

APPENDIX 1

Habitats Regulations – Appropriate Assessment

Application ref: 21/01873/FM – Construction of 226 new homes and associated green space, landscaping and ancillary infrastructure

Land SE of 60 Queen Mary Road N of Railway Line And S of Parkway Gaywood King's Lynn

1. Background

1.1 The Conservation of Habitats and Species Regulations 2017 (as amended), 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. For clarity, 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).

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 A 2018 case law ruling from the European Court of Justice Ruling on Article 6 of the Habitats Directive in Grace & Sweetman has dictated that screening for likely significant effects cannot take

into account any mitigation; however, the effects of mitigation measures can be assessed and accounted for at Appropriate Assessment (AA).

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 following European Protected Sites are within 15km of the Application Site:

- The Wash, Ramsar and SPA
- The Wash and North Norfolk Coast, SAC
- Roydon Common, Ramsar
- Dersingham Bog, Ramsar
- Roydon Common and Dersingham Bog, SAC
- Norfolk Valley Fens, SAC

1.9 The Site comprises a housing allocation for King's Lynn under Policy E1.6 King's Lynn - South of Parkway of the Site Allocations and Development Management Policies Plan (2016), with the policy requiring some 260 dwellings. 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 The Wash Ramsar and SPA and The Wash and North Norfolk Coast SAC.

1.10 A shadow Habitats Regulations Assessment (sHRA) prepared by Hopkins Ecology dated September 2021 with the application and subsequently updated in January 2022 to enable the Competent Authority (in this case the local planning authority) to undertake an Appropriate Assessment of the proposals after it was identified that without mitigation there is a risk of significant effects to The Wash SPA/Ramsar Site, The Wash and North Norfolk Coast SAC and Roydon Common and Dersingham Bog SAC/Ramsar Sites.

Stage 2: Appropriate Assessment (AA)

1.11 The Screening carried out within the submitted sHRA Report has indicated that the Application Site may lead to likely significant effects on three European sites, when considered in combination with the King's Lynn Core Strategy and corresponding Site Allocations Plan (in relation to residential development. The sites are:

- The Wash (SPA/Ramsar Site and Wash and North Norfolk Coast SAC)
- Roydon Common and Dersingham Bog SAC/Ramsar Site
- Norfolk Valley Fens (at East Walton and Adcock's Common SSSI)

The in-combination effects at all three groups of these sites are associated with the increase in the population size of King's Lynn albeit it minor as a result of this development, and the resultant increase in disturbance due to a potential proportional increase in visitor pressure.

The Local Planning Authority (LPA) is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) and it is required to make an Appropriate Assessment of the implications of the project on the integrity of any affected European site in view of

each site's conservation objectives. Those sites are The Wash SPA/Ramsar Site, The Wash and North Norfolk Coast SAC and Roydon Common and Dersingham Bog SAC/Ramsar Site.

The LPA agrees with the assessment and findings in the Appropriate Assessment of the sHRA report prepared by Hopkins Ecology dated January 2022 and therefore adopts Section 5 of that report as the necessary Appropriate Assessment in its role as the Competent Authority on this matter and agrees that there would be no adverse effect on the integrity of the designated sites based on the mitigation package proposed as follows:

- The mitigation for in combination impacts is via a tariff-based scheme to fund mitigation on relevant sites, such as signage and visitor infrastructure. This is outlined within the 'Natura 2000 Sites Monitoring and Mitigation Strategy' and Policy DM19 Green Infrastructure/Habitat Monitoring and Mitigation of the SADMPP 2016. The Habitat Mitigation Payment is £55 per house and a payment of £12,430 has been paid.
- Additional mitigation would also be provided via the existing local path network and provision of on-site open space. These would serve to provide alternative areas of recreation and reduce the likelihood of residents travelling to sites for recreation, in particular dog walking. It is also recommended that as additional mitigation an advisory leaflet is distributed in the sale pack of the properties, to provide information on areas for recreation / dog walking and describe the value and importance of Ramsar Sites and Nature Directives sites and their sensitivities.

Notwithstanding the above, a further package of habitat enhancement measures on 6.4ha of land to the east of the development (in the applicant's control) is also proposed and will be secured via condition.