

# APPENDIX

## Habitats Regulations – Appropriate Assessment

**Application 16/02231/OM Outline Application: Residential development of the land to provide up to 600 dwellings, incorporating affordable housing, together with a local centre for uses A1, A2, A3 and/or A5 (600m<sup>2</sup>) with the total quantum of A1 net sales area not to exceed 279m<sup>2</sup> in the alternative, D2 community floorspace (up to 500m<sup>2</sup>), open space, formal sport pitches, a car park to serve Reffley Wood and associated development to include substations, drainage features, roads, cycle and pedestrian paths and other such works - Land West of Knights Hill Village, Grimston Road, South Wootton, King's Lynn Norfolk ('the Site')**

### 1 Background

- 1.1 The Conservation of Habitats and Species Regulations 2017, commonly referred to as 'The Habitats Regulations', transpose the European Union Habitats Directive on the conservation of natural habitats and of wild fauna (92/43/EEC ) into national law and sets out the provisions for the protection and management of habitats and species of European importance.
- 1.2 The Habitats Regulations require a Competent Authority (for planning decisions this is the Local Planning Authority) to make an Appropriate Assessment of the implications of a plan or project which is likely to have a significant impact on European (or Natura 2000) sites and is not directly connected with or necessary to the management of those sites.
- 1.3 In the context of The Habitats Regulations, European sites comprise:
  - Special Areas of Conservation (SAC) and candidate Special Areas of Conservation (cSAC), which are designated under the Habitats Directive
  - Special Protection Areas (SPA) and potential Special Protection Areas (pSPAs) classified under the 'Birds Directive' (2009/147/EC ); and
  - Ramsar sites – although not included within the Habitats Regulations definition of European sites, government policy requires Ramsar sites to be given the same protection as European sites.
- 1.4 The Habitats Regulations provide for the control of potentially damaging operations, whereby consent for a plan or project may only be granted once it has been shown, through the Habitats Regulations Assessment process, that the proposed operation will not adversely affect the integrity of the European site(s) either individually or in-combination with other plans or projects.

## 1.5 HRA: Key Stages

i) Stage 1: Screening for Likely Significant Effect - screening to identify whether a plan is likely to have a significant effect on a European Site.

ii) Stage 2: Appropriate Assessment and ascertaining the effect on site integrity - where likely significant effects have been found, appropriate assessment of the development to ascertain whether it has an adverse effect on the integrity of the European site.

iii) Stage 3: Procedures where Significant Effect on the Integrity of International Sites Remains - consideration of mitigation measures and alternative solutions where adverse effects on the integrity of a European site have been identified.

1.6 The recent European Court of Justice Ruling in the People Over Wind/Sweetman case (ref: C-323/17, April 2018) found that measures to avoid or reduce harmful effects of a plan or project on a European site must not be considered at the screening stage details of mitigation for any project where there is a risk of significant effects on a European Site should be set out in information to support an Appropriate Assessment carried out by the Competent Authority.

1.7 When considering potentially damaging operations, the Competent Authority must apply the precautionary principle i.e. consent cannot be given unless it is ascertained that there will be no adverse effect on the integrity of the site with regard to the site's conservation objectives.

Stage 1: Screening for Likely Significant Effect

1.8 The application site is not within and does not contain any European sites. The nearest sites and their internationally designated sites:

- Roydon Common SAC / Ramsar / SCI / cSAC, approximately 1.1km due east
- Dersingham Bog SAC / Ramsar / SCI / cSAC, approximately 6.0km due north
- The Wash and North Norfolk Coast SAC, approximately 14.8km (by road) due north
- The Wash SPA and Ramsar, approximately 14.8km (by road) due north

1.9 The Site is part of a wider housing allocation for South Wootton under Policy E4.1 of the Site Allocations and Development Management Policies Plan 2016 (SADMP), with the policy requiring at least 600 dwellings on the 36.9ha of

allocated land. The Habitats Regulations Assessment (HRA) carried out to inform the site/policy selection process for the SADMP concluded that this project, due to its cumulative impact with other large housing allocations, would likely have a significant effect on Dersingham Bog Ramsar, Special Area of Control and Special Protection Area and Roydon Common Ramsar, Special Area of Control Special Protection Area.

