

LAND EAST OF NEWGATE LANE EAST, FAREHAM - APPEAL AGAINST THE
NON-DETERMINATION OF OUTLINE PLANNING PERMISSION WITH ALL
MATTERS RESERVED (EXCEPT FOR ACCESS) FOR: (LPA REF: P/22/0165/OA &
PINS REF: APP/A1720/W/22/3299739)

**PROOF OF EVIDENCE OF DAVID WEST MENV SCI (HONS) CENV
MCIEEM ON ECOLOGY MATTERS**

APP/A1720/W/22/3299739

For Miller Homes Ltd and Bargate Homes Ltd

September 2022

Prepared on Behalf of Tetra Tech Limited. Registered in England
number: 01959704

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Section 7 of this Proof of Evidence also provides the overall Summary of Evidence as required by section F10.5 of the Appeal Procedural Guide

EXECUTIVE SUMMARY

- E1 The Appeal site is assessed as having at most Local value for biodiversity, with the majority of habitats having low distinctiveness. Detailed layout and design is a matter for future Reserved Matters applications, however the illustrative masterplans demonstrate that the scheme is capable of delivering significant biodiversity gains.
- E2 The Council's reasons for refusal raise the following key questions:
1. Do the Appeal proposals result in unacceptable harm to Habitats Sites; and
 2. Do the Appeal proposals result in unacceptable harm to protected species.
- E3 Consistent with most development in the region, the scheme results in likely significant effects upon Habitats Sites through pathways such as recreational disturbance and nutrient outputs. However, with the application of suitable avoidance and mitigation measures, such as financial contributions to established strategies, and the provision of new habitat for waders, no adverse effect on the integrity of any Habitats Site is predicted. Therefore, the Appeal proposals do not result in unacceptable harm to Habitats Sites and as such the presumption in favour of sustainable development under the NPPF applies.
- E4 The biodiversity baseline for the site is low and it does not support significant populations of protected or notable species, or habitats of principal importance (with the exception of hedgerows). Suitable avoidance and mitigation measures are proposed and capable of being secured by condition to prevent significant adverse effects on flora or fauna. The Biodiversity Net Gain Assessment demonstrates that the scheme would deliver significant net gains for biodiversity. Therefore, the Appeal proposals do not result in unacceptable adverse effects, rather they deliver significant ecological benefits that would otherwise not be achieved.

1.0 INTRODUCTION

1.1 QUALIFICATIONS AND EXPERIENCE

- 1.1.1 My name is David West. I am an Associate Director at the multi-disciplinary consultancy Tetra Tech, based in the Southampton office. I have over 13 years' professional experience in ecological consultancy. At Tetra Tech I lead the Southern Regional team based in Southampton. In addition to my regional responsibilities for management and project delivery, I am the National lead within Tetra Tech for Habitats Regulations Assessment, Biodiversity Net Gain and Nutrient Neutrality.
- 1.1.2 I hold a Master's degree in Environmental Science from the University of Southampton where I graduated in 2009. I have been a full member of the Chartered Institute of Ecology and Environmental Management since 2013, and became a Chartered Environmentalist in 2016. I have authored articles for CIEEM's In Practice publication on the topics of Biodiversity Net Gain and Nutrient Neutrality.
- 1.1.3 In 2018 and 19 I was a member of the advisory group to BRE in reviewing the approach to Ecology and Landscape matters for BREEAM 2018 as part of their Strategic Ecological Framework. This included the development and review of tools for calculating changes in ecological value comparable to the approach taken for Biodiversity Net Gain.
- 1.1.4 I began my career as a Graduate Ecologist at ENIMS, where over 6 years I gained experience in a wide range of ecological surveys, including obtaining European Protected Species Survey licences for bats, great crested newts and hazel dormice. I joined Tetra Tech (formerly WYG) in 2015 as a Principal Ecologist, before being promoted to Associate Ecologist and Southern Regional lead in 2018. During my career at Tetra Tech I have provided ecological consultancy services for over 330 projects across a wide range of sectors including energy, defence, infrastructure and residential development.
- 1.1.5 Although the majority of my work has been on behalf of developers or private clients, I have also been appointed to undertake ecological services on behalf of Local Authorities. Between 2016 and 2018, I provided consultation advice to Horsham District Council on planning applications and the development of their Local Plan. I advised the Council on the Land North of Horsham strategic development which was sensitive due the potential for significant effects on barbastelle and Bechstein's bats associated with The Mens SAC and Ebernoe Common SAC. I also provided advice to the Council on the application of

