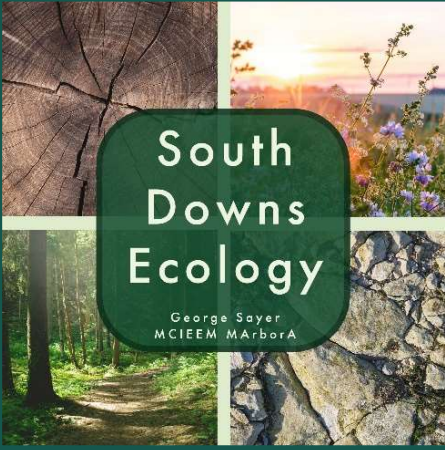


**Report to Inform a
Habitats Regulations
Assessment**

**Cathedral Business
Park Chichester**



**South
Downs
Ecology**

George Sayer
MCIEEM MARBORA

Report to Inform a Habitats Regulations Assessment

Cathedral Business Park, Chichester

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Contents

1.0	Introduction	4
2.0	Planning Policy and Legislation	5
3.0	Identification of Potential Receptors	6
4.0	Screening for Likely Significant Effects.....	9
5.0	Conclusions	12
6.0	References	13
7.0	Appendix A – Legislation and Planning Context	14

Summary

The applicant has commissioned a Report to Inform a Habitats Regulations Assessment for Reserved Matters applications on land formerly used as a fuel depot in Bognor Road, Chichester, West Sussex (*SU 87873 04213*, hereafter referred to as 'the site'). An update Bat Activity Survey of the site was carried out on the 21st August 2023. The survey was an update to an original update Ecological Impact Assessment (Reference: 201901/02) carried out in August 2018 by Castle Hill Ecology and the Original Phase 1 Report, Bat Activity Survey and Bat Mitigation Strategy forming part of the 2014 outline application. This assessment report is provided to inform the Reserved Matter applications being submitted pursuant to Condition 2 of application no. O/23/02329/OUT.

The screening stage of this Habitats Regulation Assessed determines that there is no potential for impacts to the Solent Suite of Sites nor the Singleton and Cocking Tunnels SAC, through this application alone or in combination.

A significant effect is therefore unlikely, alone or in combination with other proposals once mitigation is considered. As such the reserved matters and development can proceed lawfully.

1.0 Introduction

- 1.1 The applicant has commissioned a Report to Inform a Habitats Regulations Assessment for Reserved Matters applications on land formerly used as a fuel depot in Bognor Road, Chichester, West Sussex (SU 87873 04213, hereafter referred to as 'the site'). An update Bat Activity Survey of the site was carried out on the 21st August 2023. The survey was an update to an original update Ecological Impact Assessment (Reference: 201901/02) carried out in August 2018 by Castle Hill Ecology and the Original Phase 1 Report, Bat Activity Survey and Bat Mitigation Strategy forming part of the 2014 outline application. This assessment report is provided to inform the Reserved Matter applications being submitted pursuant to Condition 2 of application no. O/23/02329/OUT.
- 1.2 The following Report to Inform a Habitats Regulations Assessment report has been completed by George Sayer (*BSc (Hons) Environmental Sciences, PgDip Endangered Species Recovery, MArborA, MCIEEM, NE Licence Holder – Bats Level 2 and GCN - Ecologist*).

Site Description and Surrounding Area

- 1.3 The wider proposal site is an approximate square of land totalling approximately 1.531 Ha, between the A27 to the west, A59 to the south, railway line to the north and a commercial park to the east. The reserved matters applications are contained within 4 blocks within this area as shown in the survey plan of the accompanying bat survey; the frontage to the south is recently redeveloped into a new access with some grassland and tree planting. The south-western corner of the site is subject to a further reserved matters application for a hotel development that is currently unbuilt and bare ground or grassland. A builder's merchant has been completed to the north-west, with other commercial buildings under construction to the north. The site forms part of a wider development known as Cathedral Business Park.
- 1.4 The site is on the fringe of the urban area of Chichester. The wider surroundings include an area of open ground to the north with several gravel pit lakes; arable land to the south; the built-up area of Chichester to the west and further lakes beyond the commercial park to the east.

Proposals

- 1.5 The proposed development is as described in the reserved matters applications, according with the parameters approved at the outline planning stage.

