

Date: 22 April 2022  
Our ref: 384017  
Your ref: P/22/0165/OA



Peter Kneen  
Fareham Borough Council

Customer Services  
Hornbeam House  
Crewe Business Park  
Electra Way  
Crewe  
Cheshire  
CW1 6GJ

**BY EMAIL ONLY**

T 0300 060 3900

Dear Peter

**Planning consultation:** Outline application with all matters reserved (except access) for residential development of up to 375 dwellings, access from Newgate Lane East, landscaping and other associated infrastructure works

**Location:** Land East of Newgate Lane East Fareham

Thank you for your consultation on the above dated 14 February 2022 which was received by Natural England on the same date.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

## **SUMMARY OF NATURAL ENGLAND'S ADVICE**

### **FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES**

As submitted, the application could have potential significant effects on designated sites in the Solent, including the Solent and Southampton Special Protection Area (SPA) and Ramsar site in addition to the New Forest SPA, Special Area of Conservation (SAC) and Ramsar sites. Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation.

The following information is required:

- Further consideration of measures proposed to address the loss of Solent Wader and Brent Goose Strategy (SWBGS) sites F23 and F15.

Without this information, Natural England may need to object to the proposal.

Please re-consult Natural England once this information has been obtained.

Natural England's further advice on designated sites/landscapes and advice on other issues is set out below.

## **Additional Information required**

### **Habitats Regulations Assessment**

A shadow Habitats Regulations Assessment (sHRA) "Report to Inform a Habitats Regulations Assessment Stage 1 and Stage 2 (Inc. Nitrate Mitigation Statement)" has been produced by Tetra Tech in January 2022 in support of this planning application.

Natural England notes that this sHRA has not been produced by your authority, but by the applicant. As competent authority, it is your responsibility to produce the HRA and be accountable for its conclusions. We provide the advice enclosed on the assumption that your authority intends to adopt this HRA to fulfil your duty as competent authority.

### **Deterioration of the Water Environment**

On 16 March 2022 we wrote to your authority about the availability of an updated package of tools and guidance in relation to nutrient impacts. An updated nutrient budget calculator for the Solent was released on 20 April 2022. We recommend that your authority moves to using the updated generic Nutrient Neutrality Methodology and the updated catchment calculators in preference to existing methodologies whether produced by Natural England or your own authority. Your authority will be best placed to consider how it transitions to the new tools and guidance. Natural England recognises that for some existing catchments where nutrient neutrality is being implemented and mitigation is being actively progressed, authorities may need to consider the associated practicalities of moving to the new guidance whilst recognising their role as Competent Authority.

Please note, at present some elements of the guidance (national methodology, nutrient budget calculators) issued by Natural England should be considered as provisional due to the outstanding appeal to the Court of Appeal in Wyatt v Fareham BC [2021] EWHC 1434 (Admin), which although not concerned with the national methodology issued on 16th March 2022, could impact on certain elements contained within the methodology because that case considers similar (but not identical) earlier guidance for the Solent region. Natural England intends to review the national methodology following judgment in the appeal in Wyatt which may require amendments to be made.

We note that the nutrient budget for this application has been calculated in line with the Solent Nutrients Guidance, V5, June 2020. Your authority, as Competent Authority, should consider how the updated Nutrient Neutrality Methodology relates to the nutrient budget provided with this application, and any proposed mitigation.

The nitrogen budget includes an area of 6.4 hectares that will be managed post-development as open space. The competent authority will need to be assured for perpetuity that this open space will be managed as such and there will be no additional inputs of nutrients or fertilisers onto this land. Appropriate planning and legal measures will be necessary to ensure it will not revert back to agricultural use, or change to alternative uses that affects nutrient inputs on the long term. It is therefore recommended that these areas are designated open space on-site and long term management is secured.

### **Loss of Functionally Linked Land for Solent Special Protection Areas**

The proposals will affect Solent Wader and Brent Goose Strategy (SWBGS) sites. These sites form a network of terrestrial sites located outside of the Solent SPAs boundaries that are used by SPA species (including qualifying features and assemblage species) as alternative areas for roosting and foraging. These sites support the functionality of the designated sites and are therefore protected in this context.

#### **Loss of F23 Secondary Support site**

The proposals will result in the total loss of the SWBGS site F23 (4.67ha), a secondary support site with records of use by green sandpiper, greenshank and lapwing. To address this loss, it is proposed that 2ha of on-site land towards the western boundary of the site will be secured in perpetuity as a bird mitigation area. This area currently forms part of F15, a low use SWBGS site.

