Hampshire Wildlife Trust all consistently and robustly state there would be a significant impact because of its proximity. In addition surface water run off will increase flooding on the recreation ground, which will directly pollute Portsmouth Harbour SPA.
6. The appellant states that the site is classed as unimportant for Brent Geese and Waders however it has consistently been identified as Important and more recently as a Primary Support Area. I have regularly seen and heard Brent Geese on the site in the early hours during February and March likely associated with high spring tides. The evidence contained within The Solent Waders and Brent Geese Strategy is also overwhelming.
7. The appellant states that all impacts on protected or priority species will be mitigated or avoided with a 10% net biodiversity gain. A comparable specifically designed fenced area in Southsea failed to attract any Brent Geese this winter. A BCA on this site is likely also not to attract any migratory birds due to adjacent development, housing, noise and light pollution particularly from the adjacent football club. There is no mitigation offered for badgers, bats, deer, partridge, pheasant, slow worms etc.
8. The appellant must accept the responsibility as the Agent for Change and mitigate the significant noise and light pollution generated from the established and popular AFC Portchester football club. National planning policy protects existing clubs and businesses from being closed down or having restrictions imposed by residents moving into new developments.
9. The highways impact and safety concerns have not been addressed particularly in relation to congestion on the A27, reduced pavement width and increased pedestrian risk particularly between the two local schools. Impact of TRO's on local residents as there will be an absolute lack of on street parking capacity. Pedestrian safety risks crossing the access road have also not been adequately mitigated or proven to be safe.

10. The appellant has not accepted any of the considerable surface water drainage concerns. Water engineers and advisors describe the SuDS strategy as 'overly optimistic'. Not allowing for any surface water run off to go into a stream or drain as an 'unsafe concept'. The Soils Ltd investigation was undertaken in summer (July) and so no data relating to high winter and spring tides is available. The water table is likely to be close to the surface during the winter. The retention ponds do not have infiltration and therefore will overflow and create additional flooding to the well-established flood zone impacting the BCA, football ground, recreational area and additional pollution directly into the Portsmouth Harbour SPA.

Many thanks for your time and consideration.

Dan Green



## Appendix NS2

Email from Mike Townson to the case officer Tim Salter on 12<sup>th</sup>  
May 2021

## Nick Sibbett

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**From:** Mike Townson <[REDACTED]>  
**Sent:** 12 May 2021 16:38  
**To:** Salter, Tim  
**Subject:** Appeal APP/A1720/W/21/3271412

Tim

Please confirm inquiry start date is August 10 and not 12 as suggested in your recent email to me.

Please formally register the following additional objections with the Inspector

1. Brent Geese do still actively use this site. We heard them on several (at least six) mornings in February and March during the early morning. We do not have evidence of this due to our slumbering however as a Hampshire and Isle of Wight Wildlife Trust, keen bird watchers and daily observers of Brent Geese in Portsmouth Harbour we are both very aware of their call. We were sleeping with windows open during this time and their frequency appeared to coincide with high tides. I would be happy to testify under oath to this.

2. There has been no reference to noise or light pollution mitigation which is increasingly being used legally as either a planning requirement for new development under the Agent of Change principle or as a means to close or place restrictions and enforcement orders on existing community facilities to the detriment of those communities once new housing has been built. The presence of the AFC Portchester Football Club generates substantial noise and light pollution which can be disturbing at Romsey Avenue distance and beyond, this frequently involves mould language. Developers should have anticipated this and put in place mitigation measures even at outline stage to determine if this is a suitable sight for development. As the Bird Conservation Area has been located immediately adjacent to the football ground and directly under their floodlights which of course are in greatest use during the winter this is further evidence that this is the most unsuitable site for a BCA or any increase in biodiversity. The suggestion that kingfishers will be attracted must be dismissed along with most of the ecological benefit claims as fanciful at best! (Evidence can be provided)

3. Nitrate off setting is not a proven scheme however algae growth and evidence of pollution in Portsmouth Harbour is very real and evident. The appellants suggestion that this site does not have any impact on the SPA,SSI,SAC,Ramsar and Natura 2000 site when it is no further than 500 yards at any point and closer in areas is inaccurate. These are supporting networks and all relevant statutory and wildlife charities recognise this and the site fall under the Habitat Regulations Act. Photographic evidence can be provided.

