

By email to Jonathan Manning BSc
(Hons) MA MRTPI and Thomas Hatfield
BA (Hons) MA MRTPI through the
Programme Officer

Enquiries to:
Direct line:
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Dear Mr Manning & Mr Hatfield

Havant Borough Council's Ecologist's written response to the local plan examination hearings

My name is Tristan Norton and I am a Senior Ecologist with Hampshire County Council working as the ecological advisor to Havant Borough Council since 2012. I have been a professional ecologist for more than 20 years and have specialised in ornithology for much of this time. Through this experience I am familiar with the landscape, habitats and species of Havant Borough.

I have been a member of the Solent Wader and Brent Goose Strategy (SWBGS) Steering Group since its inception in 2015. I have undertaken detailed surveys in relation to the SWBGS and have an intimate knowledge of the use of Warblington Farm, Broadmarsh and Campdown sites in particular by bird species. I am joint author of the emerging Bechstein's Bat Protocol, and I am a licensed bat worker and have carried out detailed bat surveys, including for Bechstein's bat, across Havant Borough.

I have been involved in the Local Plan preparation since 2016. I have authored the Local Plan's Habitats Regulations Assessment (HRA) and have provided input to the Biodiversity Strategy and biodiversity policies within the Local Plan. I continue to work closely with planning policy colleagues at Havant Borough Council as well as with Natural England and non-governmental stakeholders in developing strategic solutions for biodiversity within Havant Borough.

The commentary below is set out in policy order and addresses the specific points that HBC officers took away from the sessions as well as the input that would have taken place had I been present.

The allocation of mitigation sites within the Local Plan

In producing the Local Plan HRA, I was aided by the best available guidance outlined in the HRA Handbook (DTA Publications, 2021). Sections F.10.1.2 to F.10.1.5 of this authoritative guidance refers to the use of 'case-specific policy restrictions or caveats' as well as providing clarity on the specificity of information required at differing stages of a plan. These are situations, particular to the HRA of higher-level plans, that recognise that certain information may not be available until later stages within the planning process and which allow the Competent Authority to conclude no

Likely Significant Effect based on the inclusion and use of policy restrictions. The effect of these restrictions or caveats is that development likely to result in effects on a European site (as identified within the Plan) could not occur until such time as certain conditions are met.

In providing this view, the guidance refers to the European Court of Justice case C-6/04 European Commission v United Kingdom and explains that the use of case-specific policy restrictions is a valid means of addressing uncertainty in high-level plans where a) the plan concludes that impacts to the European site are likely and b) the details required to assess impacts in full are not available due to the high-level nature of the plan.

The Local Plan HRA identifies that a Likely Significant Effect is probable in the case of Policies H40 Campdown and H27 Rook Farm. The Plan then goes on to describe that potential impacts to European site integrity would be addressed through a site-level HRA and the agreement of mitigation measures, particularly replacement habitat. In this context, we consider that both policies provide appropriate case-specific policy restrictions, consistent with the best-available HRA guidance, the effects of which would mean that development of either site could occur only after an appropriate mitigation package is secured. Whilst the allocation of sites for housing carries with it the statutory presumption in favour of development under section 38(6) of the Planning and Compulsory Purchase Act 2004, in each case that is subject to the detailed provisions that govern the implementation of each proposal that give certainty development will only take place if it is designed to avoid any impact on the integrity of a European site. The DTA guidance states that in order for a case-specific restriction/caveat to be sound it must be included within the policy itself, not the explanatory text. Criterion b) of Policy H27 and criterion c) of Policy H40 explicitly state that project-level HRAs will be required and that any mitigation package must remove the likely Significant Effect before being judged acceptable.

We consider that both policies H27 and H40 are consistent with the best-available guidance on HRA for plans due to the restrictions/caveats which are case-specific, explicit and contained within the policies themselves.

Policy E15

The inclusion of policy wording explicit to Bechstein's bat is in response to the particular value of Havant Borough to this internationally rare species and the pressures placed upon the Bechstein's bat population across the local landscape. Many of the larger development proposals within the Borough in recent years have been and are in close proximity to known Bechstein's bat habitat and it was considered that a strategic approach was required in order to address cumulative impacts from development within the local landscape. It was apparent in 2014 (when larger developments with potential impacts on this species were coming forward) that there was a need for greater awareness amongst planners, developers and consultants of the potential impacts to this species in particular.

