

**Curdrige Parish Council (number 00012) and
Curbridge Preservation Society (number 20260) Joint Response
December 2012**

In formulating our joint response we would ask that the Planning Inspector gives comfort to us, in consideration of the fact that we are not experts in this field, rather a partnership of NGO sector and Parish Council organisations that are purely working to ensure the full lawful protection of the European and Internationally protected site that abuts the proposed development area, and ensuring that the Precautionary Principle is applied to this proposal, not just at its outset, but throughout the development period, as far as is possible, on a scientifically quantifiable/justifiable basis.

To the best of our ability we have endeavoured to ensure that our research is based on competent authorities communications and scientific evidence.

WCC's Schedule of Further Modifications 12 November 2012

1 With particular reference to: -

A) MTRA2/3 and CP5 "...Development should protect areas designated for their local ~~or~~, national, *or international* importance, such as Gaps and the South Downs National Park."

CP12 "Change 1st bullet point of policy wording to: impact on areas designated for their local ~~or~~, national, *or international* importance, such as Gaps and the South Downs National Park, conservation areas and heritage assets, including their setting;..."

CP14 7.2.9 Add to end of para 7.29:

"In addition, the Habitats Regulation Assessment and Sustainability Appraisal advise that a strategic approach to air quality management is required. This is to ensure the continued protection of sites of international, European, and national importance, and local nature conservation sites given the planned level of growth. The location of air quality monitoring sites and the setting of thresholds to trigger further investigation should be determined through lower level assessments and where appropriate, be applied as a condition on planning applications."

CP20 7.5.6 "Amend 5th bullet to read :...Green infrastructure, including recreation provision. ~~and measures necessary to protect European sites~~

Amend 11th bullet to read:

...Measures necessary to *protect*, avoid or mitigate harm to areas designated for their local, national *or international* ~~European~~ importance"

AND

B) "Addendum to HRA Winchester District Local Plan Part 1 – Joint Core Strategy (JCS)

Habitats Regulation Assessment under the Conservation of Habitats and Species Regulations (as amended) 2010 (Habitat Regulations)"

Along with SH3 "Amend 9th bullet point of SH3 to read:-

- *include a Green Infrastructure Strategy which sets out measures to avoid harmful impacts and mitigate the local and wider impacts of the development, including their phasing and long-term management. The strategy will also need to include any off-site measures required to mitigate harmful impacts on European sites".*

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Reason: "To secure suitable long-term management of mitigation measures, and ensure that the management measures are put in place at the appropriate timescale".

C) Housing requirements

2 Summary and Recommendations

Summary

- a. The HRA, even with the addendum remains *Ultra Vires* due to significant errors over qualifying species, this needs to be corrected;
- b. The HRA Addendum ignores the 2001 SPA Review and the legally defined Site Accounts and Qualifying Species (selection stage 1.3, Assemblage, in excess of 30,000 SPA protected avians) and thus decisions based on it would be *Ultra Vires*;
- c. The HRA Addendum still ignores the Ramsar protected status of the Little Egret (status confirmed by the JNCC);
- d. The HRA Addendum ignores the 2012 Ramsar List Review;
- e. The HRA Addendum ignores the ongoing SPA Review (started 2009);
- f. The HRA Addendum ignores the potential effects of these reviews on the status of the SPA/Ramsar Site during even the early stages of the development period;
- g. The HRA Addendum ignores Adopted UK Government policy on SPA sites selected for waterbirds and their qualifying species, including Assemblage, and is therefore *Ultra Vires*;
- h. The most recent changes to the JCS ignore the European site status and the ultimate legislative framework for their protection and are thus *Ultra Vires*;
- i. The HRA Addendum ignores the established Precautionary Principle for European and International Sites; and finally
- j. There is no case for an 'overriding public interest' in favour of the development.

Recommendations

That any decision for soundness and thus outline planning consent for Policy SH3 should be placed on a moratorium until the onus of proof of compliance with the correct, current, legal status of qualifying species is accurately determined and conformed to by the Planning Authority with regard to the Site Accounts and Qualifying Species of the 2001 SPA Review for Breeding/Overwintering and Assemblage (passage) Criteria and to future-proof, as far as is practicable, the longer term protection from the final outcome/reports of: -

- the SPA review (which started in 2009-2010 and should report with new SPA accounts in 2014/15) (<http://archive.defra.gov.uk/rural/documents/protected/spareview-tor.pdf>);
- the 2012 Ramsar Review (reporting and new Ramsar Information Sheets due late 2012 onwards - detailed on page 3, linked studies of the above SPA Review report); and
- The Solent Waders' Disturbance and Mitigation Project;

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to ensure compliance with the foreseeable future Site Accounts and Qualifying Species designation for the SPA and thus European legislative requirements, as well as English law during the development period.

3 Our reasoning/response is as follows: -

- A) The reasoning for this is “*To meet the requirements of the Habitat Regulations*”. There are two issues at stake in these comments, firstly that the Habitats Regulations (2010) stem from the Habitats Directive and the Birds Directive, which are enshrined in European Law and thus come under the European Court of Justice. To completely ignore the specific ‘European’ sites (MRTA2/3, CP5, CP12 and CP20), but rather subsume them under ‘*International*’ demonstrates a disregard for the ultimate judicial process and ultimate accountability for their protected status, and breaches thereof, in statute and through case law. This we feel would be *Ultra Vires*.

