

Hearing Statement on Matter 4

Submitted by Rosie Law, local resident, on behalf of swhayling group

I believe the information below constitutes a 'main modification'.

Matter 4: HRA and Mitigation Strategy and site allocation with specific detail on H29

4.1 Has the Habitats Regulation Assessment (HRA) been undertaken in accordance with the Regulations and is it robust?

and

4.12 Is the survey methodology by which 'Core Areas', 'Primary Support Areas', 'Secondary Support Areas' have been identified robust?

No.

The latest HRA/AA March 21 reveals the true status of H29 as a Core Support Area, not a Primary Support Area. However H29 has been completely omitted from the TP03 Habitat Regulations and Biodiversity March 21! Yet H29 features throughout the rest of the Emerging Local Plan.

There is no evidence of taking account of the Sweetman 11 Ruling.

The HRA/AA revealed that this site **is actually designated as a CSA and has been since 2019**. This information was concealed until after planning approval at Planning Committee meeting 10th March 2021.

The omission of H29 from TP03 raises several concerns: Have premature assumptions regarding the determination of planning permission been made? The Conditions and Obligations have not been issued and the applications should be under review due to the issues in 2 Stage 2 complaints especially regarding the concealment of the true status of the site as a Core Site. However, there has clearly been pressure from the developer to push this development through before the Local Plan examination.

The mitigation requirements of the SW&BGS for a CSA have not been fulfilled and hence the expectations of the NPPF have been undermined.

This information is highly significant and should have been used to re-inform the:

- **allocation of land for development and environmental policies for the Draft and Emerging Local Plan 2037**
- two virtually identical applications by Barratt Homes - one in 2018 (APP/18/00724) and the other in 2020 (APP/20/01093) after the change of classification had taken place
- update the SW&BGS (Oct 2018). (Please note E16 is out of date and should be 2018 version which needs updating as well)

This failure has meant that the importance of this CSA in an already environmentally significant location has been undervalued by decision makers and subsequently resulted in the planning approval for a large housing development and an unsuitable smaller replacement refuge.

This fact had not been placed in the public domain or given to the Consultees. Even those Authorities involved with the Solent Waders and Brent Geese Strategy (SW&BGS) have

always referred to the site as a Primary Support Area (PSA) in their Consultee responses for both applications on this site:

E.g: RSPB 25th Jan 2021 Consultee response *‘The proposed development area is identified in the SW&BGS as a Primary Support site (H34C) for brent geese, with the northern area being particularly well used, with records of up to 1000 feeding brent geese.’*

This is all the subject of a formal complaint, now at Stage 2 against HBC specifically concerning:

- lack of transparency related to information
- subsequent misinformation
- negligence of duty to inform interested parties
- **negligence of duty to properly apply the Solent Waders and Brent Goose Strategy (SWBGS) October 2018 that supports the National Planning Policy Framework (NPPF)**

4.14 Is Land North of Sinah Lane’s (site H29) function as a ‘primary support area’ for Solent Waders / Brent Geese capable of being adequately mitigated?

The Mitigation proposals are not adequate. It is a Core Support Area with increased mitigation requirements in addition to existing mitigation for The Oysters (ref Matter 5). The mitigation introduced for the loss of a Core Support Area is in contravention of the Sweetman 11 Ruling that is referred to by Natural England: *‘We advise that you may want to seek your own legal advice on the implications of the Sweetman II ruling and the level of detail that should be included within an Appropriate Assessment’*.

This crucial information for decision making Councillors was not highlighted in the DMC 29th October 2020 or Planning Meeting 10th March 2021.

The SWBGS clearly defines the difference between a CSA and a PSA, with specific relevance to the following:

‘13. The Core Areas are considered essential to the continued function of the Solent waders and brent goose ecological network and have the strongest functional-linkage to the designated Solent SPAs (Special Protection Areas) in terms of their frequency and continuity of use by SPA features. Securing the long term protection and appropriate management of the Core Areas is a key objective for the Solent Waders and Brent Goose Strategy.

*8. The unmitigated loss of these sites would impact on the integrity of the SPA over the long term. **For clarity, it is recommended that the Core Areas will be identified for protection by policy within the relevant Solent local authority Local Plans.***

As a CSA, H29 should never have become an ‘exception to the rule’ in the Draft/Emerging Local Plan 2037 regardless of the pressure to find housing development sites. H29 should sit alongside Rook Farm and Campdown in TP03 and now as a Core Site. That’s 2 Core Sites on good grade arable farmland from Hayling Island being destroyed when they could be used in the same way as Warblington Farm to help compensate for the recent nutrient overload caused by human waste discharge – a serious issue from Southern Water’s Budds Farm sewage works.

The SWBGS states that *'Development that would result in impacts to a Core Area will therefore need to be carefully assessed on a case-by-case basis'*.