4. Long periods of high water table flooding are increasingly common across this farmland. The appellants data is from a survey in July and I would suggest deliberately misrepresents and misleads decision makers regarding the real high water table issue and flooding /pollution risks. This has not been referenced but all locals can evidence this with numerous photographs of which I have many. The SuDS strategy is inadequate and will cause additional flooding and SPA pollution. Prof John Williams, Professor of Environmental Technology, Associate Head (Research and Innovation), School of Civil Engineering and Surveying states " I am also confused about the reliance on infiltration, there is no storage or exceedance overflow. As for nitrates, the sewage is going to Peel, so that must be acceptable to the EA\Natural England, but this seems strange as an overall increase in N of ~10 mg/l of sewage will follow. . This then boils down to the acceptability of infiltration and nitrates in runoff going to groundwater. If there was a pond and an outfall this would need to demonstrate N removal, but I do not know how the N to groundwater would be viewed. I think the whole infiltration thing is the Achilles heel and they have gone down this route to avoid questions of N in runoff." This SuDS system cannot be talked away by just disagreeing with findings. John Champion Utility Consultant states

### "Foul Drainage:

The concept for the development is to utilise the existing sewerage infrastructure. The proposal intends to intercept the existing 225mm dia. sewer draining Romsey Avenue to serve the eastern part of the development and reconnecting downstream before utilising the existing connection to the interceptor sewer that takes flow from the Portchester Castle Area and carries it westwards to Peel Common WWTW. The drawing you supplied only had

manhole cover and invert levels but this strategy looks perfectly feasible providing it is properly designed and the existing infrastructure (main interceptor sewer is adequately sized - the drawing suggests that it is 525mmdia). It's impossible for me to comment further as I cannot determine how many households are connected upstream of the proposed interception. It appears that they are proposing to connect a further possible 100 households to the 225mm dia. sewer serving Romsey Avenue. Southern Water must have been consulted as part of the planning application and have a statutory responsibility to comment, if they are happy then there are no grounds for objection.

### **Surface Water Drainage:**

As I understand the documents you have sent me, the developer appears to entirely depend upon infiltration via soakaways and infiltration ponds to manage surface water run-off. The retention/infiltration ponds located at the SW corner of the site have been sized only to cope with 3/4 of the estimated storm run off, the remainder must be accommodated by soakaways constructed at each property or group of properties. The calculations for the size of the retention ponds are based, in part, on the assumed infiltration rate of  $1.797 \times 10^{-5}$  m/s. This figure is stated as being taken from the Soils Limited Site Inspection and Trial Pit Report you sent me. My comment are as follows:

- The strategy does not state how the figure of  $1.797 \times 10^{-5}$  m/s is derived from the Soils Limited Report. By inspection of the report, I would have thought that the figure should be closer to  $4 \times 10^{-6}$  m/s (FYI the accepted minimum infiltration rate for a soakaway is  $1 \times 10^{-6}$  m/s). I think that the strategy is overly optimistic in this regard.
- The strategy does not allow for any discharge of surface water run-off to a stream, brook or drain. I think that this is an unsafe concept, I would have thought that there should be a wire and outlet to a drain that takes surplus water to the harbour.
- The Soils Limited site investigation was carried out in summer and no mention is made of where the water table was during this time. I would suggest that the water table may be very close to the surface during winter but I have no evidence to support this. Under such conditions the retention ponds would fill after a rain event but not empty by infiltration as assumed (there is no outlet to the ponds) subsequent rain events would cause overflowing and surface flooding. This would not affect Romsey Avenue due to its elevation but the Sports Ground would be affected. I think that Southern Water would be concerned with this design unless they are convinced that the water table is well below the surface throughout the winter period. Have you any anecdotal evidence that the field, sports ground becomes wet and boggy during winter?
- Another aspect of the concept that is unsatisfactory is the reliance on individual soakaways to provide retention and attenuation of surface water run-off I think that it is an overly optimistic concept but this would not concern the planning people as its an engineering detail. Southern Water should be concerned though.

5. Additional Highway pressures are being noticed more frequently on the A27 for cars waiting to turn into Beaulieu Avenue. The turning lane allows for 3 cars however on repeated occasions 4th or 5th cars have had to wait on the main carriageway creating congestion and RTA risks. Evidence can be provided.

6. The Inquiry is planned for the school holidays and the highways case will be greatly disadvantaged should the Inspector site visit take place during the holiday period and would devalue the evidence and contribution residents have made.

7. I haven't previously referenced the presence of red legged Partridge but these are a very welcome addition and seen every day on the farmland.

8. The appellant site separates two other fields which are leased from Hampshire County Council. The West field would be completely land locked and unusable as agricultural land. This would leave just the land to the SE and would not be a viable business proposition. To approve the appellant site for development would remove an additional 20 hectares of BMV land from agricultural purposes at a time of greater dependence on our own productivity and would remove coastal agriculture as a tradition and eco system from Portsmouth Harbour.

9. It is worth noting that the development on Cranleigh Road was on land that had not been farmed for over 30 years, the appellant site has been in continual production for over 30 years (since living here)

Please acknowledge receipt

Michael J Townson

