

PLANNING APPLICATION REPORT

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REF NO: P/59/24/DOC

LOCATION: Land South of Summer Lane and West of Pagham Road

PROPOSAL: Approval of details reserved by condition imposed under P/140/16/OUT relating to condition 30- management and maintenance for adjacent Pagham Harbour SPA Enhancement land.

## SITE AND SURROUNDINGS

**DESCRIPTION OF APPLICATION**

An application has been made to discharge Condition 30 of planning permission P/140/16/OUT. The planning condition reads:

“No development shall commence until the application has submitted and the local planning authority (in consultation with Natural England) has approved the detailed management and maintenance scheme for the adjacent Pagham Harbour SPA Enhancement Land (as defined and referred to within the Agreement under s106 of the Town and Country Planning Act associated with the permission) which shall provide for:

- (a) the delivery of habitat enhancements (including some areas of additional planting) for Brent Geese on said land so as to achieve no net loss of foraging habitat for Brent Geese due to the development proposals;
- (b) the management of field boundary vegetation, associated with specific adjoining fields to enhance sight lines for Brent Geese, making this field matrix more suited to use by them; and
- (c) cessation of bird scaring initiatives on said land;

said measures and scheme to substantially accord with the details set out in Chapter 4 of the Ecology Solutions Ltd "Brent Goose Mitigation Plan" December 2017 submitted in support of the application.

Reason: This condition is necessary to ensure that the management and maintenance of the Pagham Harbour SPA Enhancement Land accords with national guidance and Policy ENV DM2 of the Arun Local Plan. It is considered necessary for this to be a pre-commencement condition because of the need ensure measures are in place to avoid any detrimental impact of the development upon the SPA/Ramsar prior to development commencing.”

**TOPOGRAPHY**

The mitigation site is comprised of several parcels of land which are generally flat arable fields.

**TREES**

To the south of the mitigation site, and along church Lane, there are substantial hedgerows measuring approximately 3m. Hedgerows and mature trees typically surround the natural field boundaries, however in some instances, no boundary treatment to the defined Brent Geese Mitigation Plan (BGMP) land, due to the land covering part of an entire field.

**BOUNDARY TREATMENT**

The mitigation land forms large open arable land in current agricultural use. The settlement of Pagham is present to the east and southeast. The western most part of the mitigation land sits adjacent to the Pagham Rife.

Within the wider BGMP buffer area, a collection of properties, many listed, are located to the southwest. A reservoir sits within the buffer zone of the mitigation land and is elevated in nature.

## RELEVANT SITE HISTORY

|              |  |                    |
|--------------|--|--------------------|
| P/140/16/OUT | Outline application for access only - mixed use development comprising of up to 400 dwellings, a care home with up to 70 beds, a Local Centre comprising up to 2000sqm of A1/A2/A3/D1/sui generis floorspace, provision of land for a 1FE primary school (with sufficient space to ensure that it is expandable to 2FE), provision of land for a scout hut, safeguarding of land to help link the site to the Pagham Harbour Cycle Route & other community uses including public open space & allotments with some matters reserved. | Approved 22-11-18  |
| P/155/21/RES | Approval of reserved matters (layout, scale, appearance and landscaping) following outline consent P/140/16/OUT for the 'local centre' parcel which comprises of retail, community and commercial uses, 20 No residential apartments and a 70 bed care home.   | Approved 31-05-22  |
| P/153/21/RES | Approval of reserved matters (appearance, layout, landscaping and scale) following outline planning Permission P/140/16/OUT for the erection of 350 No. dwellings, together with public open space, play space, drainage, parking and associated infrastructure, landscape, ancillary and site preparation works, with access off Pagham Road. This site may affect a Public Right of Way.   | Approved 19-01-24  |
| P/13/24/DOC  | Approval of details reserved by condition imposed under P/140/16/OUT relating to condition 30-management and maintenance for adjacent Pagham Harbour SPA Enhancement land.   | Withdrawn 25-04-24 |

## REPRESENTATIONS

198 objection letters were received, which raised the following material considerations:

- No mention of how long the scheme will be monitored or for how long.
- Concern over flooding of mitigation fields and the impacts this will have to make the crop available for Geese.
- Drainage proposals do not include any measures about verification.
- Nature organisations are objecting.
- The condition should not be discharged until the developer comes in with evidence that the proposal works.
- The developer has failed to provide alternative feeding grounds.
- The geese are on the Amber list and should be fully protected.
- The claim that Brent Geese are not found here (the development site) is incorrect.
- Only 3ha of land appear to be delivered in perpetuity.
- Increased impact from human disturbance (dog walkers) on the Pagham harbour due to little open space.
- General objections to the BGMP being approved prior to the approval of the development.
- No guarantee that the brent Geese will utilise these fields as no brent geese have been seen in the mitigation area.

Non-material objections (matters that are not for consideration as part of this application) were also received and can be summarised as:

- Objection to the principle of the development (P/140/16/OUT) due to:
  - Loss of wildlife, in relation to the building of new homes.
  - Negative impacts from the cycle highway not being implemented.
  - Flooding.
  - Loss of agriculture.
  - Traffic issues / congestion.
  - Infrastructure cannot cope - schools, hospitals, utilities, dentists etc.
  - New build development is built poorly and not affordable.
  - No chance for emergency vehicles to get in.
  - Visitors visit Pagham for wildlife, and new development would stop this.
  - More pollution and noise impacts.
  - Pagham has taken lots of housing already.
  - The field is in effect an extension of the Pagham harbour and should not be built on.

One letter of support was received which supported the principle of development to allow for more homes to be built.

### Pagham Parish Council - Objection

- Natural England have stated that the applicant must demonstrate that the mitigation land is acceptable beyond all reasonable scientific doubt.
- The proposed 3ha of mitigation land is insufficient.
- No comments have been received from Natural England.
- No comments have been provided by the council's Drainage Engineers.

### COMMENTS ON REPRESENTATIONS RECEIVED:

The comments of the Parish Council and objectors are noted and addressed within the report below.

Increased visitor pressure to the Pagham Harbour has been assessed as part of the outline permission and subsequent reserved matters.

## CONSULTATIONS

### CONSULTATION RESPONSES RECEIVED:

NATURAL ENGLAND – No objection subject the Local Planning Authority concluding no adverse impacts on the integrity of the Pagham Harbour SAC/RAMSAR.

### COMMENTS ON CONSULTATION RESPONSES:

Natural England will be consulted further on the Appropriate Assessment.

## POLICY CONTEXT

### DEVELOPMENT PLAN POLICIES

Arun Local Plan 2011 - 2031:

- Policy ENV SP1 Natural Environment
- Policy ENV DM1 Designated Sites of Biodiversity of geological importance

NPPF National Planning Policy Framework

NPPG National Planning Policy Guidance

## POLICY COMMENTARY

The Development Plan consists of the Arun Local Plan, West Sussex County Council's Waste and Minerals Plans, The South Inshore & South Offshore Marine Plan and Made Neighbourhood Development Plans. The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

Arun District Council received instruction from Pagham Parish Council on 25 February 2021 to withdraw the Pagham Neighbourhood Plan, and therefore there is no relevant Neighbourhood Plan.

## DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that:

(2) in dealing with an application for planning permission the authority shall have regard to -

- (a) the provisions of the development plan, so far as material to the application,
  - (aza) a post examination draft neighbourhood development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.

## OTHER MATERIAL CONSIDERATIONS

It is considered that there are other material considerations to be weighed in the balance with the Development Plan and these are set out in the Conclusions section below.

## CONCLUSIONS

### PRINCIPLE

The development under planning reference P/140/16OUT has been granted permission, and subsequent reserved matters have been approved. This application relates solely to the mitigation for brent geese which was identified as a condition of the planning permission.

### Pagham Harbour SPA/RAMSAR

The Brent Goose (*Branta bernicla*) is a small, dark goose similar to a Mallard, and is a qualifying feature of the Pagham Harbour Special Protection Area (SPA) / Ramsar.