In June 2014 I contacted Natural England to enquire about the possibility of designating a Special Area of Conservation (SAC) for bat species in south-east Hampshire. Natural England informed me at that time that they would not support such a site designation but that they would support a strategic approach to bat conservation, delivered through policy. This was the birth of the current approach to Bechstein's bats by the Council, initiating a shift away from a reactive development management approach towards a strategic approach delivered through robust policy and greater awareness.

Havant Borough Council has been foremost amongst local planning authorities in supporting this strategic approach. The Council, alongside other local planning authorities and stakeholders, instigated bespoke surveys for the species across South East Hampshire. The results of these surveys, in conjunction with evidence from surveys on development sites, were used to create a 'Bechstein's bat Buffer Zone'. This comprises a 3km buffer around all Bechstein's bat records in the Borough, within which the species should be considered as likely to occur. This information has been routinely shared with developers and consultants within the Borough for several years, leading to greater awareness of the issue within planning.

A formal Bechstein's Bat Protocol is being developed and it is expected that this will be available to the public by spring 2022, following consultation with statutory agencies and relevant stakeholders such as the Hampshire Bat Group. The Protocol will provide greater detail on the status and distribution of the species within South East Hampshire (based on the most up-to-date survey evidence) and provide guidance on the expectations for survey effort, impact assessment and mitigation. Policy E15 is based on the draft Protocol and its publication would not materially alter the policy content or thrust. There are existing survey guidelines for Bechstein's bat published by the Bat Conservation Trust, well-known to any competent ecological consultant.

Recent evidence has highlighted the presence of other rare or less-common bat species – namely Western barbastelle, Alcaethoe's bat and Greater horseshoe bat - within the Borough and the Council is mindful of the need for policy to ensure that all bat species are covered. We consider that Policy E15 does this (please see para 5.191 of the local plan), whilst not explicitly listing every protected species potentially occurring within the Borough. Policy E15 includes specific Bechstein's bat text because this is undoubtedly the most pressing bat-related issue within the Borough. Policy E14 'The Local Ecological Network' and the published Biodiversity Strategy explicitly reference the need to acknowledge landscape-scale ecological mitigation that is crucial to protecting bat populations more widely.

Developments directly affecting ancient or other mature woodland are exceptional. Therefore, impacts to bat species arise predominantly through the loss of small-scale roosts within built structures and by the loss (direct or indirect) of foraging/commuting habitat. We consider that Policies E14 and E15 together provide sufficient detail to address impacts to bat species more widely.

Ecological submissions for planning must be in accordance with Policy E15 as well as all relevant best-practice guidance. We do not consider it necessary for Local Plan policy wording to include details of recognised survey guidance: such guidance is well-known to those seeking to provide ecological information and any ecological consultant will be aware of the standard of evidence they would need to provide alongside planning submissions. Ecological submissions not meeting minimum professional standards are not accepted. The Council encourages pre-application discussions with site promoters and this has led to detailed pre-submission surveys for Bechstein's and other protected species at e.g. Havant Thicket Winter Storage Reservoir (KP9) and Land at Long Copse Lane (H8).

We consider that the raising of awareness of Bechstein's bats by HBC in recent years has resulted in a much wider appreciation of this species and the pressures faced by it and other bat species across the Borough. Policy E15 clearly sets out that all planning submissions are expected to

provide sufficient ecological information, adhering to established survey guidance. Where insufficient information is provided, permission will be refused. We consider that Policy E15 provides a robust framework for ensuring that all ecological receptors are considered, and it highlights the particular needs of Bechstein's bats in recognition of the Borough's importance to this very rare species.

We consider that Policy E15 is fully consistent with the NPPF and paragraph 175 in particular. Policy E15, in conjunction with Policies E14, E16 and E17, clearly set out the expectations for the full hierarchy of designated sites (International - National - Local) as well as protected species.

On the issue of significance of harm (NPPF para.180), we take this to mean significance at any scale. The mitigation hierarchy is a well-established principle in ecological impact assessment and is applicable across the board, irrespective of the perceived significance of an ecological feature on a given geographic scale. For example, an effect could be seen as significant at the site-scale if most of a particular habitat is to be impacted, even if it was judged to be only of site value in nature conservation terms. In other words, the test for significance of harm does not require an ecological receptor (species or habitat) to be of national or international value. On that basis we consider that Policy E15 is correct in explicitly requiring the application of the mitigation hierarchy as default: this is an established best-practice requirement in ecology. HBC expects all development to adhere to the mitigation hierarchy and we believe this is consistent with NPPF and all published ecological best practice literature.