- 1.10 An initial Stage 1 Screening Report (Capita. 2016) was submitted with the application. Appendix B of the initial Ecological Impact Assessment (December 2016) provided a list of sites to be included for the appropriate assessment. This list included the Wash SPA, The Wash and North Norfolk Coast SAC and The Wash Ramsar. However, given that the distance between the Site and The Wash is a long way beyond the 2km Zone of Influence it has not been necessary to consider effects upon The Wash. This is consistent with the findings of the Local Plan strategic HRA conducted in 2015.
- 1.11 Since the initial Stage 1 Screening Report submission by the applicant a subsequent project level Habitats Regulations Assessment Addendum was submitted in October 2018 to enable the Competent Authority and other consultees to undertake an Appropriate Assessment of the applicant's proposals after it was identified that without mitigation there is a risk of significant effects to Roydon Common and Dersingham Bog SAC.
- 1.12 This updated report contains relevant information from further research that was not available at the time of the Stage 1 Screening Report namely the "Visitor surveys at European Protected Sites across Norfolk during 2015 and 2016" (Panter et al. 2016).
- 1.13 The updated Ecological Screening Report considers the potential effect of the proposed development in terms of habitat loss or habitat degradation. It considered the reasons why the Natura sites are important, their characteristics and designated features. In addition, this report includes an in-combination assessment with other similar projects within 5 miles (8km) as requested by Natural England.
- 1.14 The Report found that the development, alone, is not likely to have a direct impact on the European Sites. However there is a risk with a development of this size and in combination with other similar projects in the vicinity that indirect impacts are likely relating to access and recreation to Roydon Common which is a component of the Roydon Common and Dersingham Bog SAC and lies 1.4 km away at its closest point to the Site. The Report then considers the potential impacts of the proposed development upon the designated features in

terms of increased population and increased visitor levels, associated increased levels of domestic pets and harm to the sites through increased activity, noise and lighting etc.

- 1.15 The report includes greater detail on the measures that will be incorporated into the development to address:
- Recreational pressure to Reffley Wood adjacent to the Site
  - Recreational pressure to Roydon Common which forms part of Roydon Common and Dersingham SAC
  - Dog walking facilities on the Site
  - Details of the greenspace and recreational mitigation included within the scheme design
  - Details of the contributions the developers will make to the Community Infrastructure Levy and Habitats Mitigation Tariff
  - Details of the contributions the developers will make to the Norfolk Wildlife Trust to address a wider suite of mitigation measures, including contributions to facilitate appropriate management of Roydon Common.
- 1.16 The finding of the Ecological Screening Report is that the development will need to include a number of on-site provisions in order to work with and improve the ecology in the area. These include a dedicated wildlife area, the retention of trees and hedgerows and substantial areas of open space with a network of footpaths, dedicated dog walking areas and information boards.
- 1.17 The Ecological Screening Report concluded that, subject to mitigation there will be no adverse effects on the interest features of the surrounding European protected sites. It stated that no adverse effects on the integrity of any features of the European site were identified and as a result there is no need to consider further mitigation measures above and beyond those that are set out in the accompanying Ecological Impact Assessment in support of this application.

#### Stage 2: Appropriate Assessment

- 1.18 This requires the consideration of the impact on the integrity of the Natura 2000 sites of the project, either alone or in combination with other projects or plans, with respect to the Natura 2000 site's structure and function and its conservation objectives. Additionally, where there are adverse impacts, an assessment of the potential mitigation of those impacts.

**Q1. Is the proposal directly connected with or necessary to European site management for nature conservation?**

1.19 The proposal is in outline for the construction of up to 600 dwellings, a local centre for uses A1, A2, A3 and/or A5 (600m<sup>2</sup>), a community building floorspace (up to 500m<sup>2</sup>), a car park to serve Reffley Wood, open space and associated infrastructure. It is not directly connected with or necessary for the management of any European sites.

**Q2. Is the proposal likely to have a significant effect on the internationally important interest features of the European site, alone or in combination with other plans or projects?**

1.20 The Site is approximately 1.1km to the west of Roydon Common SAC and Dersingham Bog SAC is 6.0km to the north.

1.21 The Site has been considered as part of the Local Plan works in connection with the SADMP and is covered by Policy E4.1. It features in the Borough-wide HRA of Detailed Policies and Site Plan (updated September 2015). This document was produced to inform the Site Allocations and Development Management Policies – Proposed Submission Document (formerly known as the Site Specific Proposals Development Plan Document).

1.22 This Borough wide HRA takes into account comments received from Natural England and the RSPB on the previous HRA (September 2014) undertaken for the Preferred Options stage, and comments received from these and other parties (including Norfolk Wildlife Trust) at the submission stage. The SADMP forms part of a hierarchical process and adds detail to the policies from the Core Strategy (adopted in July 2011). The SADMP forms part of the Local Plan (along with the existing Core Strategy) for the Borough. The Core Strategy was subject to a HRA to ensure no adverse effects of the policies on sites within the European nature protection area network (Natura 2000); i.e. SACs and SPAs.