In terms of CP14 and its relationship to the existing HRA this again would be *Ultra Vires* due to the reasons set out below in our comments on the previously unpublished WCC Addendum to the HRA of October 26 (our Part B answer).

B) The Addendum to the HRA and the HRA remains *Ultra Vires*.

The HRA is still unsound and thus Policy SH3 also by definition, due to its proximity to the European/International site, due to systematic failures on the part of the developers and the Planning Authority to correctly identify the qualifying criteria and species.

The HRA and HRA Addendum only takes into consideration the over-wintering of 4 species in the Upper Reaches of the Hamble part of the SPA rather than the Spring and Autumn Assemblages/passage of species protected as part of the assemblage (separately defined Assemblage Qualification, Article 4.2, as a Wetland of International Importance), those selected as Qualifying Species (stage 1.3) and their protection at any time of their occurrence (this represents some 35,000 avians across the whole SPA and further additional Ramsar Assemblage Features).

It is also unsound as it ignores UK Government SPA protection both in Statute and Adopted Policy for Waterbirds of the Assemblage Qualification jointly and separately its constituent qualifying species according to the legally defining 2001 SPA Review Site Account and Individual Species Accounts.

Therefore this suggests there being a much higher sensitivity of the SPA site along Curbridge Creek and the whole Upper Reaches of the Hamble part of the Southampton and Solent SPA than suggested by the existing HRA and the Addendum to the HRA.

Disturbance to the qualifying species will not ‘*only be minimal in the winter when walking and other activities are taking place*’ But will impact on protected species in the Autumn and Spring assemblages and at other times of the year when they are present and protected as a matter of UK Government Policy.

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A lack of access management, and simply air quality measurement, as part of the HRA (thus Policy SH3), along with a lack of analysis of alternative refuge/roosting and feeding areas that are within the proposed development site, also ignores the real sensitivity of the SPA closest to and within the proposed development area.

We are also concerned that 'Gaps' continue to be considered more important than the European sites.

B.1 Our Reasons: -

At the EiP hearing the issues (Policy SH3) of there being other avians protected but ignored was dismissed by the Planning Authority and the developer's agents. Our researcher had expected a patronising 'pat-on-the-head' and a reassurance that '*...of course all the relevant qualifying species had been fully considered*'. In truth all that happened was that the 2001 SPA Review had been totally ignored in preference to the legally superseded original designation.

On further investigation, and looking back through archived correspondence, whilst the assemblage was mentioned, in passing, in the JCS HRA this is inadequate in terms of the legal defining list for the SPAs following the 2001 Review.

(<http://jncc.defra.gov.uk/page-5485>) gives the status of 'qualifying species on individual SPAs

"...The individual site accounts in 2001 Review should be taken as the definitive list of qualifying species at the SPAs concerned."

It is the citation that the Assemblage is in itself a qualifying feature (Article 4.2 as a Wetland of International Importance 'supporting at least 20,000 waterfowl'). In fact the SPA supports in excess of 53,000.

Within the Assemblage Criteria and along with those species selected under selection stages 1.2; there is the selection stage 1.3 (which determines the Qualifying Species which are a fully protected part of the SPA suite for the regularly migrating Annex II species, which are above population threshold criteria) and these species have been ignored.

Therefore this has a significant effect on the integrity of the HRA and HRA Addendum and it being fit-for-purpose/sound let alone any decisions or consents being made on its basis being *Intra Vires*.

We had no expectation at the EiP the lawful protection of the separate SPA Qualifying Criteria (Article 4.2) Assemblage and its constituent selected qualifying species would be denied by other interested parties.

This is indicated by two factors: -

1. the individual species accounts with selection stage criteria of at least 1.3 (assemblage) exists for each of the named species in the 4.2 qualification as a Wetland of International Importance (Appendix 1); and

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2. the UK Government policy for SPA Waterbirds that “sites selected for waterbird species on the basis of their occurrence in the breeding, passage or winter periods also provide legal protection for these species when they occur at other times of the year” has been ignored.

B.2 Our Evidence

Ms Sarah Anthony (Senior Site Designation Officer JNCC/NE) in email correspondence with the Preservation Society (Appendix 2 at the end of this representation) stated the following in answer to our query of July 2011:

*“2) that the comment at the bottom of the page on the SPA description “Note that sites selected for waterbird species on the basis of their occurrence in the breeding, passage or winter periods also provide legal protection for these species when they occur at other times of the year.” means that the species under overwintering and assemblage have full legal protection at other times of occurrence i.e breeding season - or if partial legal protection to what extent. (giving the NE reply...) **Yes, that is correct.**”*

On 4th August 2011 she clarified that this meant: *(my underlining for emphasis)*

“the species under overwintering and assemblage have full legal protection at other times of occurrence i.e breeding season”

In Appendix 3 comprising of a further email of 13 November 2012 following the surprising comments by Terence O’Rourke at the EiP she clarified the situation: -

“I think the confusion lies in the assemblage ‘feature’/‘criterion’.

As I understand it NE’s advice would be that the tests of the Habs Regs should be applied to the feature which is the entire assemblage. Will the plan/project have a likely significant effect on the waterbird assemblage (including all its constituent components)?”