European case law including the ‘People over Wind’ judgement to applications and the Local Plan. In 2019 I provided advice to Teignbridge District Council to inform the master planning of the NA3 Wolborough allocation in the Local Plan, in particular the integration of strategic corridors for greater horseshoe bat. In 2017 I co-ordinated strategic great crested newt and radiotracking surveys for bats (focussing on barbastelle) on behalf of Eastleigh Borough Council to inform their Local Plan and subsequently represented the Council at examination.

1.1.6 Most recently, in 2021 Tetra Tech were appointed sole supplier to Bournemouth Christchurch and Poole Council for ornithological and bat surveys, and in 2022 have been appointed to Hampshire County Council’s Place, Connectivity and Infrastructure Framework to deliver ecological services. This experience demonstrates that I have well-rounded understanding of planning policy from the perspective of both developers and Local Authorities, and that Tetra Tech are recognised as delivering high-quality ecological services by Local Authorities as well as private clients.

1.2 SCOPE OF EVIDENCE, INVOLVEMENT AND INSTRUCTION

1.2.1 This evidence has been prepared in support of the Section 78 planning appeal against the Council’s non-determination of the outline planning application (reference P/22/0165/OA) for the site known as ‘Land East of Newgate Lane East, Fareham.

1.2.2 The agreed description of development:

“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.”

1.2.3 The outline planning application was submitted on 28th January 2022 and proposed the construction of up to 375 residential dwellings with access from Newgate Lane East. The application was confirmed as valid from 31st January 2022 and had an initial determination deadline of 2nd May 2022.

1.2.4 Tetra Tech were originally appointed by the Appellants to undertake ecological assessments in support of the applications (with additional ecological work conducted by ECOSA) and subsequently I have been appointed by the Appellant to provide evidence on ecology matters at the inquiry. My evidence is structured as follows:

1. Introduction

2. Relevant Policy and Legislation
3. Ecological Background
4. The Council's Reasons for Refusal
5. Potential Effects on Habitats Sites
6. Potential Effects on Protected Species
7. Summary and Conclusions

1.2.5 The evidence which I have prepared and provide for this planning inquiry in this proof of evidence is true and I confirm that the opinions expressed are my true and professional opinions.

2.0 THE PLANNING APPLICATION AND THE COUNCIL'S REASONS FOR REFUSAL

2.1.1 The appeal has been submitted to the Planning Inspectorate against the non-determination of outline planning application P/22/0165/OA. Following the submission of the appeal, Fareham Borough Council's Planning Committee considered a report in which Officers recommended the application be refused. The Committee resolved that permission would have been refused with 14 reasons for refusal. Of these, D, E, F and G relate to ecology.

2.1.2 Reason for refusal D reads:

The proposal would have likely adverse effects on the integrity of Habitat Sites alone and in combination with other developments due to additional nutrients entering the water environment of The Solent and the absence of appropriate and appropriately secured mitigation;

2.1.3 Reason for refusal E reads:

In the absence of appropriate and appropriately secured mitigation, the proposal would have likely adverse effects on the integrity of Habitat Sites alone and in combination with other developments due to additional recreational disturbance arising from residents of the development;

2.1.4 Reason for refusal F reads:

The proposal would have likely adverse effects upon the integrity of Habitat Sites and the wider Solent Waders and Brent Goose network due to the unacceptable loss of functionally linked Special Protection Area habitat. Insufficient information has been provided to demonstrate that adequate mitigation for the loss of Secondary Support Area and Low Use Areas is being provided;

