

HABITATS REGULATIONS

Appropriate Assessment for 21/01432/FM Estuary Farm, Edward Benerfer Way, King's Lynn, PE30 2HY

Changes have been made to the Conservation of Habitats and Species Regulations 2017 (as amended) (2017 Regulations). The changes are made by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (2019 Regulations).

The 2017 Regulations are one of the pieces of domestic law that transposed the land and marine aspects of the Habitats Directive (Council Directive 92/43/EEC) and certain elements of the Wild Birds Directive (Directive 2009/147/EC) (known as the Nature Directives).

The Regulations require the competent authority (in this instance the LPA) to ascertain the impacts of a plan or project not directly connected with or necessary to the management of a protected site that may impact on the site.

The competent authority must be satisfied that the project would not adversely affect the integrity of a protected site or, where there is no alternative solution that the project must be carried out for imperative reasons of overriding public interests.

The protected sites are known as Natura 2000 and consist of SACs, and SPAs. Ramsar sites, candidate SACs (cSACs) and potential SPAs (pSPAs) are treated the same as SAC and SPAs for the purposes of the Habitat Regulations Assessment (HRA).

In this instance the following sites need to be considered:

- The Wash NNR (1.47km to the West)
- The Wash Ramsar, SSI, SPA (2.48km to the Northwest)
- The Wash and North Norfolk Coast SAC (2.48km to the West)

Full details of these site's qualifying features and conservation objectives accompanied the application.

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.

The HRA is a staged process.

- STAGE 1: Screening for Likely Significant Effect (considers the scope for likely significant effects to occur based on a broad scale assessment taking into account factors such as the spatial relationship between impact sources and designated site. Screening for likely significant effects considers the project both alone and in-combination with other projects.)
- STAGE 2: Appropriate Assessment and ascertaining the effect on site(s) integrity (if stage 1 identifies likely significant effect an assessment of the implications of the project for the site(s)'s conservation objectives is carried out.)
- STAGE 3: Procedures where Significant Effect on the Integrity of International Sites Remains (if Stage 2 concludes that the project will adversely affect the integrity of the sites or when adverse effects cannot be ruled out, an assessment of alternatives for the project must be considered. Should no alternative be available 'Imperative Reasons of Overriding Public Interest' (IROPI) must be justified and compensatory measures identified.)

Therefore, consent should only be granted for plans and projects once the relevant competent authority has ascertained that there will either be no Likely Significant Effect, or (if that is not possible) that there will be no adverse effect on the integrity of the European Site(s) in question.

Stage 1 Screening

The HRA screening had to be redone due to an inaccuracy in the initial submission which has resulted in the loss of an area of land to the south of the site. The loss of this area resulted in the need for a further desk study to be undertaken in relation to bird use of the footprint of the site from other information sources (i.e. in addition to what was actually recorded on site during the four surveys.)

The conclusion of the desk study is that there are no bird records from the actual footprint area of the site. Therefore, the Desk Study results do not add additional bird value to that which is detailed in the ADAS (2021) Wintering Bird Survey Report.

It is considered that the Desk Study has been undertaken in accordance with the requirements of Natural England, and consider that due to the fact that no additional bird records exist for the site area, the detailed Desk Study did not produce different results from the conclusion of the Winter Bird Survey Report.

Stage 1, including the desk study, has identified that significant effects on the protected sites are unlikely to occur as a result of any phase of the development alone or in combination.

Initially the LPA considered that it was not necessary to carry out an Appropriate Assessment given the outcome of the screening stage. However, comments from Natural England suggest that the LPA should undertake an Appropriate Assessment.

Stage 2: Appropriate Assessment

The application site is not within but is within proximity to the following international designations:

- The Wash NNR (1.47km to the West)
- The Wash Ramsar, SSI, SPA (2.48km to the Northwest)
- The Wash and North Norfolk Coast SAC (2.48km to the West)

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

No

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

No - Full details of the protected sites' qualifying features and conservation objectives, together with any likely impacts, accompanied the application and has satisfied both Natural England and the LPA (the competent authority) that the development would not have a likely significant effect on protected sites subject to conditions (mitigation.)

3. Assess implications of the effects of the proposal for the site's conservation objectives, consult Natural England and, if necessary, the public Consideration has been given to the in-combination effects of recreational pressure on the European Protected Sites identified through the screening process.

The nature of the development is such that it would not result in increased recreational pressures on the protected sites.

4. Can it be ascertained that the proposal will not adversely affect the integrity of the sites?

Yes

5. Would compliance with conditions or other restrictions, such as planning conditions, enable it to be ascertained that the proposal would not adversely affect the integrity of the site?

Yes

6. Are there alternative solutions that would have a lesser effect or avoid an adverse effect on the integrity of the sites?

N/A (no likely adverse effect)

7. Might a priority habitat or species on the site be adversely affected by the proposal?

No.

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

N/A, but no.