2.0 Planning Policy and Legislation

Natura 2000

- 2.1 Natura 2000 is a network of nationally designated statutory sites within the EU. It is made up of Special Areas of Conservation (SACs), Special Protection Areas (SPAs) designated respectively under the Habitats Directive and Birds Directive and RAMSAR sites. The network includes both terrestrial and marine sites (Marine Protected Areas (MPAs), which are afforded strict protection from the potentially damaging effects of development. As per article 6(3) of the Habitats Directive (92/43/EEC):
- 2.2 “Any plan or project not directly connected with or necessary to the management of the [Natura 2000] site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned.”
- 2.3 The Habitats Directive was transposed into UK law through the Conservation of Habitats and Species Regulations (2017), widely referred to as the ‘Habitat Regulations’. Several significant legal precedents have modified the process through which an Appropriate Assessment should be conducted. The most notable of these are the ‘Waddenzee Case’, the ‘Sweetman Case’ and the ‘People Over Wind Case’, the implications of which are detailed in Appendix A - Legislation and Planning Context alongside further detail of legal and policy background, and in the body of the assessment, where appropriate.
- 2.4 To date it has been Chichester District Council’s view that an application to agree matters reserved by condition does not trigger the need for a development to demonstrate no adverse impact on SAC-protected bats in accordance with the Habitats Regulations. However, this is no longer the case following the above judgment. The consequence of this are significant in that it now means that a Habitats Regulations Assessment (HRA) is required at discharge of condition stage where one has not been previously carried out on the issues of SAC bats, even if the planning permission itself pre-dates these matters coming into force. Applications for matters reserved by condition can therefore not be approved unless:
- *The condition relates to a development that has previously been screened out from requiring an HRA on all current relevant issues; or*
 - *The condition relates to a development that has already passed an HRA on all current relevant issues.*
- 2.5 For the avoidance of doubt this approach applies to all conditions which require the consent of this Authority, including all pre-commencement conditions. The judgement is clear that whether or not the matter requiring agreement by condition directly relates to the affected habitat site(s) is of no relevance.

3.0 Identification of Potential Receptors

Internationally Designated Statutory Sites

- 3.1 Potential impacts upon Internationally Designated Statutory Sites were screened out during the Environmental Impact Assessment stage of the proposals in question (see Chapter 5 of the Environmental Statement, within Application Reference: 11/05283/OUT). Since this time, the Impact Risk Zone to the Singleton and Cocking Tunnels has been increased to 12.0 km. The original screening only considered sites within 5.0 km and as such did not assess impacts upon this site.
- 3.2 Since the original application, the potential for impacts to the ‘Solent Suite of Sites’ as described below have become apparent. Sites which increase overnight accommodation within 5.6 km of the sites are considered to represent an impact due to increased recreational pressures. Sites within the ‘Nutrient Impact Area’ which runs along the south-eastern edge of Chichester are also considered to represent an impact through increase of nitrogen pollution of the harbours through runoff and foul water. The potential for impacts upon these sites has therefore also been considered.

Table No. 01 - Internationally Designated Statutory Sites Identified within a Potential Zone of Influence of the Proposed Development Site

Site	Reason for Designation	Conservation Objectives	Location
Chichester and Langstone Harbours Ramsar	<p><i>Ramsar criterion 1: Two large estuarine basins linked by the channel which divides Hayling Island from the main Hampshire coastline. The site includes intertidal mudflats, saltmarsh, sand and shingle spits and sand Dunes.</i></p> <p><i>Ramsar criterion 5: Assemblages of international importance.</i></p> <p><i>Species with peak counts in winter:</i> 76,480 waterfowl (5 year peak mean 1998/99-2002/2003).</p> <p><i>Ramsar criterion 6: Species/populations occurring at levels of international importance. Qualifying Species/populations (as identified at designation):</i></p> <p><i>Species with peak counts in spring/autumn:</i></p> <ul style="list-style-type: none"> • <i>ringed plover Charadrius hiaticula, Europe/Northwest Africa: 853 individuals, representing an average of 1.1% of the population (5 year peak mean 1998/9-2002/3)</i> • <i>black-tailed godwit Limosa limosa islandica, Iceland/W Europe: 906 individuals, representing an average of 2.5% of the population (5 year peak mean 1998/9-2002/3)</i> • <i>common redshank Tringa totanus tetanus: 2,577 individuals, representing an average of 1% of the population (5 year peak mean 1998/9-2002/3)</i> <p><i>Species with peak counts in winter:</i></p> <ul style="list-style-type: none"> • <i>dark-bellied brent goose Branta bernicla bernicla: 12,987 individuals, representing an average of 6% of the population (5 year peak mean 1998/9-2002/3)</i> • <i>common shelduck Tadorna tadorna, NW Europe: 1,468 individuals, representing an average of 1.8% of the GB population (5 year peak mean 1998/9-2002/3)</i> • <i>grey plover Pluvialis squatarola, E Atlantic/W Africa – wintering: 3,043 individuals, representing an average of 1.2% of the population (5 year peak mean 1998/9-2002/3)</i> • <i>dunlin Calidris alpina alpina, W Siberia/W Europe: 33,436 individuals, representing an average of 2.5% of the population (5 year peak mean 1998/9-2002/3)</i> 	<p><i>Recognised Threats and Pressures include:</i></p> <ul style="list-style-type: none"> • <i>erosion</i> • <i>eutrophication</i> • <i>domestic sewage</i> 	3.79 km West of Site

