

## **HABITATS REGULATIONS CONSIDERATIONS**

European sites are those which have been designated either as Special Areas of Conservation (SAC) under the Habitats Directive (92/43/EEC), or Special Protection Areas for Birds (SPA) under the Birds Directive (2009/147/EC). For planning purposes, those sites that are also designated under the Ramsar Convention on Wetlands of International Importance, especially as Waterfowl Habitat (1971) are treated as European sites as a matter of UK Government policy (NPPF paragraph 118).

Dover town lies close to a number of European sites and major development proposals in the district usually have consider potential impacts on the following:

1. Folkestone to Etchinghill Escarpment SAC
2. Lydden and Temple Ewell Downs SAC
3. Dover to Kingsdown Cliffs SAC
4. Thanet Coast and Sandwich Bay SPA and Ramsar site.

## **THE ENVIRONMENTAL STATEMENT**

In respect of impacts on European sites, the LPA considers the assessment provided in the original ES to be fundamentally flawed. This view has been supported by NE. The reasoning behind this follows, and to comply with EIA Directive (85/337/EEC) in allowing public participation in Environmental Impact Regulations (EIA) applications, the following commentary is detailed.

The EIA Regulations, 2011, and the Conservation of Habitats and Species Regulations, 2010 (Habitats Regulations) are each transpositions of different European Directives. Issues arising under each piece of legislation should address what the individual regulations require. Unfortunately, the applicant has conflated the two pieces of legislation, in particular with reference to Regulation 61 of the Habitats Regulations. This is well known to be a very precise and demanding regulation that it is the duty of the local planning authority (LPA) to address, not the applicant. The applicant may, however, be called upon to supply information to the LPA.

An Environmental Statement required by the EIA Regulations must consider development site-derived impacts which may be *significant* in the wider environment, while Regulation 61 considers wider impacts which may be *significant* to a specific European site and its integrity. In the former case, significance is based on objective, but often qualitative analysis while in the latter, objective quantitative analysis is needed, if an 'appropriate assessment' is required.

The applicant discusses impacts on statutory sites from paragraph 4.179 onward in the ES. At paragraph 4.191 it is then concluded:

'It is predicted that the effect of the development prior to mitigation could cause a moderate *significant* negative impact on the SACs at the international level'.

Such a conclusion should not be drawn without prior liaison with the competent authority, in this case the LPA. As such, the applicant's approach to European sites did not take advantage of the considerable analysis that the LPA had previously conducted in liaison with NE with respect to the Core Strategy, the Whitfield Urban Expansion SPD, and the two major development sites at Sholden.

This earlier work concluded that:

- All Dover residential development over 15 dwellings would have to contribute to the Thanet Coast and Sandwich SPA Mitigation Strategy, to mitigate potential in-combination recreational impacts on the SPA and Ramsar site interest;
- The Thames Basin Heaths SPA model was inappropriate for consideration of recreational impacts on grazed chalk grassland in the Dover context;
- That in-combination vehicular-derived nitrogen deposition on the SACs, whilst a concern, could with the application of monitoring on the A2/Jubilee Way, be screened out.

Additionally, this work provided:

- A strategy for the Whitfield Urban Expansion that:
  1. Indicated the extent and nature of 'dedicated mitigation area' that would be needed in a major (5750) housing expansion to mitigate against recreational impacts on a nearby SAC (Lydden and Temple Ewell SAC); and
  2. Screened out recreational impacts on other SACs on the basis of demographic forecasting, survey work, distance and accessibility;

Contrastingly, in the ES for this application, the applicant's conclusions:

- Screen out impacts on the Thanet Coast SPA;
- Assume, without corroboration, a significant recreational impact on the SACs;
- Utilise the Thames Basin Heaths SPA model to generate a quantum of mitigation;
- Ignore any increase in traffic that development would generate and its potential for impacts on SACs.

This approach by the applicant led to certain difficulties and rendered a not inconsiderable section of the Ecology chapter in the ES redundant. In 'Further Ecological Information' (December 2012), the applicant withdrew the earlier assumption regarding recreational impacts on the SACs:

'However, although there [are] very limited possibilities that residents from the proposed development will have a significant effect on the integrity of the surrounding SACs, the proposed establishment of the Countryside Access Area [CAA] will provide a significant area of alternative recreational resource.'

Although the reasoning is not as detailed as would be wished for, it does effectively retract the earlier conclusion and allows the LPA to disregard the applicant's presumption of significant effect.