1.23 The HRA document considers the potential effects of the site-specific policies and allocations on designated sites of European importance. The Site has therefore been assessed through this Borough-wide HRA.

1.24 'Potential effects' were considered to arise from loss of supporting habitats, habitat fragmentation, non-specific proximity impacts, increased recreation and leisure pressures, increased use of roads, and the cumulative recreational impacts on sites arising from multiple housing allocations.

1.25 By far the most important of these, in a Borough-wide context, was considered to be the multi-faceted and complex impacts arising from increased recreation and leisure pressures on European sites. These were considered in some detail, and the best available evidence was used to inform the assessment. This indicated that visitors likely to cause greatest impacts were those local site users, in particular those exercising dogs. Impacts were predicted to be greatest where local users were within comfortable walking distance of European sites (estimated to be 1km), and would also occur where sites were in a reasonable range of driving (estimated to be around 8km or 5 miles).

1.26 While the effects of individual preferred options for housing were considered not to give rise to a 'likely significant effect', a more substantial effect was predicted when the in-combination effects of groups of new housing allocations within range of the European sites were considered.

1.27 With regard to this Site the originally submitted project level Stage 1 HRA Ecological Screening Report (2016) concludes the following:

#### Mitigation during construction

The construction impacts of the proposed development on the European nature conservation sites can be considered to be 'negligible' due to the distance between these wildlife sites and the site and the lack of any specific direct ecological connectivity. No direct mitigation for construction impacts are proposed for these sites.

#### Mitigation during operation

In the absence of mitigation, the operational phase of the proposed development is considered 'likely to have a moderate to major ecological significance' on these sites (Dersingham Bog and Roydon Common SAC/cSAC/Ramsar/SSSI,) due to potential increased recreational pressure.

1.28 The supporting HRA Addendum (2018) includes a detailed review of the extent of this potential increase in usage based upon an assessment of projected increases in visitor numbers arising from fulfilment of the existing housing allocations for the King's Lynn and West Norfolk District.

1.29 Based on this analysis, users of the site most likely to have a significant impact upon adjoining European Protected Sites, were identified to be dog walkers in relation to Dersingham Bog and Roydon Common. At Roydon Common 96% of visitors to the site came from home (rather than on holidays) and 46% gave the

reason to visit the site as being close to home. 36% of visitors stay for a duration of 30 minutes and 54% of visitors were visiting from home within 5 km.

- 1.30 The most common activity recorded on the site was dog walking (41%) and the second was walking (26%) with the remainder being a mix of the following activities: wildlife watchers, runners/joggers, photography. Of the visitors interviewed 96% arrived by car.
- 1.31 It is reasonable to assume that a proportion of residents of new developments such as the Knight's Hill scheme will own dogs and are likely to be seeking local dog walking facilities. For those visitors not visiting to see the wildlife, which was not recorded as the majority of reasons people visited the site, the sites provide a convenient, attractive local space for activities such as dog walking and walking, and while visitors make a positive choice to visit the site, it appears there is little awareness of the nature conservation importance of the sites.
- 1.32 The Panter report concludes that sites including Roydon Common would benefit from increased wardening provision (promoting codes of conduct, disseminating information of the site, nature conservation interest and alternative sites to visit, and actively managing disturbance), awareness raising (dogs on leads) and additional access infrastructure.
- 1.33 Specific mitigation designed to minimise these impacts, and ensure no significant likely effects on these sites includes a series of generic and specific mitigation measures. These have been submitted as part of the current planning application.
- 1.34 These generic measures to minimise recreational pressures on these sites, as informed by the desk study completed as part of the HRA Screening Report and existing allocation policy for the proposed development (Policy E4.1) include:
- A 50m buffer around the ancient woodland contained within Reffley Wood
  - The provision of a new car park for approximately 10 cars close to Reffley Wood
  - Creation of pedestrian links into Reffley Wood
  - A managed boundary into Reffley Wood

