

Library Ref: TP03

Habitats Regulations and Biodiversity Net Gain

(A topic paper supporting the local plan examination)

March 2021



Introduction

1. This paper provides an overview of specific environmental topics which the Havant Borough Local Plan has addressed and provides a narrative of the development of the Local Plan's approach to the issues raised. It is intended to aid the Inspectors and interested parties in understanding why the Local Plan puts forward the approach that it does. To do that it signposts to the relevant evidence base, Local Plan sections and relevant statements of common ground with key stakeholders. It does not introduce new information or evidence.
2. This is one of a series of topic papers provided by the Council to support the Local Plan's examination. It is highly recommended that topic papers are read together as the nature of local plans is that topics overlap.

Purpose of this paper

3. The purpose of this topic paper is to set out the main environmental topics which have arisen during the lifetime of the emerging local plan. The following topic areas have been identified as needing further context:
 - Water Quality
 - Solent Wader and Brent Goose Strategy
 - Solent Recreation Mitigation Strategy
 - Biodiversity Net Gain

Water Quality

4. In late 2018, the European Court of Justice determined a case related to considering water quality in Appropriate Assessments for development, known as the 'Dutch Case'¹. The judgement refined the definition of plans and projects and includes more operations with an impact on water quality within that definition. As a result, the only way that a new housing scheme could prevent a likely significant effect on the Solent European Sites in relation to water quality is for there to be no increase in nutrients into the harbour, i.e. for it to be 'nutrient neutral'.
5. Prior to the Dutch Case, there was existing uncertainty on the impact of proposed longer term development on the Solent European Sites through the PUSH Integrated Water Management Study (EB11). This is due to the condition of the European Sites that new development would affect. The outcomes of the Dutch Case led to Natural England updating their advice on how to consider water quality in Habitats Regulations Assessments on planning applications in April 2019².

¹ Full reference is Cooperatie Mobilisation for the Environment UA and College van gedeputeerde staten van Noord-Brabant (Case C-293/17 and C294/17) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62017CA0293>

² The advice has been updated as necessary. The latest version (Version 5, June 2020) is available at <https://www.push.gov.uk/wp-content/uploads/2020/06/Natural-England%E2%80%99s-latest-guidance-on-achieving-nutrient-neutrality-for-new-housing-development-June-2020.pdf>

6. The judgement and subsequent advice from Natural England means that planning permissions cannot be granted unless development is shown to be nutrient neutral in and of itself, or is able to provide off-site mitigation.
7. Havant Borough Council, as part of a study group, commissioned Ricardo Energy & Environment to undertake a review³ (EB10) of the Budds Farm Wastewater Treatment Works (WwTW) catchment to ascertain whether there was a water quality issue. The report concluded that new development which is served by Budds Farm WwTW would result in a likely significant effect on several European Sites. As such, there is a need to for development within the Budds Farm (WwTW) catchment to be nutrient neutral, and mitigation was required. As well as Budds Farm WwTWs, Havant Borough is also served by Thornham WwTWs in Emsworth. Development served by Thornham WwTW would also lead to a likely significant effect and thus require mitigation.
8. Havant Borough Council identified Warblington Farm as a potential mitigation option for development which drains to both Budds Farm and Thornham WwTWs, to address the significant effect of development within the Borough on the Solent European Sites. Ricardo were commissioned to undertake a scientific review of Warblington Farm, to ascertain whether the site would provide effective and reliable mitigation for new development in Havant Borough⁴ (EB12). That report provides the scientific certainty required under the Habitat Regulations, that the mitigation option would address the significant effect resulting from new development on the Solent European Sites.
9. The report concluded that Warblington Farm is a suitable mitigation option for development draining to both Budds Farm WwTW and Thornham WwTW.
10. Throughout the process Natural England was consulted and kept up to date with the findings of the report. They agree with the report's conclusions on the suitability of Warblington Farm and have agreed with the findings of many HRAs on planning applications which use Warblington Farm.
11. Once scientific certainty was established for the mitigation option, Dixon Searle Partnership were commissioned to consider and report on the potential effect on the viability of development in respect to the mitigation strategy for nutrient neutrality⁵ (EB49). The findings of that report concluded that the mitigation option would not have a discernible impact on the viability of development coming forward in Havant borough.
12. In August 2020 Havant Borough Council launched the first phase of the Council's mitigation scheme for nutrient neutrality. The Council published an updated Position Statement and Mitigation Plan for Nutrient Neutral Development⁶ (EB09), which sets out the Council's approach to new development which is likely to have a significant effect on the integrity of the Solent European Sites. It provides guidance on how development can calculate its nutrient load, and how development can mitigate its significant effect on the Solent European sites for water quality. The Position Statement also outlines the financial contribution required should an applicant for planning permission wish to use the Council's mitigation scheme.
13. The Council's mitigation scheme has been welcomed and supported by Natural England and developers. Phase 1 of Warblington Farm can provide 805kg of nitrogen mitigation. At the time of

³ [EB10 Review of the need for nutrient neutral development in the Budds Farm Wastewater Treatment Works Catchment](#)

⁴ [EB12 Review of the Warblington Farm Mitigation Option for Nutrient Neutral Development](#)

⁵ [EB49 Local Plan and CIL Viability Supplementary Update Note](#)

⁶ [EB09 Position Statement and Mitigation Plan for Nutrient Neutral Development](#)

writing, 264.20kg of phase 1 has been reserved by development and 35.94kg has been paid for by developers.