## **Brent Geese Mitigation Land**

An Appropriate Assessment was undertaken during determination of the outline permission P/140/16/OUT which concluded that suitable off-site mitigation must be provided due to the loss of functionally linked habitat by virtue of the development of the application site. The off-site mitigation was required to provide overwinter crops to off-set the loss of the functionally linked habitat. The mitigation would ensure that migrating geese, who overwinter in parts of the Pagham Harbour, would retain access to an equivalent level of foraging resources.

Several fields were identified as part of the outline permission which would provide additional foraging resources, and these were secured as part of the S106 agreement, with further details of management and maintenance to be secured through Conditioned 30 imposed on P/140/16/OUT.

Concerns were raised by residents prior to the submission of the Brent Geese Mitigation Plan (BGMP) due to historic flooding on these fields and the impact this would have upon the availability of crops. The originally proposed mitigation fields were identified as falling within Flood Zones 2 and 3 and on this basis the applicant had proposed improvements to the field drainage to avoid flooding and the loss of crops. However, following the submission of the Brent Geese Mitigation Plan (BGMP), officers raised concerns that it could not be categorically concluded that the proposed drainage works would prevent flooding and ensure the availability of winter crops for foraging. Therefore, officer's put to the applicants that a monitoring process would need to be implemented for the full 80-year period of mitigation to ensure that the mitigation land was operating appropriately and delivering an acceptable level of foraging provision.

Due to the financial costs associated with this 80-year monitoring the applicant has instead identified alternative fields which sit outside of Flood Zones 2 and 3 to overcome this issue. The amended BGMP now proposes the mitigation land across four fields located to the west of the application site.

For the purposes of this report, the proposal include four fields located to the east of the application site: Field A is the northernmost field, located above the existing reservoir; Field B located to the east of the Reservoir and dissects the natural field at the existing agricultural building; Field C is the southernmost field and adjoins Church Lane to the south, and; Field D forms the westernmost field, which is located adjacent to the Rife. The entirety of Field D is identified as mitigation land, this includes 3ha of habitat enhancement land, with the remainder arable land. The three other fields (Fields A, B, C) which make up the mitigation land are parts of larger fields. The remainder of these fields would continue to be used for agricultural purposes and would support arable crops but outside the scope of the BGMP.

### **Crop Selection**

The BGMP identifies that a selection of crops would be provided throughout the winter period which are known to be of value to Brent Geese. These consist of Winter Wheat, Winter Barley, Oile Seed Rape and a Rye Grass / Clover sward. The landowner would have control over the rotation of appropriate crops planted each year, based upon best practice selection with regards to weather and soil status.

Council officers and Natural England are satisfied that the crops identified would be a suitable foraging resource for Brent Geese and is acceptable.

### **Noise Disturbance**

The BGMP commits to stopping all forms of acoustic bird scaring during the agreed winter period (October – March inclusive) upon the BGMP land. This period has been chosen to encompass a longer range than when Brent Geese are typically expected in the winter (majority of arrivals occur in late October to early November) to account for changes in the climate in future years, affecting arrival and departure times of the geese.

The applicants have also provided an additional 100m buffer surrounding the BGMP land, where acoustic bird scaring is also prohibited during the agreed winter periods.

At paragraph 4.6-4.7, the BGMP proposes additional measures in the form of baffles, restrictions on noise output of bird scarers and orientation to reduce disturbance. However, the BGMP does not specify which land would be subject to these additional measures. Officers have requested that the spatial plan is updated to identify where this applies. Subject to this amendment the proposals are deemed to be acceptable.

Whilst the consolidation of the BGMP land into one field would provide additional mitigation for noise disturbance due to the presence of natural boundaries and screening, the proposed cessation of bird scaring upon the mitigation land and additional measures for adjoining fields would constitute an enhancement when compared to the fields which formed the application site which did not restrict the use of acoustic bird scarers.

### **Visual Disturbance**

To reduce visual disturbance (and combined noise/visual disturbance) to Brent Geese, which is known to cause freeze or flight, visual disturbance events such as recreational activities (people and dogs), and intentional physical scaring apparatus in relation to agricultural practices should be minimised.

The proposal would prohibit all physical bird scarers, such as kites and inflatable / scarecrows within the BGMP land. The proposed 100m buffer surrounding the Brent Geese Mitigation Land would also prohibit any physical bird scarers which would further mitigate potential visual disturbance.