However on the 5 August 2011 (Appendix 2) we enquired as to the following with particular regard to qualifying species of the assemblage: -
(my underlining/bolding for emphasis)

“Note that sites selected for waterbird species on the basis of their occurrence in the breeding, passage or winter periods also provide legal protection for these species when they occur at other times of the year.”

I am trying to work out how this applies to the SPA designated species (because for a therapist of very little brain it is somewhat confusing) I will try to make the questions as closed as possible...

1) Is this legal protection

*a) full SPA protection? (NE answer...) **The tests of the Habitats Regulations (The Conservation of Habitats and Species Regulations 2010) apply to all birds that are features of the site (i.e. in their own right or as part of the assemblage – where that is applicable)***

or

*b) a lesser protection (such as under the Wildlife & Countryside Act)? (NE answer...) **Only relating to features of the SSSI***

2) Would I be correct in thinking that this would be because of: -

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a) 2009/147 EC Article 4 (2) "...To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance" ? (NE answer...) **As well as the requirement to classify the most suitable areas for species listed in Annex I of the Directive and for regularly occurring migratory species.**

And on the 14 August 2011 the specific protection of Redshanks was confirmed (Assemblage, qualifying species, stage 1.3).

As stated on P 43-44 of our Pre-Submission Consultation response DEFRA have also confirmed this UK SPA Waterbird Policy: -

*"From: Tully, Andy (ERG-BIO) [mailto:Andy.Tully@defra.gsi.gov.uk]
Sent: 11 January 2012 15:50
To: Duncan Murray
Subject: RE: Waterbirds Policy - FOI Act request*

Duncan,

*Further to my telephone call, I can confirm that the 2001 SPA Review was carried out by JNCC on behalf of UK government, and agreed by the UK (including devolved administrations) prior to its formal presentation by DETR (now Defra) to the European Commission in 2001. **As such, the statement within the review that sites selected for waterbird species on the basis of their occurrence in the breeding, passage or winter periods also provide legal protection for these species when they occur at other times of the year, reflects agreed adopted policy and can therefore be regarded as a statement of UK Government policy.**"*

With supporting WeBS bird-count data supporting their presence in the Upper Reaches of the Hamble (p 28-29 our pre-submission document) the actual sensitivity of the Upper Hamble part of the SPA can be seen and also be seen to be increasing.

Therefore the HRA discussion at the EiP that limited the SPA protected species to the first two qualifying criteria was terminally 'inexact'.

The SPA qualifying species under the Assemblage criteria along with their species accounts/SPA suites (selection stage in brackets) are listed below: -

All of these species have a selection stage for being a 'Qualifying Species' of the Southampton and Solent SPA at either stage (1.2) or as part of the Assemblage (1.3), they account for over 30,000 SPA individually protected avians!

Gadwall (1.3) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-29B.pdf>
Teal (1.2) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-30.pdf>
Ringed Plover (1.2) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-59b.pdf>
Black-tailed Godwit (1.2) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-70B.pdf>
Little Grebe (1.3) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-3.pdf>
Great Crested Grebe (1.3) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-4B.pdf>
Cormorant (1.3) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-11B.pdf>
Dark-bellied Brent Goose (1.2) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-24.pdf>
Wigeon (1.3) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-28B.pdf>
Redshank (1.3) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-74B.pdf>

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Pintail (1.3) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-32.pdf>
Shoveler (1.3) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-33B.pdf>
Red-breasted Merganser (1.3) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-42.pdf>
Grey Plover (1.3) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-62.pdf>
Lapwing (1.3) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-63.pdf>
Dunlin (1.3) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-67B.pdf>
Curlew (1.3) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-73B.pdf>
Shelduck (1.3) <http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-27.pdf>

The Assemblage is an important part of the Ramsar designation too, and according to UK Government Policy (NPPF 118) the assemblage components would be given the same protection as SPA Assemblage features.

This would account for the Little Egret being a Passage/Assemblage species having Ramsar protection and at an equivalent level to SPA. (EiP Submission October 12, 2012 Appendix III).

The 2001 SPA review (<http://jncc.defra.gov.uk/pdf/UKSPA/UKSPA-A6-14.pdf>) put the GB Little Egret population at 500 with a threshold for selection at 50 birds. The Southampton and Solent Water SPA from the Ramsar Bird Data Spreadsheet (our EiP questions response Appendix ii) shows 115 birds at a nationally important population level of 6.9%, well above SPA selection criteria (2002/3).

In terms of the provenance of the author of that email stating the status of the Little Egret in this SPA we would like to point out that in the 2001 SPA Review and Volume 3 [Site Accounts] David Stroud, Senior Ornithologist, JNCC, is the first name in the citation of that review.

B.3 Systematic European Site Downgrading

In this section we would ask for the Inspector's patience in our referring to earlier Cabinet Documents from WCC that demonstrate the extent to which this proposed policy (SH3) has been made to fit lower levels of significance in the Appropriate Assessment requirements and thus through the HRA Addendum .