Chichester and Langstone Harbours SPA	<p>This site qualifies under by supporting habitats/populations of the species listed below on Annex II of the Directive9. Note that the European directives have been transposed into The Conservation of Habitats and Species Regulations 2017, now amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 20193.</p> <ul style="list-style-type: none"> • northern pintail <i>Anas acuta</i> (wintering); 330 individuals representing 1.2% of the GB population • shoveler <i>Anas clypeata</i> (wintering); 100 individuals representing 1% of the GB population • teal <i>Anas crecca</i> (wintering); 1,824 individuals representing 0.5% of the GB population • wigeon <i>Anas penelope</i> (wintering); 2,055 individuals representing 0.7% of the GB population • turnstone <i>Arenaria interpres</i> (wintering); 430 individuals representing 0.7% of the GB population • brent goose <i>Branta bernicla bernicla</i> (wintering); 17,119 individuals representing 5.7% of the GB population • sanderling <i>Calidris alba</i> (wintering); 236 individuals representing 0.2% of the GB population • dunlin <i>Calidris alpina alpina</i> (wintering); 44,294 individuals representing 3.2% of the GB population • ringed plover <i>Charadrius hiaticula</i> (wintering); 846 individuals representing 3% of the GB population • bar-tailed godwit <i>Limosa lapponica</i> (wintering); 1,692 individuals representing 3.2% of the GB population • red-breasted merganser <i>Mergus serrator</i> (wintering); 297 individuals representing 3% of the GB population • curlew <i>Numenius arquata</i> (wintering); 1,861 individuals representing 1.6% of the GB population • grey plover <i>Pluvialis squatarola</i> (wintering); 3,825 individuals representing 2.3% of the GB population • little tern <i>Sterna albifrons</i> (breeding); 100 pairs representing 4.2% of the GB breeding population • common tern <i>Sterna hirundo</i> (breeding); 33 pairs representing 0.3% of the GB breeding population • sandwich tern <i>Sterna sandvicensis</i> (breeding); 31 pairs representing 0.2% of the GB breeding population • shelduck <i>Tadorna tadorna</i> (wintering); 2,410 individuals representing 3.3% of the GB population • redshank <i>Tringa tetanus</i> (wintering); 1,788 individuals representing 1% of the GB population <p>Waterbird assemblage 93,230 individuals.</p>	<p>“Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;</p> <ul style="list-style-type: none"> • The extent and distribution of the habitats of the qualifying features • The structure and function of the habitats of the qualifying features • The supporting processes on which the habitats of the qualifying features rely • The population of each of the qualifying features, and, • The distribution of the qualifying features within the site.” 	3.79 km West of Site
Solent Maritime SAC	<p>Annex I habitats that are a primary reason for selection of this site:</p> <ul style="list-style-type: none"> • estuaries • <i>Spartina</i> swards <i>Spartinion maritimae</i> • Atlantic salt meadows <i>Glauco-Puccinellietalia maritimae</i> <p>Annex I habitats present as a qualifying feature, but not a primary reason for selection of this site:</p> <ul style="list-style-type: none"> • sandbanks which are slightly covered by sea water all the time • mudflats and sandflats not covered by seawater at low tide • coastal lagoons (Priority feature) • annual vegetation of drift lines • perennial vegetation of stony banks • <i>Salicornia</i> and other annuals colonizing mud and sand • shifting dunes along the shoreline with <i>Ammophila arenaria</i> (“white dunes”) 	<p>“Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring:</p> <ul style="list-style-type: none"> • The extent and distribution of qualifying natural habitats and habitats of qualifying species • The structure and function (including typical species) of qualifying natural habitats • The structure and function of the habitats of qualifying species • The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely • The populations of qualifying species, and, • The distribution of qualifying species within the site.” 	3.79 km West of Site