There is an existing Public Right of Way (PROW) running between fields B and C, which is proposed to be planted with native hedgerow on both sides as well as the installation of stockproof fencing. Whilst this would not extend the entire length of the PROW outside of the BGMP, it is considered beneficial to reduce visual disturbance for the brent geese within the BGMP land. This would also reflect the approach taken for the current development site which also has a PROW running across it.

Therefore, the proposed mitigation measures would minimise visual disturbance impacts to ensure the land is usable by Brent Geese.

## Quantum

The size of the functionally linked fields lost by virtue of their development was 25.62ha. However, when considering the 7 years of crop data prior to the submission of the outline planning application and taking into consideration the years it had been planted with a crop suitable for Brent Geese, the actual quantum of foraging land lost equates to an area of 17ha.

The proposed mitigation land measures 24.48ha in area, however these fields have also had historic planting of suitable foraging crop for Brent Geese, such as Winter Wheat, which are required to be discounted so that the overall uplift in foraging resource is no less than 17ha. The BGMP refers to an uplift value of 17.03ha.

Field D which consists of both fallow and arable land, is located within Flood Zone 3a / 3b (functional fluvial floodplain). The habitat enhancement land, which forms the fallow land within Field D, will be over-seeded with a grassland mix suitable for foraging and include water tolerant species. In addition, there will be scrapes, allowing water to pool, which is of benefit to Brent Geese and will create more opportunities for the geese to utilise the BGMP land. The arable land within Field D will continue to be planted with clover and ryegrass cover crops will be used within these areas, as these crops are more tolerant to water.

The remainder (Fields A, B, C) sit outside of flood zone 2 and 3 and will be planted and sown with more varied foraging resources known to be used by Brent Geese, such as winter wheat or oil seed rape.

Therefore, the overall provision of foraging resources will measure 17.03ha, which is equivalent to that lost by virtue of development of the application site and as such the overall provision would constitute appropriate and acceptable mitigation.

## Monitoring

To ensure it is clear where the BGMP applies, 2m posts will mark out key corners of the BGMP and the wider 100m buffer zone to ensure adequate monitoring by the Local Planning Authority.

The BGMP also proposes regular monitoring reports to be submitted to the Local Planning Authority as well as retaining detailed records which will be available for inspection ensuring that the ongoing operation and effectiveness of the mitigation land can be assessed.

## Habitat Regulation Assessment (HRA)

The Local Planning Authority have undertaken an Appropriate Assessment (AA), in accordance with the Habitat Regulations (Conservation of Habitats and Species Regulations 2017), which concludes that the proposal would rule out likely significant adverse effects on the integrity of the Pagham Harbour SAC/RAMSAR.

Natural England have been extensively involved in discussions with the applicant regarding the BGMP and have verbally accepted the BGMP. The Appropriate Assessment (AA) will be consulted on formally, and their written comments are awaited.

## Section 106

The proposed land within the proposed BGMP sits outside of the Mitigation Area Plan land identified and secured through the Section 106 agreement signed on P/140/16/OUT. Therefore, it is necessary for a deed of variation to be completed to regularise this alteration. Subject to a Deed of Variation being successfully completed, the proposals would accord with the S106 agreement.

## Conclusion

The proposed BGMP plan is considered suitably robust and would ensure that an appropriate foraging resource equivalent in quantum to that which will be lost ensuring that the proposed development does not adversely impact upon the qualifying features of the Pagham Harbour SPA.

## RECOMMENDATION

It is recommended that Planning Committee delegate authority to the Group Head of Planning in consultation with the Chair or Vice Chair authority to:

Discharge Condition 30 subject to the completion of a Deed of Variation to amend the Section 106 Agreement, with any minor amendments authorised by the Group Head of Planning.

In the absence of a signed Deed of Variation, the proposal would conflict with the Section 106 agreements, and will not be discharged.

## HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for approval of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval is considered to be a proportionate

response to the submitted application based on the considerations set out in this report.

## DUTY UNDER THE EQUALITIES ACT 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