This on-site bird mitigation area would be managed primarily as short-sward grassland. A seasonal

waterbody is proposed to improve habitat suitability for wading birds (this basin would also form part of the SuDs network for the site). Permitted access would be for management and monitoring purposes, with measures to prevent unauthorised access to include stock-proof fencing and hedgerows planted along the northern and southern boundaries. Given its proximity to the proposed development we advise that consideration should be given to enforcement of these measures, in addition to their management in perpetuity, to provide certainty that no unauthorised access would occur.

There is uncertainty as to whether the proposed on-site mitigation area would provide suitable and sufficient habitat to address the loss of F23. Given the relatively small size of this site, and the presence of boundary hedgerows and trees it is unlikely that the site could provide long sight-lines preferred by overwintering bird species.

In line with the SWBGS [Mitigation guidance](#), there is a preference for on-site provision to maintain a network of sites across the region. However, it must be sufficient size and of suitable design, with management in perpetuity including controlled access during winter months. 'Significant enhancements' would need to be delivered, such as long term secured management. In this instance we raise concerns regarding the small size of the mitigation area proposed, the likelihood of limited sight lines and uncertainty regarding informal access by people and dogs. The current proposals do not provide the certainty needed that the continued ecological function of the SWBGS network would be maintained. Therefore, we advise consideration should be given to broadening the scope of on-site mitigation, or to funding a suitable offsite project.

#### Loss of F15 Low Use SWBGS Site

This proposal will result in the loss of 9.92ha of SWBGS site 'F15', representing a partial loss of this low use site, which has records of use by lapwing. All low use sites have the potential to support the existing network and provide alternative options and resilience for the future network.

To address the loss of part of SWBGS site F15, it is proposed that a 5ha off-site Winter Bird Mitigation area is secured in perpetuity at Old Street in Stubbington. Natural England previously agreed that this mitigation area could make provision for the loss of 11.84ha of F15 arising from three developments. Following the unsuccessful appeals of two of these developments (Land at Newgate Lane North and South), it is proposed that this off-site Mitigation area instead provides for the combined loss from the third development (Land at Newgate Lane East) in addition to this development proposal. This would total 13.8ha of loss from F15, representing an additional c.2ha of loss.

It is advised that further measures are sought to address this additional loss of c.2ha. Options to expand the Winter Bird Mitigation area could be explored, or a suitable contribution made in line with the Solent Wader and Brent Goose strategy could be provided to address any level of uncertainty arising from this increase in loss. We advise that suitable project(s) are identified to ensure that this contribution will benefit the wider SWBGS network of sites.

Clarity is sought as to the exact area of loss to F15. The loss from the development at Land East of Newgate Lane (P/19/1260/OA) is stated to be 4.03ha and the loss from this development is 9.92ha, which would total 13.95ha. Although 13.8ha of loss is stated in the report to inform the Habitats Regulations Assessment, January 2022.

A monitoring and management plan for the offsite Winter Bird Mitigation Area has been produced in support of this application (WYG, February 2021). We advise that this plan should be costed, as your authority will need to be satisfied that financial arrangements are in place that will guarantee the provision of sufficient funds to ensure the full delivery of the agreed management plans for the lifetime of the development. The plan should make clear the organisation(s) responsible for delivering the mitigation, and should cater for instances where monitoring shows declining effectiveness and allow for remedial management measures. The mitigation land should be delivered in advance of any loss of SPA functionally linked land, and managed by a suitable third party (such as the Local Planning Authority or NGO partner, or similar stable management body

such as the Land Trust) in perpetuity. Where a management body is employed that is not the public authority, legal step-in rights may be required to take over management of the area in the case where that body fails or folds.

### **Recreational Disturbance – Solent Special Protected Areas (SPAs)**

This application is within 5.6km of the Solent and Southampton Water SPA and the Portsmouth Harbour SPA, and will lead to a net increase in residential accommodation. Natural England is aware that Fareham Borough Council have adopted planning policy to mitigate against adverse effects from recreational disturbance on the Solent SPA sites, as agreed by the Solent Recreation Mitigation Partnership (SRMP), also known as Bird Aware Solent.

Provided that the applicant is complying with the policy and the Bird Aware Definitive Strategy, Natural England are satisfied that the applicant has mitigated against the potential adverse effects of the development on the integrity of the European site(s), and has no objection to this aspect of the application.