From earlier developmental phases of the JCS/Local Plan pt 1 in March 2009 CAB1799LDF-AppA (p.46) it was identified as a requirement of Policy SH3 that it “... **would require the development to be planned and laid out so that there is no access to the internationally protected sites around the River Hamble.**”

This should have been retained and carried through to the Local Plan Pt 1 as it would have provided a significant level of comfort for the European/ Internationally protected site. The lack of a ‘European’ inclusion in the latest EiP tracked changes (modifications and our point **A**) version shows significant European Site ‘avoidance/evasion’ despite the apparent principles appearing to be complied with.

We have to therefore question why, as early as 2010 to the present day, considering the identified constraints above, there are 2 road accesses being planned within 300-700 meters of the protected site and networks of cycle

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paths etc against the Council's own earlier recommendations. The reasoning would appear to be that such needed protection would be impossible to provide within both the constraints of the development area and the connectivity aspirations of the developers and the Planning Authority.

Further in terms of the supporting CAB1799LDF-AppA (p 26) on North of Whiteley Area 2, and its ultimate selection and reduced policy wording in the Local Plan pt 1, it states: -

*“The main areas of concern are the potential biodiversity and landscape impacts, particularly in view of the site’s proximity to areas designated for their national, European and international biodiversity interest and its high quality and unspoilt landscape. **The assessment suggests that biodiversity issues are an ‘absolute sustainability constraint to development’.** This reflects the strategic nature of the assessment and the constraints which it has identified. However, discussions have been held with Natural England and the development consortium (who are undertaking more detailed work), which suggests that the constraints can be **avoided** or mitigated, making development possible.”*

If those discussions were based, as demonstrated in B above, on the incorrect SPA qualifying species (using pre 2001 SPA review account sheets) that have been used in the EiP presentations/discussions, and therefore represent an erroneous list and numbers of such species, that are fully SPA protected' then it is hardly surprising that the biodiversity '**absolute sustainability constraints**' can be '**avoided** or mitigated'.

B. 4 Related National Trust Submission

“Planning for Places: After Blueprint Consultation by Winchester City Council. Comments by the National Trust for Places of Historic Interest and Natural Beauty.

1.0. Comments and Submission Monday 25th July 2011

3.2. We would like to reiterate the point as previously made above that a considerable body of work is required before we can fully respond. The current consultation does not inform this debate, accepting that it may not be designed to achieve that objective. That may be asking a great deal of this consultation but it must also be accepted that interested third parties need to be given necessary assurances, even deletion of some of the proposed options or a significant reduction in the numbers proposed. We are aware of a draft Master-Plan as being prepared by consultants and that (in 2009) work was being commissioned on visitor behaviour at Hamble River. This work was being commissioned by the Whiteley Consortium and undertaken by the Geodata Institute at the University of Southampton. Some very detailed survey work on recreational activity was completed in May and June 2009. This work must have been collated by now and we are unaware of the findings and if this material is in the public domain. We would ask that this study and any other cognate work are now put in the public domain and that the emerging evidence base being collated by the Consultants is made available to us. We know that a high level of protection for the SPA/SAC is in place and requires a robust Appropriate Assessment, as is found in the Thames Basin Heaths and Dorset

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Heaths. Certainly and following the model adopted at the Thames Basins Heaths (which was rigorously and independently assessed as a part of the South East Plan Examination), sites of external mitigation were required and this option appears unviable here. That may render protection of the SPA/SAC as highly uncertain, even impossible to assure should development proceed."

This study is still not available in the public domain, or as part of the HRA/its Addendum and requires being included as one or either.

B.5 Policy Direction:

To be able to be considered *Intra Vires* a minimum standard must be established.

That the Precautionary Principle with particular regard to SPAs and other European protected sites, as accepted by the Principle Planning Inspector Peter Burley in his Report on the Thames Basin Heaths SPA in 2007, must be applied until there is an accurate analysis of the extent of a significant impact on the SPA its habitat **and all of its Qualifying Species.**

This to take into consideration all the protected species including those in the Assemblage Criteria and selected at Stage (1.3), which are also its lawfully protected constituent, qualifying, species.

Further that considering that there is currently another SPA Review being undertaken and that the Threshold Level for designated/qualifying species for the Annex I (Birds Directive) listed Little Egret is currently 50 individuals across an SPA and that there are currently recorded (seabird survey 2000) some 115 Little Egrets within this SPA. Therefore it is likely to gain SPA Qualifying Status in its own right. The Little Egret is due for review of its terrestrial SPA suite in the current SPA review.

Therefore, again within the Precautionary Principle and to be *Intra Vires* that any decision for soundness and thus outline planning consent for Policy SH3 should be placed on a moratorium until the final outcome/reports of: -

- the SPA review (which started in 2009-2010 should report with new SPA accounts in 2014/15) (<http://archive.defra.gov.uk/rural/documents/protected/spareview-tor.pdf>);
- the 2012 Ramsar Review (reporting and new Ramsar Information Sheets due late 2012 onwards - detailed on page 3, linked studies of the above SPA Review report); and
- The Solent Waders' Disturbance and Mitigation Project;

to ensure compliance with the foreseeable future qualifying species designation for the SPA and thus European legislative requirements, as well as English law during the development period.

We would also add that the onus of proof of compliance with the correct, current, and soon to be determined legal status of qualifying species is on the Competent Authority, not on us.