- Overprovision of 6.0ha of open space compared to the standards set out within the Council's adopted standards DM16 (approx. 167%)
  - An additional 4.75ha of additional land for landscape buffers and ecological mitigation areas
  - A network of footpaths and routes for cycling
  - Payment of the £50 Habitat Mitigation Tariff for specific projects. Based on 600 dwellings this would contribute £30,000 towards this.
- 1.35 Specific mitigation measures to minimise recreational impacts upon Dersingham Bog and Roydon Common, with reference to dog walkers include:
- A contribution towards a Community Ranger for Roydon Common and community engagement delivery costs for 3 years
  - The provision of an area of approximately 1.5ha for off lead dog walking that will be incorporated into the development at the northern end of the site adjacent to Grimston Road.
- 1.36 The HRA considers that there would possibly be in-combination effects on Natura 2000 sites from the collective allocated and major development sites including the land at Hall Lane (Site Allocation Policy E3.1), Nursery Lane (17/01106/OM), Lynnsport (16/02227/FM or 16/00097/FM), Marsh Lane and Russett Close in the town. However, each of these sites has either proposed compensation measures to minimise potential impacts upon Natura 2000 sites through the provision of new areas of on-site accessible green space and improved access to adjoining areas or have not been considered to cause a significant effect on nearby European sites. Where relevant the applicants have also been agreeable to the payment of the Habitat Mitigation Tariff as well as liable for CIL.
- 1.37 Since the original submission the amount of open space has been further increased to provide specific off lead dog walking areas of approximately 1.5ha. Based on the implementation of the mitigation proposed across the Site, including the provision of additional areas of publicly accessible green space, and in particular dog walking mitigation measures, this site taken alone as well as in-combination impacts with other housing sites is considered unlikely to give rise to significant adverse effects on Natura 2000 sites.
- 1.38 Further, the payment of the Habitat Mitigation Tariff, which will provide for funding of monitoring and small scale mitigation of impacts on European sites

goes further towards mitigation. It contributes towards the Habitat Mitigation Advisory Panel, which advises the Borough Council on such measures and provides recommendations for allocation of funds.

- 1.39 This Strategy contributes to safeguarding the integrity of European sites within, and adjacent to the Borough boundary and is monitored and reviewed to ensure the effectiveness of the identified measures. Partnership working is a key component of the Strategy and the Borough Council continues to pursue a joined up approach with all relevant authorities, organisations and site owners with responsibility for managing the designated European Sites.
- 1.40 Additionally the applicant proposes to support the enhanced management of nearby designated nature conservation sites by contributing financially towards the funding of a Community Ranger in line with the Norfolk Wildlife Trust 'Roydon Project' covering Roydon Common and Grimston Warren. This will assist in managing the area most at risk from visitor pressure through face to face engagement and promoting positive attitude and behaviours. This can be secured through S106 legal agreement.
- 1.41 Accordingly, the ongoing implementation of the Natura 2000 Sites Monitoring and Mitigation Strategy together with the generic and specific mitigation measures proposed to minimise recreational pressures on European sites as a required part of this development, provides the required certainty that any likely effects of the development of this Site on the Natura 2000 sites will be avoided or mitigated against.

**Q3. Assess implications of the effects of the proposal for the European site's conservation objectives, consult Natural England and, if necessary, the public.**

- 1.42 Consideration has been given to the in-combination effects of recreational pressure on the, Dersingham Bog SAC / Ramsar / SCI / cSAC and Roydon Common SAC / Ramsar / SCI / cSAC identified through the screening process.
- 1.43 As stated above, the Borough implements a Habitat Mitigation Tariff for all new residential development. This funding secures the monitoring and small scale mitigation of impacts on European sites. The Habitat Mitigation Tariff is set at £50 per house (index linked) plus a £50 fee to cover legal and administration costs. The proposal for 600 houses would contribute £30,000 towards the monitoring and small scale mitigation of impacts on European sites.