2.1.5 Reason for refusal G reads:

The applicant has failed to provide sufficient evidence to demonstrate that the development would not result in unacceptable harm to protected species that may be present on site or affected by its development;

2.1.6 The first three of these reasons for refusal consider effects upon Habitats sites, which I address together and in the accompanying Report to Inform Habitats Regulations Assessment (Appendix A to this Proof of Evidence). Therefore, my evidence addresses

the following two issues raised in the reason for refusal and summarised in Section 6 of the Ecology Topic Statement of Common Ground:

1. Potential effects on Habitats sites; and
2. Potential effects on protected species.

3.0 RELEVANT POLICY AND LEGISLATION

3.1 POLICY AND LEGISLATION WHICH ARE MATERIAL CONSIDERATIONS

3.1.1 A full list of relevant policy, legislation and guidance which are material considerations is given in Section 4.0 of the Ecology Topic Statement of Common Ground. Here I summarise the policy and legislation which is of particular relevance to ecological matters which are in dispute and provide the framework for my evidence.

3.2 NATIONAL POLICY

3.2.1 Paragraph 174 of the NPPF sets out requirements for ecological enhancement and relates to both policy and decision making (in particular parts A and C) stating:

3.2.2 *Planning policies and decisions should contribute to and enhance the natural and local environment by:*

a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);

d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

3.2.3 Paragraph 180 addresses the protection of ecological features in decision making:

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 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 reasons⁶³ and a suitable compensation strategy exists; and

d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate.

3.2.4 Paragraph 182 is of relevance with respect to Habitats Sites and confirms that the presumption in favour of sustainable development applies where significant effects are likely, if an Appropriate Assessment confirms there will be no adverse effect on the integrity of the Habitats Site.

3.3 LOCAL POLICY

3.3.1 Policy DSP13 Nature Conservation establishes the key principles for development proposals in respect of biodiversity, including the protection of designated sites and protected and priority species. The biodiversity network should not be fragmented and where possible biodiversity 'gain' should be sought.

3.3.2 Policy DSP14 sets out the Council's position in relation to functionally linked habitat for Solent SPAs, including the hierarchy of sites and the requirement for Appropriate Assessment of projects with a direct effect on the network.

3.3.3 Policy DSP15 sets out the Council's policy for mitigating the effects of recreational disturbance on Solent SPAs. This follows the Solent Recreation Mitigation Strategy and the process for determining and securing financial contributions.

3.3.4 Policy DSP40 Housing Allocations sets out criteria for permitted housing sites outside the Core Strategy (where there is not a five year housing land supply) and at (v) states additional sites may be permitted where the proposal would not have any unacceptable environmental, amenity or traffic implications.

3.4 LEGISLATION

3.4.1 The Conservation of Habitats and Species Regulations 2017 (as amended) is an important consideration, as it sets out at Regulation 63 the requirement for the Competent Authority to undertake an appropriate assessment of any plan or project likely to have a significant effect on a European site (described as Habitats Sites by the NPPF).

This also sets out the requirement for the Applicant (or in this case Appellant) to provide such information that the Competent Authority may reasonably require for the purposes of the assessment.

3.4.2 The Environment Act 2021 makes provision for the delivery of mandatory biodiversity gain as a condition of planning permission (Section 98) and Local Nature Recovery Strategies (Section 104). However, as I discuss in my evidence, the mechanisms to implement the relevant parts of these provisions (via changes to the Town and Country Planning Act 1990 and Natural Environment and Rural Communities Act 2006 respectively) have not yet taken place.