C) Housing Requirements

In this section we would again ask for the Inspector's patience in our referring to earlier Cabinet Documents from WCC that demonstrate the extent to which this proposed policy (SH3) has been made to fit lower levels of significance in the Appropriate Assessment requirements and thus through the HRA Addendum

C.1 In our EiP response Session/Issue 3 HOUSING GENERAL – Policies CP1, WT1 and SH1

We stated the following: -

“Part (ii)

1 Housing Distribution Issues

1.1 Summary: -

We find this policy unsound in terms of Housing Distribution numbers/location and suggest that a more balanced distribution to increase the supply of new housing in the northern part of the district needs to be achieved for reasons of sustainability across the district. For example access to major employment areas such as Basingstoke and the Thames Corridor and related environmental costs arising from increased journey distances and social equitability issues. We are also concerned that the figures project an over-supply to predicted need.”

C.2 Suggested Policy Direction

The other housing provision contained within SH2, PUSH MTRA 2 and 3 will be able to virtually meet the need required in the South East Plan, therefore the requirement of statute and the 2012 PUSH 'aspirational' Spatial Strategy therefore there is no need to develop policy SH3 at a level any where near 3000 dwellings.

There is also no need to include schools provision as there is the clear potential for a 'Free School' to be developed in Whiteley at minimal cost thus providing the required schools infrastructure for the existing Whiteley.

Further there were £5M in householder contributions (i.e. through the dwellings' purchase price) towards the Whiteley Way taken as part of the original development; to take contributions a second time would amount to 'double taxation', which would appear to be potentially *Ultra Vires*.

The Retail Consortium with their EiP submission, through their agents Terence O'Rourke, has also confirmed that the new 'Town Centre Retail Park' is appropriate, and sustainable, for the existing level of development.

This would also suggest that there is no 'overriding public interest' that could justify this policy and its significant impact on the European and Internationally protected site. Especially in consideration of the erroneous HRA/HRA Addendum and the true constraint on the SPA and its Qualifying Species; in order to comply with the requirements of the Conservation of Habitats and Species Regulations 2010, the conservation objectives for the

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SPA/SAC and Ramsar site as there are other sites available that can be identified/assessed as part of the JCS/Local Plan pt 2. This includes measures that can be taken to increase the sustainability of settlements such as Knowle.

Appendix 1 JNCC SPA guidance and definitions

**Appendix 2 Emails August 2011 with Ms Sarah Anthony Senior Adviser –
International Site Designations, NE**

Appendix 3 Emails Sarah Anthony NE, November 2012

Appendix 1

<http://jncc.defra.gov.uk/page-1412>

“The UK SPA Network - Its Scope and Content

Please note

The UK SPA review was published in 2001 the following information is a published snapshot of the SPA network and will not be updated. For up-to-date information on classification status and qualifying species for an SPA please refer to the [UK list](#) and the [spreadsheet of SPA data](#)

The UK SPA network: its scope and content is a JNCC publication that presents a comprehensive review of the UK's Special Protection Areas; sites classified in accordance with the EC Birds Directive to protect birds and their habitats. It is also known as the **UK SPA review**.

This online version of the UK SPA review compliments the printed publication and provides full access to its content. Much of the introductory text and the site accounts are presented as linked HTML pages, while other sections of the printed document are available in PDF format.

Much of the content of the printed review is available in the following sections:

- [UK SPA Network](#) - UK and regional maps of the network and a site list linked to individual site accounts
- [Species accounts](#) - **Summaries of the data handling issues and individual species accounts**
- [Download](#) - An index providing access to sections of the printed publication available in PDF format

Citation:

Stroud, DA, Chambers, D, Cook, S, Buxton, N, Fraser, B, Clement, P, Lewis, P, McLean, I, Baker, H & Whitehead, S (eds). 2001. *The UK SPA network: its scope and content*. JNCC, Peterborough.

Volume 1: Rationale for the selection of sites. 90 pp.

Volume 2: Species accounts. 438 pp.

Volume 3: Site accounts. 392 pp.

The status of 'qualifying' species on individual SPAs - [important information>>>](#)”

<http://jncc.defra.gov.uk/page-5485>

“The status of ‘qualifying’ species on individual SPAs

The legal list of qualifying species, for which a Special Protection Area (SPA) has been selected and is managed, is given on the relevant SPA citation (available from the country agency concerned). A review of UK network of SPAs was co-ordinated by JNCC in the late 1990s. Following formal submission to, and agreement by, relevant Ministers, [the results](#) were published in 2001. This Review revised the list of qualifying species at some SPAs....

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...The individual site accounts in 2001 Review should be taken as the definitive list of qualifying species at the SPAs concerned.” (my emphasis)

2001 SPA review site accounts (http://jncc.defra.gov.uk/PDF/UKSPAVol_3.pdf) p 189-190 states the following about the **Solent and Southampton Water SPA**, which is the legal definitive list of qualifying species...

