

## Alice Honan

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**From:** Clemson, Rachael <Rachael.Clemson@naturalengland.org.uk>  
**Sent:** 28 August 2020 09:36  
**To:** Appeals Officer  
**Subject:** 324733 NE response to APP/L1765/C/19/3242323

**Categories:** Grey Category

FAO Alice Honan

Your ref - APP/L1765/C/19/3242323 Enforcement Notice Appeal - 16/00061/WKS Without planning permission, the erection of a dwellinghouse. The Old Piggeries, Firgrove Lane, North Boarhunt, Winchester PO17 6JF

Thank you for consulting us on the above application

### **Objection further information required to determine impacts to designated sites**

The consultation documents provided by your authority do not include information to demonstrate that the requirements of Regulations 63 and 64 of the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations') have been considered by your authority, i.e. the consultation does not include a Habitats Regulations Assessment.

In advising your authority on the requirements relating to Habitats Regulations Assessment, it is Natural England's advice that the proposal is not necessary for the management of the European site. Your authority should therefore determine whether the proposal is likely to have a significant effect on any European site, proceeding to the Appropriate Assessment stage where significant effects cannot be ruled out.

Please note that, recent case law ('Sweetman II') outlines that mitigation measures should not be assessed through a Habitats Regulations Assessment (HRA) to 'screen out' impacts at the stage of considering Likely Significant Effects (LSE), rather avoidance / mitigation measures should be considered through an Appropriate Assessment. Therefore in this case, as mitigation measures are proposed to avoid a likely significant effect your authority's HRA will need to include an Appropriate Assessment under Regulation 63(1) of The Conservation of Habitats and Species Regulations 2017. Please note Natural England are a statutory consultee for Appropriate Assessments and should be re-consulted once your authority has completed its HRA.

### **Deterioration of the water environment**

With regard to the integrity of the designated sites, we advise that there is currently uncertainty as to whether the increase in waste water from new housing in the Solent catchment will have an adverse effect on the international sites.

There is existing evidence of high levels of nitrogen and phosphorus in the Solent water environment with evidence of eutrophication at some designated sites. The Partnership for Urban South Hampshire (PUSH), Natural England (NE), and Environment Agency (EA) have been jointly working to develop an Integrated Water Management Strategy (IWMS). This examines the potential for the PUSH region to accommodate future housing growth without having a detrimental effect upon the water environment. A Water Quality Working Group has been set up to identify and analyse the existing evidence gaps and evaluate the need for strategic mitigation measures. However, there is currently uncertainty as to whether there is sufficient capacity to accommodate the new housing growth. The proposal comprises new housing development and has inevitable waste water implications. It is Natural England's view that these implications, and all other matters capable of having a significant effect on designated sites in the Solent, must be addressed in the ways required by Regulation 63 of the Conservation of Habitats and Species Regulations 2017.

It is Natural England's view that there is a likely significant effect on the internationally designated sites (SPA, SAC, pSPA) due to the increase in waste water from the new housing. As you are aware, where there is a likelihood of significant effects (excluding any measures intended to avoid or reduce harmful effects on the European site), or there are uncertainties, a competent authority should fully assess (by way of an "appropriate assessment") the implications of the proposal in view of the conservation objectives for the European site(s) in question. Appropriate assessments cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned. Complete information is required to ensure that the proposal will not affect the integrity of the international sites.

Natural England advises that the waste water issue is examined within the appropriate assessment and that the existing nutrient and conservation status of the receiving waters be taken into account. LPAs will be aware of recent CJEU decisions regarding the assessment of elements of a proposal aimed toward mitigating adverse effects on designated sites and the need for certainty that mitigating measures will achieve their aims. The achievement of nutrient neutrality, if scientifically and practically effective, is a means of ensuring that development does not add to existing nutrient burdens. Natural England has prepared a methodology setting out how this can be achieved and this is attached for your information. It is appreciated that this may be difficult for smaller developments or developments on brownfield land. Natural England has advised that your authority set up an interim approach that developments can contribute to thereby ensuring that this uncertainty is fully addressed by all applications. Natural England is working closely with affected local planning authorities to help address this issue. Natural England can also provide further advice to the applicant on mitigation options under our [Discretionary Advice Service](#). Please note we advise that the competent authorities to whom Natural England gives its statutory advice on the environment will need to seek and rely upon their own legal advice on the interpretation of the Habitats Regulations and case law.