Please note, your authority's appropriate assessment should reflect the current developer contribution rates, which are updated every April in line with the Retail Price Index.

### **Recreational Disturbance – New Forest Designated Sites**

It is noted the applicant proposes to provide a financial contribution towards Fareham Borough Council's Interim Disturbance Mitigation Strategy. Natural England understands an Interim Mitigation Solution has recently been approved at committee to address recreational impacts on the New Forest designated sites for a time period of up to March 2025, while cross-boundary partnership work with other affected local authorities progresses the development of a strategic, proportionate and co-ordinated approach to enable a robust means for forthcoming development to avoid and/or mitigate its impacts over the long term. Natural England is working with affected local authorities, including Fareham Borough Council, to develop such a strategy.

To mitigate recreational impacts on the New Forest protected sites, Natural England recommends a package of measures is delivered that includes suitable green space provision outside of the designated sites, improved public access to green space and education and communications both within the borough and at the designated sites. Not all visits to the New Forest will be diverted solely by in-borough measures, and we therefore advise all relevant development within the zone of influence contributes to the delivery of suitable access management and education/comms measures at the designated sites, to address residual impacts.

The current interim solution proposes to take a financial contribution from relevant development to deliver a range of in-borough measures and contributions to the New Forest National Park Authority to address recreational impacts on the New Forest designated sites. We understand the Council have agreed the approach to addressing residual impacts with the New Forest National Park Authority. We recommend that the Council provides confirmation of the measures such funds will deliver to inform the appropriate assessment. It is our advice that any measures used to inform the decision about the effects on the integrity need to be sufficiently secured and likely to work in practice. Where you as competent authority are satisfied the proposed mitigation is suitably precautionary and can be appropriately secured and delivered in perpetuity, Natural England raises no further comments on this aspect of the proposals.

### **Construction Environmental Management Plan (CEMP)**

The development site is located approximately 600m from the Portsmouth Harbour SPA and Ramsar site, and in addition watercourses on site could provide a pollutant pathway to protected sites including the Wild Grounds SSSI site.

Natural England advises a Construction Environmental Management Plan (CEMP) should be submitted to and approved in writing by the district ecologist/biodiversity officer that identifies the

steps and procedures that will be implemented to avoid or mitigate constructional impacts on species and habitats. The CEMP should include the following impacts:

- Storage of construction materials/chemicals and equipment;
- Dust suppression
- Chemical and/or fuel run-off from construction into nearby watercourse(s)
- Waste disposal
- Noise/visual/vibrational/lighting impacts

The approved CEMP should be secured via an appropriately worded condition attached to any planning consent and shall be adhered to at all times, unless otherwise first agreed in writing with the Local Planning Authority.

Wherever possible, percussive piling or works with heavy machinery (i.e. plant resulting in a noise level in excess of 69dbAmax – measured at the sensitive receptor) should be avoided during the bird overwintering period (i.e. October to March inclusive). If such a condition is problematic to the applicant than Natural England will consider any implications of the proposals on the SPA bird interests on a case by case basis through our Discretionary Advice Service. Note: The sensitive receptor is the nearest point of the SPA or any SPA supporting habitat (e.g. high tide roosting site).

### **Sustainable Urban Drainage (SuDs)**

Best practice SuDS should be designed and installed in accordance with the requirements in the CIRIA SuDS Manual (C753).

Please note, the pollution hazard indices in the CIRIA SuDS Manual (C753) relate to 'protected waters' with regards to drinking water supply. Step 3 under Section 26.7.1 of the SuDS manual outlines that the requirement for extra treatment should be considered in relation to discharge to environmentally protected sites. It states that 'an additional treatment component (i.e. over and above that required for standard discharges), or other equivalent protection, is required that provides environmental protection in the event of an unexpected pollution event or poor system performance'.

On-site watercourses could provide a potential pathway to designated sites in the area. A Flood Risk and Drainage Strategy has been produced by The Civil Engineering Practice (January 2022) which outlines a SuDS strategy including on-site storage basins and a network of interlinked swales, filter trenches and permeable paving to convey surface water from across the site to these storage areas.

The detailed design of the Sustainable Drainage System (SuDS) should be submitted and agreed with Fareham Council. This should include evidence to show that the proposed SuDS scheme will ensure there will be no deterioration in water quality (or changes in water quantity) in discharges from the site. Information on the long term management and maintenance (including funding) of the SuDS for the lifetime of the development should also be secured prior to the commencement of any works.