<p>Singleton and Cocking Tunnels SAC</p>	<p>The site is designated under article 4(4) of the Directive (92/43/EEC) as it hosts the following species listed in Annex II:</p> <ul style="list-style-type: none"> • Barbastelle bat <i>Barbastella barbastellus</i> • Bechstein's bat <i>Myotis bechsteinii</i> 	<p>Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;</p> <p>The extent and distribution of the habitats of qualifying species</p> <p>The structure and function of the habitats of qualifying species</p> <p>The supporting processes on which the habitats of qualifying species rely</p> <p>The populations of qualifying species, and</p> <p>The distribution of qualifying species within the site</p>	<p>9.8 km North of Closest Site</p>
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4.0 Screening for Likely Significant Effects

4.1 The internationally designated statutory site identified in Table No. 01 above was then subject to a screening assessment, to identify the potential for any 'likely significant effects' to occur in light of the site's conservation objectives. This screening exercise considers potential impact pathways through which deterioration of the site's qualifying features have the potential to occur. This included, but was not limited to; direct impacts, such as through direct land take or changes directly adjacent to the site, and indirect effects, such as loss of functionally linked habitat, increased mortality or disturbance of key species and deterioration of designated habitats, such as through air pollution, changes to hydrology, soil chemistry and water quality and quantity. Possible temporary and permanent effects were considered.

Table No. 02 – Screening of Likely Significant Effects to Singleton and Cocking Tunnels SAC

Impact Pathway	Relevance to Site
<i>Direct land take</i>	<i>None.</i>
<i>Works adjacent to the designated site</i>	<i>None – too distant.</i>
<i>Loss or disturbance of functionally linked habitat</i>	<p><i>Singleton and Cocking Tunnels SAC: None – the 2015, 2018 and 2023 surveys recorded no use of the sites by the qualifying features of the SAC, namely Barbastelle and Bechstein's bats. There is very limited vegetation on the sites, and boundary vegetation falls outside the site and is already heavily lit. No severance of flightlines would occur.</i></p> <p>Solent Suite of Sites: <i>None – the sites are unsuitable for the qualifying features to use.</i></p>
<i>Increased mortality or disturbance of designated species / habitats</i>	<p>Singleton and Cocking Tunnels SAC: <i>None – highly unlikely that any increased predation of bats would occur. The proposal sites are too far from the SAC to result in a significant increase in recreation and associated disturbance or damage.</i></p> <p>Solent Suite of Sites: <i>The sites lie within the strategically-designated 5.6km buffer of the sites, within which new residential developments are considered to represent an increase in recreational disturbance impacts. The sites are not residential.</i></p>
<i>Air pollution / quality</i>	<i>None.</i>
<i>Water quality</i>	<p>Singleton and Cocking Tunnels SAC: <i>None.</i></p> <p>Solent Suite of Sites: <i>None.</i></p> <p><i>Sites within the designated 'Nutrient Impact Zone' discharge foul water to wastewater treatment works that ultimately discharge into the Solent, resulting in eutrophication and degradation of the Solent Maritime SAC, and impacts upon qualifying features of the Chichester and Langstone Harbours SPA and Ramsar. Surface water from such sites also drains to the harbour.</i></p> <p><i>As the sites are not within the Nutrient Impact Area, no impacts would occur. Such impacts are also only assessed from residential applications, which none of the reserved matters relate to.</i></p>
<i>Water quantity</i>	<i>None.</i>