4.0 ECOLOGICAL BACKGROUND

4.1 BASELINE DATA COLLECTION

4.1.1 The assessment of ecological effects is presented in a series of Ecological Reports which were submitted to the Council in support of the planning application. These comprise:

- Ecological Impact Assessment (ECOSA, January 2022)
- Badger Report (Confidential) (ECOSA, January 2022)
- Report to Inform Habitats Regulations Stage 1 and Stage 2 (Tetra Tech, January 2022)
- Biodiversity Net Gain Assessment (Tetra Tech, January 2022)

4.2 SUMMARY OF FINDINGS

4.2.1 The site comprises a series of arable fields, bordered by hedgerows, fencing and scattered trees, located in Fareham, Hampshire. The site is centred at OS Grid Reference SU 57430 03563. The fields form part of farmland surrounded by the built-up areas of Fareham to the north, Gosport to the east and south and Stubbington to the west. The newly constructed Newgate Lane East is to the west of the site.

4.2.2 The Ecological Impact Assessment submitted with the application describes the habitats on site and assesses the potential for protected species. The site has been assessed as being of no more than local value in terms of habitats present with the features of relatively higher interest including the mature trees and hedgerow network being retained within the scheme design. Survey work has identified the site as supporting a relatively low diversity of foraging and commuting bats, breeding and wintering birds and a population of slow worms is also present on site.

4.3 SUMMARY OF MITIGATION AND ENHANCEMENT

4.3.1 Potential impacts from recreation by new residents upon Portsmouth Harbour SPA and Ramsar and Solent and Southampton Water SPA and Ramsar will be mitigated through financial contributions to strategic access management measures in the form of the Solent Recreation Mitigation Strategy. Potential impacts from recreation by new residents upon the New Forest SAC, SPA and Ramsar will be mitigated through financial contributions to the Council's Interim Mitigation Strategy.

4.3.2 At the time the application was submitted, the relevant calculations demonstrated the scheme was capable of achieving nutrient neutrality and therefore was unlikely to result

in adverse effects on the Solent and Southampton Water SPA and Ramsar or the Solent Maritime SAC. As a result of changes to Natural England's guidance on Nutrient Neutrality in March 2022, the revised calculations indicated that the scheme would not be nutrient neutral and additional mitigation is required. This will take the form of 'nitrogen credits' purchased from an established mitigation scheme in the same fluvial catchment which has been approved by both Natural England and the Council. This will be appropriately secured and is fully assessed within the accompanying Report to Inform Habitats Regulations Assessment (Appendix A).

4.3.3 Adverse effects upon functionally linked habitat for the Solent and Southampton Water SPA and Ramsar will be mitigated through the creation of new permanent wader habitat both on site and as part of an approved mitigation site at Land East of Old Street, Stubbington. This will maintain the integrity of the wader and brent goose network as discussed in the accompanying Report to Inform Habitats Regulations Assessment (Appendix A).

4.3.4 The proposed mitigation and compensation includes the retention and positive management of retained features and the creation of new habitats which would deliver an enhancement at the site and an overall net gain in biodiversity of 10.12 habitat units, which is an increase of 23.01% (further details are set out within the Biodiversity Net Gain Assessment).

4.3.5 A translocation exercise for reptiles, sensitive lighting scheme in respect of bats and the provision of new bat and bird units within newly construction dwellings has also been proposed.

4.3.6 Therefore, significant impacts upon ecological features are avoided or suitably mitigated, and biodiversity gains achieved in accordance with NPPF Paragraph 174 and 180 and Policy DSP13 of the Local Plan. No adverse effect on the integrity of any Habitats site will occur in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended), NPPF Paragraph 180 and Policies DSP13, DSP14 and DSP15 of the Local Plan. No unacceptable impacts will occur in accordance with Policy DSP40(v). Therefore, the presumption in favour of sustainable development applies in accordance with NPPF Paragraph 182.

4.1 BIODIVERSITY NET GAIN

- 4.1.1 The provision of Biodiversity Net Gain is not yet a mandatory requirement under the Environment Act 2021 (as the necessary amendments to the Town and Country Planning Act 1990 have not been implemented). However, a Biodiversity Net Gain Assessment was undertaken by Tetra Tech using the DEFRA 3.0 Biodiversity Metric to provide a quantitative assessment of the predicted change in the biodiversity value of both Appeal sites alone, and cumulatively.
- 4.1.2 This assessment demonstrates that the site is capable of delivering a significant net gain of 23.01% in habitat units and 23.45% in hedgerow units. This is a biodiversity net gain in excess of the future mandatory requirement of 10%, which represents a benefit of significant weight in the planning balance.
- 4.1.3 This provides further evidence of the biodiversity gains delivered by the Appeal Sites in accordance with NPPF Paragraph 174(d) and 180(d) and Policy DSP13 of the Local Plan.