### **Sites of Special Scientific Interest (SSSIs)**

Please note that if your authority is minded to grant planning permission contrary to the advice in this letter, you are required under Section 281 (6) of the Wildlife and Countryside Act 1981 (as amended) to notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, your authority has taken account of Natural England's advice. You must also allow a further period of 21 days before the operation can commence.

### **Other advice**

### **Biodiversity Net Gain**

It is recommended that all mitigation and enhancement measures described in the supporting Ecological Impact Assessment (Ecosa, January 2022) are agreed with the HCC Ecologist and appropriately secured with any granting of permission.

The submission of an approved BMEP will help ensure your authority meets the requirements of Section 40 of the Natural Environment and Rural Communities Act (2006), which states that 'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'. Section 40(3) also states that 'conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'. Biodiversity 2020: A strategy for England's wildlife and ecosystem services and Making Space for Nature (2010) also provide strong drivers for the inclusion of biodiversity enhancements through the planning process. Please note that provided the Council's Ecologist is satisfied with the submitted biodiversity mitigation and enhancement measures and the measures are secured by any permission then no further consultation with Natural England on this aspect of the proposal is required.

Further general advice on the protected species and other natural environment issues is provided at Annex A.

If you have any queries relating to the advice in this letter please contact me on 07552 268094.

Should the applicant wish to discuss the further information required and scope for mitigation with Natural England, we would be happy to provide advice through our [Discretionary Advice Service](#).

Please consult us again once the information requested above, has been provided.

Yours sincerely

Mary Andrew  
Sustainable Development Team  
Thames Solent Team

## Annex A – Additional advice

Natural England offers the following additional advice:

### Landscape

Paragraph 174 of the [National Planning Policy Framework](#) (NPPF) highlights the need to protect and enhance valued landscapes through the planning system. This application may present opportunities to protect and enhance locally valued landscapes, including any local landscape designations. You may want to consider whether any local landscape features or characteristics (such as ponds, woodland, or dry-stone walls) could be incorporated into the development to respond to and enhance local landscape character and distinctiveness, in line with any local landscape character assessments. Where the impacts of development are likely to be significant, a Landscape & Visual Impact Assessment should be provided with the proposal to inform decision making. We refer you to the [Landscape Institute](#) Guidelines for Landscape and Visual Impact Assessment for further guidance.

### Best and most versatile agricultural land and soils

Local planning authorities are responsible for ensuring that they have sufficient detailed agricultural land classification (ALC) information to apply NPPF policies (Paragraphs 174 and 175). This is the case regardless of whether the proposed development is sufficiently large to consult Natural England. Further information is contained in [GOV.UK guidance](#). Agricultural Land Classification information is available on the [Magic](#) website on the [Data.Gov.uk](#) website. If you consider the proposal has significant implications for further loss of 'best and most versatile' agricultural land, we would be pleased to discuss the matter further.

Guidance on soil protection is available in the Defra [Construction Code of Practice for the Sustainable Use of Soils on Construction Sites](#), and we recommend its use in the design and construction of development, including any planning conditions. Should the development proceed, we advise that the developer uses an appropriately experienced soil specialist to advise on, and supervise soil handling, including identifying when soils are dry enough to be handled and how to make the best use of soils on site.

### Protected Species

Natural England has produced [standing advice](#)<sup>1</sup> to help planning authorities understand the impact of particular developments on protected species. We advise you to refer to this advice. Natural England will only provide bespoke advice on protected species where they form part of a Site of Special Scientific Interest or in exceptional circumstances.

### Local sites and priority habitats and species

You should consider the impacts of the proposed development on any local wildlife or geodiversity sites, in line with paragraphs 175 and 179 of the NPPF and any relevant development plan policy. There may also be opportunities to enhance local sites and improve their connectivity. Natural England does not hold locally specific information on local sites and recommends further information is obtained from appropriate bodies such as the local records centre, wildlife trust, geoconservation groups or recording societies.

Priority habitats and Species are of particular importance for nature conservation and included in the England Biodiversity List published under section 41 of the Natural Environment and Rural Communities Act 2006. Most priority habitats will be mapped either as Sites of Special Scientific Interest, on the Magic website or as Local Wildlife Sites. List of priority habitats and species can be found [here](#)<sup>2</sup>. Natural England does not routinely hold species data, such data should be collected when impacts on priority habitats or species are considered likely. Consideration should also be given to the potential environmental value of brownfield sites, often found in urban areas and former industrial land, further information including links to the open mosaic habitats inventory can be found [here](#).