There are 3 qualification citations: -

“2. Qualifying species

This site qualifies under Article 4.1 of the Directive (79/409/EEC) by supporting populations of European importance of the following species listed on Annex I of the Directive:

Solent and Southampton Water

During the breeding season;

Common Tern *Sterna hirundo*, 267 pairs representing at least 2.2% of the breeding population in Great Britain (5 year peak mean, 1993–1997)

Little Tern *Sterna albifrons*, 49 pairs representing at least 2.0% of the breeding population in Great Britain (5 year peak mean, 1993–1997)

Mediterranean Gull *Larus melanocephalus*, 2 pairs representing at least 20.0% of the breeding population in Great Britain (5 year peak mean, 1994–1998)

Roseate Tern *Sterna dougallii*, 2 pairs representing at least 3.3% of the breeding population in Great Britain (5 year peak mean, 1993–1997)

Sandwich Tern *Sterna sandvicensis*, 231 pairs representing at least 1.7% of the breeding population in Great Britain (5 year peak mean, 1993–1997)

This site also qualifies under Article 4.2 of the Directive (79/409/EEC) by supporting populations of European importance of the following migratory species:

Over winter;

Black-tailed Godwit *Limosa limosa islandica*, 1,125 individuals representing at least 1.6% of the wintering Iceland – breeding population (5 year peak mean, 1992/3–1996/7)

Dark-bellied Brent Goose *Branta bernicla bernicla*, 7,506 individuals representing at least 2.5% of the wintering Western Siberia/Western Europe population (5 year peak mean, 1992/3–1996/7)

Ringed Plover *Charadrius hiaticula*, 552 individuals representing at least 1.1% of the wintering Europe/Northern Africa – wintering population (5 year peak mean, 1992/3–1996/7)

Teal *Anas crecca*, 4,400 individuals representing at least 1.1% of the wintering Northwestern Europe population (5 year peak mean, 1992/3–1996/7)

Assemblage qualification: A wetland of international importance.

The area qualifies under Article 4.2 of the Directive (79/409/EEC) by regularly supporting at least 20,000 waterfowl

Over winter, the area regularly supports 53,948 individual waterfowl (5 year peak mean 1991/2–1995/6) including: Gadwall *Anas strepera*, Teal *Anas crecca*, Ringed Plover *Charadrius hiaticula*, Blacktailed Godwit *Limosa limosa islandica*, Little Grebe *Tachybaptus ruficollis*, Great Crested Grebe *Podiceps cristatus*, Cormorant *Phalacrocorax carbo*, Dark-bellied Brent Goose *Branta bernicla bernicla*, Wigeon *Anas penelope*, Redshank *Tringa totanus*, Pintail *Anas acuta*, Shoveler *Anas clypeata*, Redbreasted Merganser *Mergus serrator*, Grey Plover *Pluvialis squatarola*, Lapwing *Vanellus vanellus*, Dunlin *Calidris alpina alpina*, Curlew *Numenius arquata*, Shelduck *Tadorna tadorna*.

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Note that sites selected for waterbird species on the basis of their occurrence in the breeding, passage or winter periods also provide legal protection for these species when they occur at other times of the year."

SPA selection guidelines <http://jncc.defra.gov.uk/page-1405>

The Birds Directive Selection guidelines for Special Protection Areas

Introduction

In 1979 the European Community adopted the Council Directive on the Conservation of Wild Birds (79/409/EEC). This Directive is usually referred to as the Birds Directive. It provides for the protection, management and control of all species of naturally occurring wild birds in the European territory of Member States. In particular it requires Member States to identify areas to be given special protection for the rare or vulnerable species listed in Annex I (Article 4.1) and for regularly occurring migratory species (Article 4.2) and for the protection of wetlands, especially wetlands of international importance. These areas are known as Special Protection Areas (SPAs).

These guidelines have been prepared to assist the selection of SPAs in the UK. The process involves two stages. The [first stage](#) is intended to identify areas which are likely to qualify for SPA status. These areas are then considered further using one or more of the judgements in [Stage 2](#) to select the most suitable areas in number and size for SPA classification. Stage 1's fourth guideline gives consideration, using the Stage 2 judgements, to cases where a species' population status, ecology or movement patterns may mean that an adequate number of areas cannot be identified from Stage 1's first three guidelines alone. In addition, these Stage 2 judgements are particularly important for selecting and determining the boundaries of SPAs for thinly dispersed and wide-ranging species.

In the application of Stage 2 judgements, a preference should be given to those areas which contribute significantly to the species population viability locally and as a whole. The protection of the populations in these areas is considered alongside, and is complemented by, other non-site-based special measures designed to maintain populations.

The national implementation of the Natura 2000 network and other special conservation measures need to be co-ordinated at a European Union level to ensure the survival and reproduction in the areas of distribution of each Annex I or migratory bird species. In the light of this objective, selection of SPAs in the UK has regard to conservation measures being taken for each species by other European Union Member States.

Stage 1

1. An area is used regularly by 1% or more of the Great Britain (or in Northern Ireland, the all-Ireland) population of a species listed in Annex I of the Birds Directive (79/409/EEC as amended) in any season.
2. An area is used regularly by 1% or more of the biogeographical population of a regularly occurring migratory species (other than those listed in Annex I) in any season.
3. **An area is used regularly by over 20,000 waterfowl (waterfowl as defined by the Ramsar Convention) or 20,000 seabirds in any season.**
4. An area which meets the requirements of one or more of the Stage 2 guidelines in any season, where the application of Stage 1 guidelines 1, 2 or 3 for a species does not identify an adequate suite of most suitable sites for the conservation of that species.