Policy E17

The current Solent Wader and Brent Goose Strategy (SWBGS) which informs policy E17 is based on detailed systematic surveys carried out between 2016 and 2019. These were undertaken by professional ecologists, coordinated by the Hampshire & Isle of Wight Wildlife Trust (HIOWWT).

Before 2016 site classifications were based on generally ad hoc data provided by volunteer effort, albeit by experienced volunteers. The data before 2016 was often patchy, with most sites having too few records to provide certainty on bird status as such most sites within the Borough were of 'uncertain' status. As a result of this, applicants were expected to provide three years' additional data before submitting proposals. Most developer and LPA effort was therefore being focussed on updating surveys of uncertain sites (often of low value) rather than identifying opportunities for securing permanent bird habitat to ensure protection of a network of sites.

It was therefore decided in 2015/16 (at meetings between Solent LPAs, Natural England, RSPB, Hampshire Ornithological Society and other stakeholders – the future SWBGS Steering Group) that a more robust and systematic survey methodology was required. In addition, the focus of the strategy should move towards supporting the identification and protection, through planning, of a network of permanent refuge sites across the wider Solent. The current strategy is based on the result of these detailed surveys, thereby eliminating many of the deficiencies of the previous dataset. There is now robust and consistent data for nearly all sites. The records generated are from professional bird surveyors and therefore of high quality. The recent surveys also focussed on bird movements, highlighting the relationships between SWBGS sites and how these operated as a functioning network.

The SWBGS database is maintained by the HIOWWT. Records from formal surveys are collated by them and each site's status (e.g. Low Use, Primary etc) is based upon these data using a detailed metric. The metric system is robust and agreed by all Steering Group members.

Records from non-specialists are also collated by the HIOWWT. It is my understanding that there are very few non-professional individuals regularly providing data to the SWBGS. All such records are verified by HIOWWT and discussed by the SWBGS Steering Group. In my experience, there have been no examples of obviously spurious records submitted. There have been examples of misidentifications and these have quickly been corrected. In my view, any obviously spurious records (e.g. sudden presence of hundreds of birds on a Low Use site) would be highlighted readily by HIOWWT and the Steering Group and investigated. Most SWBGS sites have regular patterns of use and sudden increases in bird numbers or frequency of usage would be unusual and flagged as such. Where this occurs, verification would be required e.g. photographic evidence (dated images) or follow-up surveys by professionals. The submission of an obviously high count of birds from any site would therefore be questioned and would be unlikely to result in a change of site status unless the record could be independently verified. Site status is as much based on regularity of use as by peak counts.

It is important to reiterate the purpose of the SWBGS. The first two iterations of the SWBGS in 2002 and 2010 provided essentially a map of sites where birds had been recorded. In addition, information was provided on the characteristics of sites used by birds. No mitigation guidance was provided. As previously discussed, the sometimes poor quality of data resulted in a focus on re-surveying generally poor-quality sites rather than identifying and protecting the most valuable sites.

The change of focus for the strategy in 2015/16 sought to address the issue of how birds were using the sites by looking at both the links between sites (i.e. how the network functions) and how birds use individual sites (i.e. are particular areas of a site more favoured?). The purpose of this shift was to provide robust evidence to identify the key sites providing critical habitat to the overall network, and to aid decision-making within the context of increased development pressure across the Solent.

At the current time, none of the terrestrial SWBGS sites are afforded any protection other than through their 'status' as functionally-linked land under the Habitats Regulations. This status only comes into effect through the planning system. It is important to note that a site's functionality is a result of multiple factors. The size, location, habitat quality and disturbance are key factors in determining functionally linked land and these vary geographically across the Solent region. The functionally linked land can be mitigated and it is possible to provide an uplift in function by providing a smaller site which is free from disturbance and managed explicitly for birds. This is the reason why the Sinah Lane site (Policy H29) was judged to be acceptable in terms of bird mitigation.

The vast majority of SWBGS sites are within farmland and therefore subject to the vagaries of crop rotation which means there is no certainty that any site will be in favourable condition in any one year, and cropping practices can change at any time without any recourse to the Habitats Regulations as it is out of the planning systems control. Whilst cropping practices are not generally prone to radical changes, there is no certainty in suitable habitat from year to year. Sites on farmland are also subject to licensed shooting of geese as well as crop-scaring measures.

It is therefore a fundamental principle of the current SWBGS that there is a need to provide a series of permanently available supporting habitat for SPA bird species across the Solent, and that the primary method for achieving this is through the planning system. It is accepted by the Steering Group that the loss of some SWBGS sites is acceptable provided that replacement habitat provides at least the same function as the sites being lost and that an overall network of sites is maintained.