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<sup>1</sup> <https://www.gov.uk/protected-species-and-sites-how-to-review-planning-proposals>

<sup>2</sup> <http://webarchive.nationalarchives.gov.uk/20140711133551/http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>



### **Ancient woodland, ancient and veteran trees**

You should consider any impacts on ancient woodland and ancient and veteran trees in line with paragraph 180 of the NPPF. Natural England maintains the Ancient Woodland [Inventory](#) which can help identify ancient woodland. Natural England and the Forestry Commission have produced [standing advice](#) for planning authorities in relation to ancient woodland and ancient and veteran trees. It should be taken into account by planning authorities when determining relevant planning applications. Natural England will only provide bespoke advice on ancient woodland, ancient and veteran trees where they form part of a Site of Special Scientific Interest or in exceptional circumstances.

### **Environmental gains**

Development should provide net gains for biodiversity in line with the NPPF paragraphs 174(d), 179 and 180. Development also provides opportunities to secure wider environmental gains, as outlined in the NPPF (paragraphs 8, 73, 104, 120, 174, 175 and 180). We advise you to follow the mitigation hierarchy as set out in paragraph 180 of the NPPF and firstly consider what existing environmental features on and around the site can be retained or enhanced or what new features could be incorporated into the development proposal. Where onsite measures are not possible, you should consider off site measures. Opportunities for enhancement might include:

- Providing a new footpath through the new development to link into existing rights of way.
- Restoring a neglected hedgerow.
- Creating a new pond as an attractive feature on the site.
- Planting trees characteristic to the local area to make a positive contribution to the local landscape.
- Using native plants in landscaping schemes for better nectar and seed sources for bees and birds.
- Incorporating swift boxes or bat boxes into the design of new buildings.
- Designing lighting to encourage wildlife.
- Adding a green roof to new buildings.

Natural England's [Biodiversity Metric 3.0](#) may be used to calculate biodiversity losses and gains for terrestrial and intertidal habitats and can be used to inform any development project. For small development sites the [Small Sites Metric](#) may be used. This is a simplified version of [Biodiversity Metric 3.0](#) and is designed for use where certain criteria are met. It is available as a beta test version.

You could also consider how the proposed development can contribute to the wider environment and help implement elements of any Landscape, Green Infrastructure or Biodiversity Strategy in place in your area. For example:

- Links to existing greenspace and/or opportunities to enhance and improve access.
- Identifying opportunities for new greenspace and managing existing (and new) public spaces to be more wildlife friendly (e.g. by sowing wild flower strips)
- Planting additional street trees.
- Identifying any improvements to the existing public right of way network or using the opportunity of new development to extend the network to create missing links.
- Restoring neglected environmental features (e.g. coppicing a prominent hedge that is in poor condition or clearing away an eyesore).

Natural England's [Environmental Benefits from Nature tool](#) may be used to identify opportunities to enhance wider benefits from nature and to avoid and minimise any negative impacts. It is designed to work alongside [Biodiversity Metric 3.0](#) and is available as a beta test version.

### **Access and Recreation**

Natural England encourages any proposal to incorporate measures to help improve people's access to the natural environment. Measures such as reinstating existing footpaths together with the creation of new footpaths and bridleways should be considered. Links to other green networks and, where appropriate, urban fringe areas should also be explored to help promote the creation of wider green infrastructure. Relevant aspects of local authority green infrastructure strategies should be delivered



where appropriate.

### **Rights of Way, Access land, Coastal access and National Trails**

Paragraphs 100 and 174 of the NPPF highlight the important of public rights of way and access. Development should consider potential impacts on access land, common land, rights of way and coastal access routes in the vicinity of the development. Consideration should also be given to the potential impacts on the any nearby National Trails. The National Trails website [www.nationaltrail.co.uk](http://www.nationaltrail.co.uk) provides information including contact details for the National Trail Officer. Appropriate mitigation measures should be incorporated for any adverse impacts.

### **Biodiversity duty**

Your authority has a [duty](#) to have regard to conserving biodiversity as part of your decision making. Conserving biodiversity can also include restoration or enhancement to a population or habitat. Further information is available [here](#).