5.0 POTENTIAL EFFECTS ON HABITATS SITES

5.1.1 As the competent authority, the Secretary of State (and by extension the Inspector) is required under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) to undertake an Appropriate Assessments. This is because significant effects upon Habitats Sites are likely in the absence of avoidance or mitigation. To assist in the assessment, the Appellant has prepared a Report to Inform Habitats Regulations Assessment. This has been informed by discussion with the Council with a number of matters agreed as part of the Ecology Statement of Common Ground.

5.1.2 The Council and Appellant agree that the Habitats Sites which require screening for likely significant effects are:

- Portsmouth Harbour SPA and Ramsar;
- Solent Maritime SAC;
- Solent and Southampton Water SPA and Ramsar; and
- New Forest SPA, SAC and Ramsar.

5.1.3 Potential likely significant effects as a result of the appeal development are:

- Portsmouth Harbour SPA and Ramsar, Solent and Southampton Water SPA and Ramsar, New Forest SPA, SAC and Ramsar – disturbance of qualifying species through increased recreation; degradation of water quality from increases in nitrogen outputs;
- Solent Maritime SAC – degradation of water quality from increases in nitrogen outputs;
- Solent and Southampton Water SPA and Ramsar – loss or disturbance of functionally linked habitat for qualifying species

5.1.4 The Council and Appellants agree that mitigation for recreational disturbance can be provided through a suitable financial contribution to the Solent Recreation Mitigation Strategy (as per Policy DSP15 of the Local Plan) and the Council's Interim Mitigation Strategy for recreational impacts on the New Forest. This should be secured via legal agreement(s) and with the application of this mitigation no adverse effect on the integrity of Portsmouth Harbour SPA and Ramsar, Solent and Southampton Water SPA and Ramsar and New Forest SPA, SAC and Ramsar will occur.

5.1.5 The Council and Appellant agree that, in principle, degradation of water quality from increased nitrogen outputs can be mitigated through the purchase of 'nitrogen credits' from a suitable mitigation scheme. This is secured by legal agreement between the mitigation provider and Fareham Borough Council and provides mitigation through removal of land agricultural use or through treatment wetlands. For the project, the provision of the nitrogen credits is secured by a contract between the Appellants and the mitigation provider which secures the required mitigation in the event the appeal is allowed.

5.1.6 The Appeal development will result in the loss of 4.67 ha of F23 (Secondary Support Area), which is the whole area, and 9.92 ha of F15 (Low Use Site) which is a partial loss. To mitigate the loss of this functionally linked habitat, a combination of off-site and on-site habitat creation is proposed. It is common ground between the Council and Appellants that this mitigation is suitable subject to further details of the layout and management of the on-site mitigation area and a legal agreement securing the off-site area. This additional information on layout and management is provided as part of the updated Report to Inform HRA Stage 1 and Stage 2 which accompanies my evidence.

5.1.7 The status of the two areas impacted (F15 and F23) is important to consider when determining the suitability of mitigation. As detailed in the SWBGS, Low Use Sites are those with the potential to be used by waders or brent geese and provide alternative options and resilience for the network. As per the strategy, while Low Use Sites have records of birds the numbers involved are low enough to ensure there is only a negligible risk of not successfully offsetting the loss of a Low Use Site through enhancements of the wider network. Nevertheless, all Low Use Sites have the potential to be used by waders and brent geese and the unmitigated loss of these sites would in combination negatively affect the long term resilience of the network. The key phrase here is '*there is only a negligible risk of not successfully offsetting the loss of a low use site*' (Solent Wader and Brent Goose Strategy Guidance on Mitigation and Offsetting Requirements, para. 37).