14. The Submission Havant Borough Local Plan (CD01)⁷ addresses the issue of nutrient neutrality in Policy EX1 Water Quality impact of the Solent European Sites and allocation EX2 Warblington Farm.
15. The Council's approach to addressing water quality has been welcomed by Natural England through joint promotional material. Natural England have consistently agreed with the findings of project level Habitats Regulations Assessments which use Warblington Farm as a mitigation method. The approach to water quality was also welcomed by Natural England in their responses to the 2020 Regulation 19 consultation.

Solent Waders and Brent Goose Strategy

16. The Solent supports internationally significant numbers of waders and Brent Geese during the winter months. It is the extensive harbours and estuaries which make the Solent attractive to these species for feeding. However, during high tide, these food sources are not available and as a consequence birds migrate further inland to feed and roost.
17. The Solent Waders and Brent Goose Strategy⁸ (EB16) aims to protect the network of non-designated terrestrial wader and Brent Goose sites from development and recreational pressure. Those sites which are identified within the strategy fall outside the SPAs boundaries. However, the sites identified through the strategy are used by SPA species and therefore contributes to the SPA's conservation objectives by providing alternative roosting and foraging sites.
18. The non-designated sites outside of the SPA boundary are classified as either Core Areas, Primary Support Areas, Secondary Support Areas, Low Use or Candidate Sites.
19. There are many sites in Havant Borough which support Solent Waders or Brent Geese at high tide. As a result, some development proposals are either on or adjacent to sites which are used by Solent waders and Brent Geese as identified within the strategy. Such proposals therefore need to be assessed in line with the Habitat Regulations and if necessary require an Appropriate Assessment to be undertaken.
20. The Strategy sets out the mitigation and off-setting requirements for each classification. For sites on Core Areas or Primary Support Areas if mitigation cannot be achieved on site a suitable replacement site is required. For secondary support areas or low use sites there is greater flexibility around the form that mitigation can take, including the option of a financial contribution to improve a site elsewhere.
21. Policy E17 Solent and Wader and Brent Goose feeding and roosting sites reflects these requirements within the Local Plan.
22. In line with the strategy the Local Plan has allocated two sites which can provide off-site mitigation for development on Secondary and Low Use Sites. These are Warblington Farm (EX2) and

⁷ [CD01 Submission Havant Borough Local Plan](#)

⁸ [EB16 Solent Waders and Brent Goose Strategy](#)

Broadmarsh Brent Goose and Wader Refuge (E25). A further site on Hayling Island is safeguarded through Policy IN1.

23. The successful application of the strategy can be seen from planning applications on Secondary Support Areas/Low Use Sites where the applicant agreed to a commuted sum to be used at the mitigation sites identified within the Local Plan⁹ and Natural England agreed with the findings of the Council's HRA. Also, the allocation Forty Acres (H14) which was granted planning permission (reference 18/00450) was able to provide a refuge on-site in order to provide suitable mitigation habitat to off-set the impact of development on a Secondary Support Area and Low Use Site. Again, Natural England agreed with the findings of the Council's HRA that accompanied the planning application.
24. There are however, two allocations within the Local Plan that are located on either a Core Area or Primary Support Area where further explanation is needed in relation to mitigation.

Rook Farm (H27)

25. The allocation Rook Farm (H27) within the Local Plan is located on a Core Area and will only be permitted where a suitable replacement habitat is provided in perpetuity. This could be a refuge site which has been safeguarded under emerging Local Plan Policy IN1 (Hayling Island Bird Refuge (IN1K)) or an alternative provision agreed in consultation with Natural England.
26. Natural England has concerns regarding the deliverability of the allocation due to the mitigation required for the Core Area. However, the allocation will only be granted planning permission if a suitable mitigation package is brought forward and a Habitats Regulation Assessment is undertaken which concludes that there is no likely significant effect on any internationally designated nature conservation sites and is agreed in consultation with Natural England.
27. There is clear developer interest in bringing the site forward. This is evidenced through the submission of an outline planning application for the site, which was refused. However close contact has been maintained with the site promoter since then and it is understood from their Regulation 19 representations and other discussions that they are actively exploring mitigation options. More detail on the site's planning history is provided in the Sites Topic Paper (TP02).