### **Recreational pressure on Solent European sites**

The application site is within 5.6km of the Solent and Southampton Water Special Protection Area (SPA) and will lead to a net increase in residential accommodation. To address any potential significant effects, any forthcoming planning application will need to comply with adopted planning policy to mitigate against adverse effects from recreational disturbance on the Solent SPA sites, as agreed by the Solent Recreation Mitigation Partnership (SRMP) Definitive Strategy.

Provided there is commitment to this mitigation early in the process and an appropriate planning condition or obligation is attached to any forthcoming planning permission to secure this measure, this will ensure this potential effect has been appropriately addressed. Our advice is that this needs to be confirmed by the Council, as the competent authority, via an appropriate assessment to ensure there is no adverse effect on the integrity of the site(s) in accordance with the Conservation of Habitats & Species Regulations 2017.

In addition Natural England would advise on the following issues:

### **Protected landscape**

The proposed development is for a site within or close to a nationally designated landscape namely South Downs National Park. Natural England advises that the planning authority uses national and local policies, together with local landscape expertise and information to determine the proposal. The policy and statutory framework to guide your decision and the role of local advice are explained below.

Your decision should be guided by paragraph 172 of the National Planning Policy Framework which gives the highest status of protection for the 'landscape and scenic beauty' of AONBs and National Parks. For major development proposals paragraph 172 sets out criteria to determine whether the development should exceptionally be permitted within the designated landscape.

Alongside national policy you should also apply landscape policies set out in your development plan, or appropriate saved policies.

The landscape advisor/planner for the National Park will be best placed to provide you with detailed advice about this development proposal. Their knowledge of the site and its wider landscape setting, together with the aims and objectives of the park's management plan, will be a valuable contribution to the planning decision. Where available, a local Landscape Character Assessment can also be a helpful guide to the landscape's sensitivity to this type of development and its capacity to accommodate the proposed development.

The statutory purposes of the National Park are to conserve and enhance the natural beauty, wildlife and cultural heritage of the park; and to promote opportunities for the understanding and enjoyment of the special qualities of the park by the public. You should assess the application carefully as to whether the proposed development would have a significant impact on or harm those statutory purposes. Relevant to this is the duty on public bodies to 'have regard' for those statutory purposes in carrying out their functions (section 11 A(2) of the National Parks and Access to the Countryside Act 1949 (as amended)). The Planning Practice Guidance confirms that this duty also applies to proposals outside the designated area but impacting on its natural beauty.

### **Protected species**

Natural England has not assessed this application and associated document for impacts on protected species. Natural England has produced [standing advice](#) to help planning authorities understand the impact of particular developments on protected species. We advise that the standing advice is interpreted for you by your district ecologist, or an equivalent independent party with the necessary expertise. Natural England will only provide bespoke advice on protected species where they form part of a SSSI or in exceptional circumstances.

Please contact me if you have any queries relating to the above advice

Kind regards  
Rachael Clemson  
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Thames Solent Area Team  
Mobile : 07500 954264  
**Please note my non-working day is Friday**



Please send planning consultations to Natural England by email to: [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk).  
**Natural England offers two chargeable services – The Discretionary Advice Service (DAS) provides pre-application, pre-determination and post-consent advice on proposals to developers and consultants as well as pre-licensing species advice and pre-assent and consent advice. The Pre-submission Screening Service (PSS) provides advice for protected species mitigation licence applications.**

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