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Appendix 2

Emails between the author and Ms Anthony of Natural England/JNCC

Duncan

Apologies for delayed response – I've been away on leave.

In summary the answer is that the tests of the Conservation of Habitats and Species Regulations 2010 applies to all features of the SPA site regardless of the time of year they occur at the site.

- 1) In terms of numbers this will depend on the particular situation. We are concerned with 'likely significant effect' of the plan/project on the feature. If there is deemed to be likely significant effect then an appropriate assessment is required to be undertaken to ascertain no adverse affect on the integrity of the site. Regarding numbers specifically this may or may not be an issue depending on the circumstance and species concerned e.g. there could be an issue for 1 bittern but not for 1 mallard...
- 2) Full SPA protection means the application of the tests of the Conservation of Habitats and Species Regulations 2010, i.e. determination of likely significant effect and appropriate assessment. All stages of the life cycle are protected as well, although only as far as avoiding adverse effect which usually means a reduction in numbers and/or distribution.
- 3) It won't have any specific reference in the Regulations as it is adopted as a policy.

Best wishes
Sarah

From: Duncan Murray [<mailto:duncan@curbridgepreservationsociety.org.uk>]
Sent: 14 August 2011 17:27
To: Anthony, Sarah (NE)
Subject: RE: Website comment

Dear Sarah

Firstly, sorry...I am afraid that I have been asked to clarify a couple of extra points or so about this waterbird and SPA legal protection at any time of occurrence issue (I have tried asking the RSPB but they are a little non-plussed too). As this is part of the developing Parish Plan and its questionnaire I have been asked to clarify 3 last points - if you have the time to be able to help us...

- 1) Does this full SPA legal protection apply to any number of any of the SPA designated migratory species that occur at any other time?
 - a) yes, even if it is just 1 waterbird of one of the designated species for that SPA under any category
 - or
 - b) no, there is a requirement of a minimum number

- 2) Does this full SPA legal protection apply to the nests, eggs, nestlings and fledglings, and disturbance/predation of these, of any of the designated species for that SPA during the breeding season, whether the waterbirds are migratory designation even though some (e.g. redshank) are possibly resident in the SPA
 - a) yes
 - or

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b) no

3) I cannot find within the 2010 regulations setting 2009/147/EC into especially this waterbird issue that is behind all these questions - could you please quote the relevant section and para of the regulations or other aspect such as precise habitat reg? - again I have asked the RSPB and their county conservation officer checked with her colleagues but the answer back was rather unsure and vague.

Many, many thanks and these are the final queries - I will also be stepping don as Chair within the next few weeks to prevent any conflict of interest as I take up the position of Parish Clerk.

Kind regards

Duncan Murray
Chair
Curbridge Preservation Society
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From: Anthony, Sarah (NE) [<mailto:Sarah.Anthony@naturalengland.org.uk>]
Sent: 08 August 2011 09:32
To: Duncan Murray
Subject: RE: Website comment

From: Duncan Murray [<mailto:duncan@curbridgepreservationsociety.org.uk>]
Sent: 05 August 2011 18:23
To: Anthony, Sarah (NE)
Subject: RE: Website comment

Dear Sarah

Yet again my apologies for bothering you - but a pre-emptive couple of questions - if that is alright with you - before my meeting next week...and to tie up our understanding of the legal framework issues...

"Note that sites selected for waterbird species on the basis of their occurrence in the breeding, passage or winter periods also provide legal protection for these species when they occur at other times of the year."

I am trying to work out how this applies to the SPA designated species (because for a therapist of very little brain it is somewhat confusing) I will try to make the questions as closed as possible...

1) Is this legal protection

a) full SPA protection? (NE answer) **The tests of the Habitats Regulations (The Conservation of Habitats and Species Regulations 2010) apply to all birds that are features of the site (i.e. in their own right or as part of the assemblage – where that is applicable)**

or

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b) a lesser protection (such as under the Wildlife & Countryside Act)? (NE Answer) **Only relating to features of the SSSI**

2) Would I be correct in thinking that this would be because of: -

a) 2009/147 EC Article 4 (2) "...To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance" ? (NE Answer) **As well as the requirement to classify the most suitable areas for species listed in Annex I of the Directive and for regularly occurring migratory species.**

or

b)no - please can you briefly explain

and finally

3) I cannot see how this is enacted into UK law - can you tell me briefly where/how it is enacted. (NE Answer) **The requirements of the Birds Directive are transposed into domestic legislation through the Conservation of Habitats and Species Regulations 2010: <http://www.legislation.gov.uk/uksi/2010/490/contents/made>**

Many, many thanks - and hopefully I will now, finally, be onto the survey and bird count stuff and not have to ask any further of your time.

Kind regards

Duncan

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From: Anthony, Sarah (NE) [<mailto:Sarah.Anthony@naturalengland.org.uk>]
Sent: 04 August 2011 10:31
To: Duncan Murray
Subject: RE: Website comment

Duncan

The answer is a).