Campdown (H40)

28. The allocation Campdown (H40) within the Local Plan is located on a Primary Support Area and a Secondary Support Area and will only be permitted where a suitable replacement habitat is provided in perpetuity.
29. Natural England has concerns about the allocation due to its importance to the SPA's curlew population which uses the Campdown site. The concerns are based on the uncertainty as to whether the function of the site can be replaced, and an appropriate refuge secured because of the sensitivity of the species.

⁹ Land East of Castle Avenue (APP/18/01033), which forms part of allocation H15. Land South of Lower Road (APP/19/00427 & APP/20/01031), which forms allocation H20. Whilst the two planning applications at 'Land South of Lower Road' were subsequently refused planning permission, the principle of the approach to the Habitats Regulations was accepted by Natural England, albeit the absence of the mitigation package in a legal agreement led to its inclusion in reason for refusal 2.

30. In light of these concerns, Havant Borough Council sought Counsel view as to whether a replacement refuge for the site must support the exact same population of birds on the allocation site and where the mitigation should be.
31. The Council's interpretation of the Counsel's advice is that there is not a need for mitigation to be for the same exact bird population on the site. The Site Improvement Plan anticipates that this may be secured through the provision of refuges and this approach has been carried forward into the Local Plan. However, that does not require the competent authority to be certain that the individual birds which use Campdown will frequent the alternative site. The key point is instead that the refuge site be design so that the SPA's population of these species is maintained or ideally restored. The crucial element of any plan or project is that it should not undermine the conservation objectives of the SPA.
32. In terms of location, the mitigation scheme should demonstrate that it is capable of mitigating the significant effect caused by the development site. To do this, it should be shown that the mitigation scheme will maintain or restore the qualifying species which currently use the proposed development site. It is however not necessary for it to be the exact bird population which currently use it in order to necessarily reach the conclusion of no likely significant effect.
33. The Council is committed to working with Natural England to ensure a suitable mitigation package is brought forward with any planning application and that a Habitat Regulations Assessment is undertaken which concludes there is no likely significant effect on any internationally designated nature conservation sites. If a suitable mitigation package is not brought forward, there are safeguards in place within the policy allocation which would ensure that planning permission is refused and the site could not be permitted until a suitable mitigation package is submitted.

Solent Recreation and Mitigation Strategy

34. Research has been undertaken which has shown that more development being built in the Solent will lead to more people visiting the coast for recreation, and potentially causing additional disturbance to the birds within the SPAs within the Solent. The Solent Recreation and Mitigation Strategy¹⁰ (SRMS) (EB17) was produced to provide a strategic solution across all Solent authorities to ensure the requirements of the Habitats Regulations are met due to the in-combination effects of increased recreational pressure from new development.
35. The SRMS sets out the mitigation measures which are required from new development. The strategy enables an to make a developer contribution for the strategic mitigation of recreational pressures, instead of them needing to provide bespoke mitigation themselves.
36. The strategy geographically applies to any new residential development within 5.6km of the SPA. The majority of Havant Borough except a small area to the North is within the 5.6km boundary. This is set out in Policy E16 of the Submission Local Plan (CD01) and shown spatially in figure 21.
37. The strategy was prepared by the local authorities, statutory bodies and other organisations as part of the Bird Aware Solent Partnership. It is considered that the SRMS is the most appropriate mechanism for mitigating recreational disturbance to the Solent European Sites created by new residential development. It provides the clarity and certainty for both developers and local authorities because it delivers coordinated and effective mitigation as well as helping the development approval process and reducing the cost for all parties. Natural England are supportive

¹⁰ [EB17 Solent Recreation Mitigation Strategy](#)

of the partnership and a key member of it whilst the development industry also accept it as a way of addressing this issue. Since its inception, the partnership has won several awards for the work that it does.

38. The Local Plan addresses the increased recreational impact on the Solent European Sites and implements the SRMS through policy E16 Recreation impact on the Solent European Sites. The policy itself is very similar to a policy in the adopted Allocations Plan. Whilst housebuilders are not obligated to use the SRMS, invariably they do. Addressing this issue has become part of the development process at the Solent and is now accepted by the development industry.

Biodiversity Net Gain

39. During the production of the Local Plan there have been emerging(?) changes in legislation and national policy. The Local Plan has taken account of new legislation in order to ensure it is sufficiently flexible to provide longevity post adoption. The Environment Bill is a particularly significant piece of legislation that, if passed as currently drafted, would have significant impacts on planning and development.
40. A feature of the Environmental Bill is around biodiversity net gain, and the requirement for development not only to mitigate the amount of biodiversity lost through development, but also to provide improvements in biodiversity compared to the existing position. The Local Plan in Policy E14 The Local Ecological Network, as well as the Biodiversity Strategy (EB15), therefore addresses the biodiversity requirements of the Environmental Bill by requiring development to provide biodiversity net gain in line with the Environmental Bill and the DEFRA Metric which is currently being finalised.