5.1.8 Although F23 is identified as a Secondary Support Area, this is only due to its local value for greenshank and green sandpiper. As set out in Section 4.1.1 of the Report to Inform HRA Stage 1 and 2, no records have been obtained which exceed the Local Value threshold for either species. Neither species is a qualifying feature of Portsmouth Harbour SPA, nor is the overwintering bird assemblage a qualifying feature (in the

manner of the Solent and Southampton Water SPA). Therefore, the loss of F23 cannot result in an adverse effect on the integrity of Portsmouth Harbour SPA/Ramsar. The numbers recorded at F23 would also not meet the thresholds for Local Value when measured against the criteria for the Solent and Southampton Water SPA. Therefore, the effect on this SPA is comparable to the loss of a Low Use Site. Again, with reference to the SWBGS, *'there is only a negligible risk of not successfully offsetting the loss of a low use site.'*

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

5.1.10 To mitigate the partial loss of F15, it is proposed that a Winter Bird Mitigation Area measuring 5.0 ha is created at Land West of Old Street, Stubbington which will enhance the wader and Brent Goose network. A Winter Bird Mitigation Strategy setting out the background, rationale and proposed management of the Mitigation Area is included at Appendix D of the Report to Inform HRA. This mitigation strategy has undergone extensive consultation with Natural England and Fareham Borough Council and has been approved as part of the Appeal allowed at Newgate Lane East (APP/A1720/W/21/3269030).

5.1.11 Originally, it was agreed with that the proposed mitigation area was capable of mitigating the loss of F15 associated with three sites (Newgate Lane East, Land at Newgate Lane (South) and Land at Newgate Lane (North), totalling 11.84 ha. Following the unsuccessful appeals at the latter two sites, it is now proposed that the strategy is secured to mitigate the loss of F15 for Newgate Lane East and the Appeal development (totalling 13.8 ha).

5.1.12 The previous approved loss (11.84) is of limited significance given the two dismissed appeals discussed above. The proposed approach to mitigation accords with the

approach to mitigation across the region – the loss of unsecured habitat of lesser value mitigated by the provision of a smaller area of secured habitat which is permanently in a suitable condition for use by birds. In this case, the mitigation area for F15 is 36% of the size of the area to be lost. This compares favourably with other approved schemes in the region for the provision of mitigation areas for functionally linked habitat (see Table 1 below).

Table 1 Examples of winter bird mitigation areas.

Site Name	Winter Bird Habitat	Area Pre-development	Area Post-development	Proportion
Land East of Newgate Lane (the Appeal site)	Secondary Support Area	4.67 ha	2.01 ha	43%
	Low Use Site	13.9 ha	5.0 ha	36%
Sinah Lane, Hayling Island	Primary Support Area (later Core)	12.67 ha	6.77 ha	53%
Romsey Avenue, Portchester	Secondary Support Area	12.6 ha	4.5 ha	36%
Harbour Place, Bedhampton	Secondary Support Area	12.6 ha	5.8 ha	35%
	Low Use Site	4.06 ha		

5.1.13 It should also be noted that all of these schemes provided mitigation for impacts to higher value areas than F15.

5.1.14 Since the above appeal was allowed, Fareham Borough Council (Fareham Borough Council, 2021a) have adopted a Solent Waders and Brent Geese Mitigation Solution. Although this does not identify specific mitigation projects, it does identify four cluster areas within the Borough where mitigation should be located. The proposed mitigation area at Stubbington is within the same cluster area as the proposed development site (Meon Valley and Fareham/Stubbington/Gosport Farmland) and therefore accords with this approach (as agreed by the Council).

5.1.15 To mitigate the loss of F23, it is proposed that an on-site Winter Bird Mitigation Area is also created. This will be located at the western extent of the site (a field compartment which is currently part of F15). A Winter Bird Mitigation Strategy setting out the proposed

management of the on-site Mitigation Area is included at Appendix E of the Report to Inform HRA.