Apologies for the confusion.
Best wishes
Sarah

From: Duncan Murray [<mailto:duncan@curbridgepreservationsociety.org.uk>]
Sent: 04 August 2011 10:12
To: Anthony, Sarah (NE)
Subject: RE: Website comment

Dear Sarah

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I am terribly sorry to bother you, but I was 'told off' gently at our research meeting yesterday evening as I had phrased my question in an ambiguous manner...so could I ask for a couple of moments of your time to clarify the answer - again my apologies

2) that the comment at the bottom of the page on the SPA description "*Note that sites selected for waterbird species on the basis of their occurrence in the breeding, passage or winter periods also provide legal protection for these species when they occur at other times of the year.*" means that

a) the species under overwintering and assemblage have full legal protection at other times of occurrence i.e breeding season

- or

b) if partial legal protection to what extent.

with many thanks and kind regards

Duncan

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From: Anthony, Sarah (NE) [<mailto:Sarah.Anthony@naturalengland.org.uk>]
Sent: 25 July 2011 12:07
To: Dave Chambers; Duncan Murray
Cc: Stroud, David (Non-Defra)
Subject: RE: Website comment

Dear Duncan

See below in red text answers to your questions.

Best wishes
Sarah

Sarah Anthony
Senior Adviser – International Site Designations

From: Dave Chambers [<mailto:Dave.Chambers@jncc.gov.uk>]
Sent: 25 July 2011 10:00
To: Duncan Murray; Anthony, Sarah (NE)
Cc: Stroud, David (Non-Defra)
Subject: RE: Website comment

Duncan

I have passed your enquiry on to Natural England.

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Dave Chambers

From: Duncan Murray [<mailto:duncan@curbridgepreservationsociety.org.uk>]

Sent: 24 July 2011 10:24

To: JNCC Website Comments

Subject: Website comment

Dear Sirs

I am doing some research into the very complex Solent and Southampton Water SPA as was hoping you could clarify a couple of things for me, as I am not an ecologist.

1) that the specific designation of the SPA under Directive 2009/147 EC (replacing the earlier 79/409/EEC) applies equally to all its constituent SSSIs and that they do not have separate designations as they are part of the overall SPA. **That is correct all the component SSSIs comprise and underpin the entire SPA.**

2) that the comment at the bottom of the page on the SPA description "*Note that sites selected for waterbird species on the basis of their occurrence in the breeding, passage or winter periods also provide legal protection for these species when they occur at other times of the year.*" means that the species under overwintering and assemblage have full legal protection at other times of occurrence i.e breeding season - or if partial legal protection to what extent. **Yes, that is correct.**

Many thanks

Duncan

Duncan Murray

Chair

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Appendix 3

From: Anthony, Sarah (NE) [mailto:Sarah.Anthony@naturalengland.org.uk]
Sent: 13 November 2012 18:21
To: Duncan Murray
Cc: Thompson, Simon (NE); Coles, Stewart (NE)
Subject: RE: Little Egrets Southampton and Solent SPA/Ramsar

Dear Duncan

Just to clarify

The reasons for classification of Solent and Southampton Water SPA are as follows:

Qualifying Features:

A046a *Branta bernicla bernicla*; Dark-bellied brent goose (Non-breeding)
A052 *Anas crecca*; Eurasian teal (Non-breeding)
A137 *Charadrius hiaticula*; Ringed plover (Non-breeding)
A156 *Limosa limosa islandica*; Black-tailed godwit (Non-breeding)
A176 *Larus melanocephalus*; Mediterranean gull (Breeding)
A191 *Sterna sandvicensis*; Sandwich tern (Breeding)
A192 *Sterna dougallii*; Roseate tern (Breeding)
A193 *Sterna hirundo*; Common tern (Breeding)
A195 *Sterna albifrons*; Little tern (Breeding)
Waterbird assemblage

The reasons for designation as a Ramsar site are as follows (taken from the Ramsar Information Sheet):

Ramsar criterion 5

Assemblages of international importance:

Species with peak counts in winter:
51343 waterfowl (5 year peak mean 1998/99-2002/2003)

Ramsar criterion 6 – species/populations occurring at levels of international importance.

Qualifying Species/populations (as identified at designation):

Species with peak counts in spring/autumn:
Ringed plover, *Charadrius hiaticula*,
Europe/Northwest Africa
397 individuals, representing an average of 1.2%
of the GB population (5 year peak mean 1998/9-
2002/3)
Species with peak counts in winter:
Dark-bellied brent goose, *Branta bernicla
bernicla*,
6456 individuals, representing an average of 3%
of the population (5 year peak mean 1998/9-
2002/3)

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Eurasian teal , *Anas crecca*, NW Europe 5514 individuals, representing an average of

1.3% of the population (5 year peak mean
1998/9-2002/3)

Black-tailed godwit , *Limosa limosa islandica*,
Iceland/W Europe

1240 individuals, representing an average of
3.5% of the population (5 year peak mean
1998/9-2002/3)

As David states it is policy to provide the same protection to Ramsar sites as N2K:

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/2116950.pdf>

I think the confusion lies in the assemblage 'feature'/'criterion'.

As I understand it NE's advice would be that the tests of the Habs Regs should be applied to the feature which is the entire assemblage. Will the plan/project have a likely significant effect on the waterbird assemblage (including all its constituent components)?

I have copied in my colleagues in your local area who may be able to advise further on the specifics of this case and Natural England's advice.

Many thanks

Sarah