- 1.44 The Habitat Mitigation Tariff would be used to ensure timely and efficient mitigation of the recreational pressures arising from new development. As referred to above, this is initiated through the Habitat Mitigation Advisory Panel, made up of representatives of bodies that have expertise in managing impacts on these habitats e.g. BCKLWN Officers, RSPB, Norfolk Wildlife Trust, Natural England, NCC, National Trust, Forestry Commission, Water Management Alliance and the Environment Agency. They make recommendations for projects and expenditure of monies and set priorities for future action to meet the requirement of the HRA.
- 1.45 It is considered that such mitigation measures, when implemented, will ensure that likely significant impacts identified in the HRA as a result of policies proposed in the SADMP document will be avoided or mitigated against.
- 1.46 Natural England has been consulted through the planning application process. They raise no objection subject to appropriate generic and specific mitigation to minimise recreational impacts on European sites being secured.
- 1.47 Natural England welcome the provision of public open space over and above the Councils open space standard, including 5ha of informal open space, 1ha of children's play space, 0.7ha of formal open space and 0.3ha of allotment/community orchard. They accept the provision of 1.5ha of safe off the lead dog walking space that will be incorporated into the north side of the development footprint and linked to foot and cycle paths.
- 1.48 With regard to Reffley Wood County Wildlife Site Natural England states that all proposed access and pathways should be agreed with the Woodland Trust. They advise that the measures recommended by the Woodland Trust as described in the HRA (section 5.1) are conditioned as part of planning permission.
- 1.49 With regard to Roydon Common SSSI/SAC Natural England understands that, based on the information provided in section 5.2.1 of the HRA, the developer will contribute to the funding of a full time Community Ranger for a period of three years and community engagement costs for three years. They advise that an appropriate planning condition or obligation is attached to any planning permission to secure these measures. This will be included within the S106 legal agreement.
- 1.50 With regard to Natura 2000 Sites Monitoring and Mitigation Strategy Natural England welcomes a financial contribution of £50 per dwelling towards the King's Lynn Borough Council Natura 2000 Sites Monitoring and Mitigation

Strategy as in line with Policy DM19. This will be included within the S106 legal agreement.

1.51 Public consultation has been undertaken through the planning application process. Norfolk Wildlife Trust has been closely involved with the proposed mitigation measures and has made comments similar to those made by Natural England, but otherwise no other comments relating to European sites have been made by statutory consultees.

**Q4. Can it be ascertained that the proposal will not adversely affect the integrity of the European site(s)?**

1.52 Yes – see response to Q.2.

**Q5. Would compliance with conditions or other restrictions, such as planning conditions and obligations, enable it to be ascertained that the proposal would not adversely affect the integrity of the European site(s)?**

1.53 Yes, conditions / legal agreement re: Habitat Mitigation Tariff and incorporation of visitor improvements to Reffley Wood, dog walking routes and high level of open space within the site enable it to be ascertained that the proposal will not adversely affect the integrity of the European sites – see detailed response to Q.2. and Q.3, which lists the measures to be secured either through condition or within a S106 legal agreement.

**Q6. Are there alternative solutions that would have a lesser effect or avoid an adverse effect on the integrity of the European site(s)?**

1.54 N/A – see response to Q.2.

**Q7. Might a priority habitat or species on the European site(s) be adversely affected by the proposal?**

1.55 No – see response to Q.2.

**Q8. Are there imperative reasons of over-riding public interest relating to human health, public safety or benefits of primary importance to the environment?**

1.56 N/A – see response to Q.2.

**Conclusion**

- 1.57 The submitted application incorporates large areas of open space across the Site. Up to 7 ha of open space is currently proposed (approximately 20% of the Site), made up of 6ha for amenity, outdoor sports or allotments and 1ha of equipped children's play space which includes areas of natural green space and other space designed to be attractive to dog walkers. This included a dedicated 1.5ha area for dog walking. A further 4.75ha of additional land is proposed for landscape buffers around and within the Site. These areas offer benefits in terms of ecological aspects and present substantial opportunities to enhance areas of biodiversity within the proposal through the creation of wildlife areas.
- 1.58 These areas planned into the proposal therefore not only provide areas for landscaping and ecology but also present opportunity to offer the mitigation to the Natura 2000 sites.
- 1.59 Additionally, with regard to off-site measures, in order to help the enhanced management of nearby designated nature conservation sites, the applicant is proposing financial contributions towards the appointment of a community ranger at Roydon Common to actively engage with the local community and visitors and help promote positive attitudes and behaviour. This can be secured through S106 legal agreement.
- 1.60 It is of note that Natural England has been consulted throughout the planning application process and raises no objection, subject to appropriate mitigation being secured.
- 1.61 As referred to above, the Ecological Screening Report sets out a list of mitigation measures which will ensure the development will not have significant effects on the Natura 2000 sites. It is considered these elements can be secured through planning condition or legal agreement and will sit alongside the additional mitigation measures achieved through the payment of the Habitat Mitigation Tariff.
- 1.62 Accordingly, subject to the development incorporating additional recreational provision in the form of informal open space or dog walking facilities in addition to the list of generic and specific measures referred to at paras 1.34 and 1.35, and the ongoing implementation of the Natura 2000 Sites Monitoring and Mitigation Strategy through payment of the Habitat Mitigation Tariff, to be secured through planning condition or S106 agreement, it is considered that the impacts upon the European sites can be mitigated to a sufficient degree for it to be ascertained that the proposal would not adversely affect the integrity of the European sites, and permission may be granted for this application.