If it had been known that the site was actually a CSA, then the case by case assessment should have been different. The severe impact of development of this site due to its location, the proximity to the SPA and Langstone Harbour is clear in the HRA/AA March 2021. So it is NOT a PSA to be *'off-set' by the provision of a new site to ensure long-term protection and enhancement'*. (SWBGS page 6)

This site **does not** need to be *'brought into appropriate condition' or 'enhancing or securing in function'* as it is already a CSA and should remain as such!

For CSAs, *'In order for such developments to demonstrate no adverse effect on the integrity of the SPA(s) then, as a minimum, the full criteria for the replacement of Primary Support Areas.....must be met **along with the following additional requirements:***

- *A suitable replacement site **of an equal, or in some circumstances greater, size and quality must be provided in close enough proximity to the Core Area affected to fully replace its ecological function.***
- *The freehold or long term lease (in perpetuity) of the replacement site must be passed to an appropriate conservation body, or the LPA, in a suitable condition and managed in perpetuity as a nature reserve for waders and / or brent geese.'*

Proposed Mitigation Land and the Oysters (also ref Matter 5)

Even when it was thought that H34C was a PSA, there was still no confirmation in either application on this site that additional land would be used to replace the 12.4 hectares of land lost to development from H34C which is already in mitigation and replacement of land lost to the Oysters Development.

The new onsite refuge will **only be 5.7 hectares.**

When residents argued against the use of this site for development, knowing it should still be protected even as a PSA, the counter arguments presented by HBC included belief that the Geese only used the northern part of the field and therefore an 'enhanced' but smaller replacement refuge, available every year and protected from disturbance, would be adequate mitigation for the loss of the PSA. However, this has been proven to be wrong due to formally recorded and photographic evidence last winter when Brent Geese quite clearly foraged in the southern part of the field.

It is also important to take into account that the now 'Core Support Area' was prevented from functioning in its normal way in 2019! Local residents informed HBC of unusual and partial crop planting using the northern section of H34C and not the whole field. This did not resemble the normal crop rotation but followed the pattern of the proposed housing development in the south and the replacement onsite small refuge in the north. This resulted in the Brent Geese being unable to forage on the whole of H34C, disturbing and restricting their use of already legally protected compensatory land and skewing any survey data.

Despite the new crop planting clearly reflecting the proposed development areas, HBC took no action, saying that the owners could do what they want on their land. Barratt Homes were controlling the land for the Owners. The CSA/PSA was prevented from operating as it had done in the past; the whole field no longer provided the Brent Geese with the opportunity to forage from winter 2018-19 until winter 2020-2021. Surely this contravenes all the guidance that the SW&BGS aims to prevent?

In October 2020, the whole field, which had turned to wasteland in the south, was suddenly re-ploughed for the first time in several years and drainage channels cleared

and restored, just before the virtual site viewing meeting relating to the Advisory DMC for the Appeal Inspectorate in October 2020. The northern and **also the middle section**, were then planted with winter wheat.

Consequently, last winter, the Brent Geese landed on the Southern part of the field in the location of the proposed housing, where they rested and foraged, undisturbed and sheltered from the winds, as well as the northern section which is more exposed. The northern area of the field also became denuded very quickly leaving no doubt that the proposed refuge area is not big enough on its own for a replacement refuge for the large flock in the region of 1000 Brent Geese.

Enforcement of previous mitigation which is meant to be secured for the duration of previous development of the Oysters in 2015 has not occurred *'in order to ensure that the compensatory **measures** (including crop rotation and fence repair) are secured for the duration of the development (I e in perpetuity)'* (Tyler Grange 11th Sept 2013, Land off Station Road, Hayling Island, Brent Goose Strategy. Section 3: Management and Monitoring Plan 3.1). Annual systematic checks and repair to fencing have not been carried out in September prior to the over wintering season for Brent Geese. **Crop rotation for H34D and the whole of H34C were meant to remain in line with usual farming practice and cereals grown on alternate years.** The Tyler Grange report explains that H34D was used by horses and not used by Brent Geese but needed to be enhanced to partly compensate for the Oysters along with the certainty of H34C which is used by Brent Geese. As such both fields are needed to remain fully farmed with in standard crop rotation and part of a larger plan for crop rotation for other fields in this area of Hayling Island. Hence winter wheat, the favourite cereal crop for Brent Geese would always be grown somewhere.

The counter arguments used by HBC also include disturbance by dog walkers but the impact by dog walkers, who still enjoy using the edge of the field, has been minimal, regardless of the lack of fence repair by Barratt Homes. If the Geese take flight or fright, they return to foraging very quickly. Even the previous bird scaring techniques of the farmer, used for limited periods of time, simply resulted in the crop recovering and the birds returning within a few days. In fact the heavily denuded northern part of the field has fully recovered since April when the Geese flew back to their Arctic breeding grounds after over-wintering on Hayling Island.