5.1.16 Although the proposed approach to mitigation, does result in a reduction in total area, as discussed above, it does provide a significant increase in habitat quality (ensuring suitable habitat every year as opposed to only when suitable crops are planted) and security in-perpetuity. It also provides a number of other benefits over the existing F23 including the provision of wetland habitat for wading birds, and a reduction in overlooking by trees. This discourages smaller waders as large trees act as perches for predators. F23 is currently surrounded by mature tree lines. With reference to the areas discussed at 5.1.11, the mitigation for F23 is 43% of the pre-development area. Again, this is superior to other approved schemes at Harbour Place and Romsey Avenue which involved the loss of Secondary Support Areas.

5.1.17 The Report to Inform HRA concludes that with the application and securing of the identified avoidance and mitigation measures, the appeal proposals would not give rise to an adverse effect on the integrity of any Habitats Site. Therefore, the proposal is capable of meeting the requirements of Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) and is in compliance with Paragraph 180 of the NPPF and Policies DSP13, DSP14 and DSP15 of the Local Plan. As there will be no adverse effect on integrity, the presumption in favour of sustainable development applies in accordance with NPPF Paragraph 182. This is agreed with the Council in the Ecology Statement of Common Ground, subject to detailed design and management of the on-site space and securing of identified measures by legal agreement or conditions.

6.0 POTENTIAL EFFECTS UPON PROTECTED SPECIES

- 6.1.1 Reason for Refusal G relates to the absence of some ecological survey information at the time of the application (rather than the presence of unacceptable impacts upon flora or fauna). All necessary information has been supplied in the form of an updated Ecological Impact Assessment (ECOSA, 2022) following the completion of ecological surveys on site. This update assessment results in no change to the impact assessment and mitigation and enhancement recommendations made at the time of the application.
- 6.1.2 It is common ground between the Council and the Appellants that in respect of on-site ecological features, including habitats, reptiles, bats and breeding birds, the Appeal scheme will not give rise to significant adverse effects upon these species and their habitats found within the site, subject to the application of appropriate mitigation measures, identified within the Ecological Impact Assessment and to be secured by S106 Agreements and/or condition
- 6.1.3 As such, the Appeal scheme is in accordance with Policies CS4, DSP13, DSP40 (v) of the Local Plan and paragraphs 174 and 180 of the NPPF.

7.0 SUMMARY AND CONCLUSIONS

7.1.1 The Appeal Site has been subject to extensive ecological survey and assessment in accordance with relevant best practice guidance. This has found that the Appeal Site is of generally low ecological value, with slightly higher value afforded to features such as hedgerows and lines of trees (albeit still of only low or medium distinctiveness). Elevated value is afforded by the value of the site as part of the network of functionally linked habitat which comprises the Solent Wader and Brent Goose Network.

7.1.2 The key questions raised in respect of ecology are:

1. Do the Appeal proposals result in unacceptable harm to Habitats sites; and
2. Do the Appeal proposals result in unacceptable harm to protected species.

7.1.3 In my evidence, I demonstrate that although significant effects to Habitats Sites are likely, with the application of suitable mitigation (which can be secured by legal agreement and planning conditions), no adverse effect on integrity will occur.

7.1.4 I also demonstrate that the Appeal proposals will not give rise to unacceptable harm to protected species, and all significant effects are capable of being either avoided or suitably mitigated by appropriately worded planning conditions.

7.1.5 Indeed, rather than causing unacceptable harm, the Appeal proposals will deliver significant biodiversity gains. This provides a substantial ecological benefit which could not be achieved were the Appeal to be dismissed.

7.1.6 I therefore conclude that the Appeal proposals fully accord with the NPPF Paragraph 174 and 180 and Policies DSP13, DSP14, DSP15 and DSP40(v) of the Local Plan. The Appeal is also in accordance with the requirements of Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended), and as no adverse effect on integrity will occur, the presumption in favour of sustainable development applies in accordance with Paragraph 182 of the NPPF.

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