## **HABITATS REGULATIONS ASSESSMENT**

Regulation 61 of Conservation of Habitats and Species Regulations, 2010, is concerned with ensuring that planning decisions do not have significant impacts on European sites unless an appropriate assessment of the implications for relevant sites is carried out to ensure the integrity of those sites are not adversely affected. The duty of compliance with this regulation lies with the planning authority. If appropriate assessment is required, the authority must liaise with Natural England

Procedurally, a development proposal is initially screened to estimate whether it is likely to have an impact on a European site. This screening should consider both the

potential for in-combination impacts and measures incorporated in any proposal or secured by an enforceable obligation, such as a S.106 agreement, that would mitigate impacts. (Hart District Council v Secretary of State for Communities and Local Government, Luckmore Ltd and Barratt Homes Limited ex parte Taylor Wimpey Developments Limited and Natural England [2008] and Helford Village Development Company Ltd, R (on the application of) v Kerrier District Council [2009])

### **Regulation 61 Screening**

The application is for:

1. Up to 521 residential units and 90 retirement apartments at Farthingloe. The site is located to the west of Dover with good road links to the west;
2. Up to 40 residential units together with a 130 bedroom hotel and a 150 person conference centre at Western Heights. The site is located towards the west of Dover and has good road links to motorway network.

The following European sites have been identified in previous applications in the Dover area as needing consideration in applications for residential development:

5. Folkestone to Etchinghill Escarpment (FEE) SAC
6. Lydden and Temple Ewell Downs (LTE) SAC
7. Dover to Kingsdown Cliffs (DKC) SAC
8. Thanet Coast and Sandwich Bay (TC) SPA and Ramsar site.

Habitats Regulations Assessments have been carried out for the Dover Core Strategy, Whitfield Urban Expansion SPD and the draft Land Allocations Local Plan. These assessments have identified two impact pathways of importance:

- Recreational pressure
- Vehicular air quality (nitrogen deposition) concerns

In respect of recreational pressure on the TC SPA and Ramsar site, the assessments have resulted in the application of a Dover-wide tariff on any new residential development in excess of 15 houses in order to provide mitigation for potential in-combination recreational impacts on the SPA and Ramsar site. This provision would apply for the Western Heights and Farthingloe proposals.

Thus, it is concluded, that subject to the applicant accepting the tariff by means of a S.106 agreement, in-combination impacts on the TC SPA and Ramsar site can be screened out.

Elsewhere, impacts have been linked with specific development proposals (e.g. recreational impacts on LTE from housing growth at Whitfield), but no in-combination impacts have been identified as being significant. Nitrogen deposition from Jubilee Way (A2) onto DKC has been modelled for all Dover town sites in the Core Strategy, in-combination. Whilst the impact is considered insignificant, nitrogen levels are near the upper critical load for nitrogen deposition and a precautionary approach has been taken with the most relevant development, at Whitfield, to monitor levels.

The location of the proposed development is such that recreational pressure is most likely at FEE as there is easy road access. However, FEE is a very large site (182 ha) with very few parking opportunities (15-20 cars) dispersed over some 2.5 km of road verges, which would act to discourage regular visiting. Less direct road access is to DKC, where The National Trust manages over 200,000 visitors a year. Visitor

survey work has indicated that even the population increase predicted for Whitfield (5750 houses) would be insignificant in terms of recreational impact at DKC. The most difficult site to access is LTE, another large site with very limited parking. All the sites are somewhat distant for walking, the nearest being DKC, approximately 5 Km distant via footpaths.

Therefore, it is concluded that the recreational impacts can be screened out.

Notwithstanding the conclusion above, there remains a question as to where residents may go for recreation. The proposal includes a large 'Countryside Access Area' directly abutting Farthingloe and accessible from Western Heights through open access land. There remain some concerns regarding the deliverability of the total Countryside Access Area. However, even the delivery of part of it would remove any residual concerns regarding recreational impact on the European sites.

In respect of vehicular air quality, the two sites that could be affected are FEE and DKC. In the case of FEE, modelling carried out for the Harbour Revision Order for Dover Terminal 2 indicates that only if traffic were to double in volume along the A20 would the lower critical load for nitrogen deposition on the SAC be reached. For DKC, traffic from Farthingloe and Western Heights is far more likely to use the A20/M20 than the A2. It is considered that what extra vehicular traffic may be generated along Jubilee Way by this development proposal would be insignificant, compared with that for other Dover sites.

Therefore, it is concluded that nitrogen deposition on European sites can be screened out.

Following submission by the LPA of the Regulation 61 screening to NE for comment, NE is satisfied that the requirements of the Habitats Regulations have been met.