This proposed inadequate replacement refuge is located right next to the proposed new housing estate and huge drainage attenuation basin. This would destroy the previous flat and open landscape required by the birds and the noise of a housing estate be very likely to add to disturbance, not enhance attraction as required by the existing the Tyler Grange mitigation for H34C.

It is highly significant that now, as a CSA, the replacement onsite refuge is neither adequate nor suitable mitigation as any replacement site should be, ***'Of an equal, or in some circumstances greater, size and quality.'*** Clearly this is NOT the case.

In the Emerging Local Plan, the environmental policies and H29 related to the Land North of Sinah Lane site are now incorrect. They described the site as a PSA.

They have also included the so called Hayling Island Bird Refuge (HIBR) as available replacement land.

However, **the HIBR is unsuitable and vulnerable.** It is:

- already a CSA foraged by a very large flock of Geese (over 1000) and cannot be used as mitigation for another CSA, thus reducing the area available for both CSAs
- separated from H34C by the protected Salt Marsh habitat and NOT adjacent to H34C and the proposed onsite refuge in the northern section
- highly vulnerable to coastal flooding lying within Flood Zone 3. The map in the SWBGS illustrates just how vulnerable this whole coastline is to the increasingly intense south westerly storms and tidal surges and the predicted 1.4m Sea Level rise in 100 year life time due to Climate Change.
- more rapidly eroding along the coastline than first predicted. So, as residents have pointed out on several occasions without gaining any satisfactory response, this is not a solution or adequate compensatory land.
- undergoes crop rotation. So when planted with winter wheat, it will attract the Brent Geese away from the planting proposals for the new onsite refuge on H34C, leaving it unused and failing as a replacement CSA. Or, when not planted with winter wheat, put enormous space pressure on the new refuge which, at only 5.7 hectares, will not even match the size of the existing CSA and mitigation for the Oysters of 12.4 hectares.

PLEASE NOTE: The location of field H34C is more protected and in flood zone 1 - an ideal CSA that should be saved from development in order to compensate for the other CSAs included in the HIBR, which will be lost to flooding and Climate change.

The use of the whole of H34C by Brent Geese this winter demonstrates exactly this point. The Geese moved into the southern part of the field to forage and shelter, away from the strong winds and rain as captured in photographic evidence and formally added survey data.

As such, there is even a strong case for the turning the whole field at H34C into a designated **Core and Special Site**, ensuring existing CSAs are protected from coastal squeeze as well as development and making full use of the following passage from the SWBGS 2018:

'Special Sites

11. These are sites that are considered more important than the statistical analysis would suggest as their locality contributes significantly to maintaining a cohesive and resilient ecological network spread across the geographical range.... In this case, there is a risk that another Core Area will be lost over time and the' Core Support Area in H34C 'would become even more important to the SPA birds in the future..... to safeguard this alternative resource and ensure resilience within the network'.

In Conclusion:

Important land already designated for the protection of Solent Waders and Brent Geese will be lost for ever and not mitigated for in accordance with Strategy that supplements the NPPF: The mitigation requirements of the SWBGS for a CSA have not been fulfilled and hence the expectations of the National Planning Policy (NPPF) have been undermined.

Questions that have been asked and points that have been made regarding compensatory land have been left unanswered or misled by the answers given. Planning Applications have been debated in isolation, with no consideration allowed for the vulnerability and constraints of a nearby CSA which should be part of the debate according to the Emerging Local Plan 2037.

Biased activity in favour of development on a site which needs to be protected and which needs to provide for the protection of rare species, has been left unchallenged by HBC despite alerts raised by residents. The Tyler Grange Report states that, '*the developer (Barratt Homes) controls the southern and eastern parts of H34C.*' This raises further questions with HBC's statement that the owner can do what he likes with his land: Barratt Homes, the developer who should be adhering to binding mitigation conditions and S106 Obligations for the Oysters as well as any related to the proposed development, controls the southern section and east side of H34C. Subdivision of the whole field H34C and crop planting only in the northern section for several cycles of crop rotation, has had a much greater impact on the disturbance to the foraging and resting habits of the Brent Geese than the importance given to repairing fencing to deter walkers along the side of the field. The standard crop rotation, when winter wheat was planted on alternate years, supported the SPA and did not disturb the Brent Geese compared to this changed activity.

4.16 Is the approach to other proposals on Core Areas, Primary Support Areas, Secondary Support Areas, Low Use areas, and Candidate Sites justified?

Yes. However, by choosing to ignore an NPPF supporting document and create exceptions, the Local Plan is conflicting with the NPPF.