With regards to the comments made within the examination hearing for the two sites on the South East Hayling seafront which are identified in the SWBGS as Sites H105 and C19, these are both important high tide roosts for small wader species such as Sanderling and Ringed plover. There are not any mapping errors because these sites are important coastal roosts for SPA bird species. Neither site is designated due to the presence of Brent geese. Concerns over the inclusion of these two sites in Local Plan mapping are unfounded.

Policy H40 and H27

Further to the detail provided on the valid use of case-specific policy restrictions and caveats within high-level plans, the approach taken by Natural England to the sites at H40 Campdown and H27 Rook Farm is not consistent with advice provided for other policies with potential effects on European sites or European protected species.

The front-loading of mitigation is not suggested by Natural England for other policies within the Plan. For example, the Havant Thicket Winter Storage Reservoir application (Policy KP9) relies on a suite of off-site mitigation and compensatory measures to address identified impacts to European sites, full details of which have not been provided at the application stage nor within Policy KP9. It was accepted by the Council and Natural England that sufficient detail had been provided in the form of outline action plans, identifying aims and objectives for off-site mitigation/compensation but without precise details of location. The details judged to be acceptable at the application stage have no guarantee of deliverability or success, and so case-specific caveats have been applied and deemed to be acceptable.

Similarly, for all policies with the potential to impact European Protected Species (e.g. bats), the provision of fully-detailed mitigation/compensation packages at the Plan stage is not a requirement. For example, policies may result in impacts to buildings or trees with potential to support roosting bats, or habitat supporting foraging bats, but it is not considered necessary for fully-detailed mitigation proposals to be included with such policies. It is considered suitable for the Plan to include as much detail as possible, to incorporate case-specific caveats and for the provision of fully-detailed mitigation information to be deferred to the application stage.

Policy EX2 Warblington Farm

The primary function of the emerging proposal for Warblington Farm is to provide nitrate mitigation but also permanent replacement habitat for SPA birds. The Council is in the enviable position of having a site such as Warblington Farm (and to a similar extent Broadmarsh Coastal Park) available for supporting habitat mitigation. Warblington Farm provides an exceptional opportunity for layering nutrient and SPA bird mitigation, as well as biodiversity net gain.

Work is underway to develop a management plan for Warblington Farm, investigating the potential for concurrent nitrate and bird mitigation. There is no fundamental tension between these two factors, and it is perfectly possible for grassland habitat to be provided that is both suitable for bird

species as well as mitigating nitrate pollution. Clover-rich permanent grassland subject to light grazing is one obvious example.

From my detailed knowledge of the Warblington Farm site there is clearly much potential for enhancing the site for SPA bird species alongside nutrient mitigation measures. The site is already used by significant numbers of Brent geese (up to 1000 birds) and Curlew (up to 80 birds). The site's proximity to the intertidal habitats in Chichester & Langstone Harbours SPA is a key factor in its potential.

The current management of the site provides a mix of winter cereals and permanent pasture suited to the needs of both species. Brent geese are found on the winter cereals but this could readily be replaced with grazed clover-rich permanent grassland that has been shown to provide suitable nutrition for this species and is indeed a favoured habitat type. Areas of permanent pasture, ideally damp in nature, can be provided for Curlew. I have also observed Curlew feeding and resting within cereal stubbles and winter wheat in this area, indicating that this species can also be accommodated within the site through the provision of suitable habitat.

The site is subject to regular disturbance and I would consider this to be the key factor in improving the site's functionality. There are many informal paths and routes across the site, the use of which results in disturbance of birds by people and dogs. The formalisation of access to the site through fencing and signage is an obvious potential uplift in the site's suitability for bird species.

Disturbance is less of an issue for Brent geese than for Curlew: I have observed geese feeding within a few metres of walkers at Warblington but Curlew will take flight at considerable distances. In my view the issue of disturbance is critical for the potential success of any refuge for Curlew.

It is my view that the Warblington Farm site has great potential for enhancement for SPA bird species through the use of permanent grassland, improved fencing/access and the creation of features such as wet flushes and scrapes. The site also provides an invaluable opportunity for wider biodiversity net gain.

Warblington Farm was removed from Policy H40 due to a misperception that the Warblington Farm site was being promoted as the direct replacement site for the proposed Campdown development. This was not and is not the case and there is no direct relationship between Campdown and Warblington Farm. Warblington Farm is a potential mitigation site, but could provide that mitigation for any one potential development site or many.

I trust that the commentary above is helpful.

Yours sincerely

Tristan Norton

Ecologist