Significance of Effects

Singleton and Cocking Tunnels SAC

- 4.2 The only effect which would be considered possible on the Singleton and Cocking Tunnels SAC (which is in accordance with both the SDNPA Guidance for the Designated Sites, and the SDNPA Technical Advice Note for HRA) is that of loss or disturbance of functionally linked habitat. In this case this would refer to loss or degradation of foraging habitat, and breaking of commuting routes (also referred to as flightlines). This impact would not occur at the site alone, as no records of these bats using the site over the course of three sets of surveys has been recorded.
- 4.3 The latest Bat Activity Survey, whilst relatively limited, recorded very low levels of bat activity and only the most common and light-tolerant species within the sites themselves, suggesting the sites are already unsuitable for the qualifying features of the SAC, namely Barbastelle and Bechstein's bats. The static deployment of 2023 found a low number of Daubenton's bat passes, and higher numbers of commuting bats such as pipistrelle and noctule than other surveys had detected. This would still only amount to c.12 bats per hour, however. The rarity of calls suggests this is not a significant flightline, and bats are likely being recorded as they fly along vegetation on the north of the railway, at least 50.0 m outside the sites. The railway is c.15.0 m wide and further separates suitable habitats from the sites. This would be a sufficient distance to attenuate anything but the largest and brightest of lights. As such, whilst inappropriate lighting might very slightly alter flight patterns of common bats, no flightlines would be significantly impacted beyond the existing baseline and none of bats for which the SAC is specifically designated.
- 4.4 Consideration has been given to the potential for a significant effect in-combination with other sites. The closest relevant sites would be those residential and commercial developments, north and south of Shopwyke Lane, the closest of which would be c.500.0 m north when constructed. A review of bat tracking data (Chichester District Council 2021) has recorded individual ringed Barbastelle bats commuting from the Goodwood Barbastelle colony, over the A27, south along Drayton Lane towards floodplain habitats further south. They do not appear to travel west towards the site. As such, whilst there may be potential for impacts upon the SAC from those developments, as no impact is possible from these sites no in-combination effects have to be considered, and the Habitats Regulations Assessment does not need to proceed to Appropriate Assessment.

Solent Suite of Sites

- 4.5 In accordance with the emerging Policy NE7 and current Policy 50, 'it is Natural England's advice that all net increases in residential development within the 5.6km zone of influence are likely to have a significant effect on the Chichester and Langstone Harbours SPA either alone or in-combination with other developments and will need to be subject to the provisions of Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended). In the absence of appropriate avoidance and/or mitigation measures that will enable the planning authority to ascertain that the development would not adversely affect the integrity of the SPA, planning permission will not be granted because the tests for derogations in Regulation 64 are unlikely to be met. Furthermore, such development would not have the benefit of the presumption in favour of sustainable development in the NPPF.

- 4.6 Appropriate avoidance/mitigation measures that are likely to allow the planning authority to ascertain that there will be no adverse effect on the integrity of the SPA will comprise:
- A contribution in accordance with the joint mitigation strategy outlined in the Bird Aware Solent Strategy; or
 - A developer provided package of measures associated with the proposed development designed to avoid any significant effect on the SPA, provided and funded in-perpetuity; or
 - A combination of measures in (a) and (b) above.
- 4.7 Avoidance/mitigation measures will need to be phased with development and shall be maintained in perpetuity. All mitigation measures in b. and c. above must be agreed to be appropriate by Natural England through the Habitats Regulations Assessment process. They should also have regard to the Chichester Harbour AONB Management Plan.
- 4.8 The provisions of this policy do not exclude the possibility that some residential schemes either within or outside the zone of influence might require further assessment under the Habitats Regulations. For example, large schemes, schemes proposing bespoke or alternative avoidance/mitigation measures, or schemes that impinge on the supporting habitats identified by the Solent Waders and Brent Goose Strategy. Such schemes will be assessed on their own merits under Regulation 63 (Appropriate Assessment), and, subject to advice from Natural England. Where mitigation for any impact upon supporting habitats is required this should follow the guidance given in the Solent Waders and Brent Goose Strategy.'
- 4.9 In this case the sites are for commercial rather than residential development, and as such no impact is considered to occur and no further assessment is required. No in-combination effects need to be considered as there is no effect alone from the proposals.
- 4.10 Given that no significant impacts are predicted even in the absence of mitigation measures, no appropriate assessment is required.

5.0 Conclusions

- 5.1 This assessment has considered all potentially significant effects that could arise from the development schemes in view of the European sites' Conservation Objectives. In light of the assessment undertaken and with due regard had to relevant case law, it is concluded that the proposals within the reserved matters would not adversely affect the integrity of any protected sites when the development scheme proposals are considered either alone or in combination with other plans or projects.
- 5.2 An initial screening assessment of the implications of the development scheme on Singleton and Cocking Tunnels SAC and the Solent Suite of Sites identified that there are no likely significant effects. As such no Appropriate Assessment is necessary and effects in-combination do not need to be considered.
- 5.3 The conclusions of this assessment work are set out to enable a Habitats Regulations Assessment document, such that the competent authority, in exercising its duties under the Habitats Regulations, has all the necessary information to consider the application. It is considered that no significant effect upon the on Singleton and Cocking Tunnels SAC, Chichester and Langstone Harbours Ramsar, Chichester and Langstone Harbours SPA, and Solent Maritime SAC would occur.

6.0 References

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7.0 Appendix A – Legislation and Planning Context

Conservation of Habitats and Species Regulations (as amended) 2017

Under the *Conservation of Habitats and Species Regulations (as amended) 2017* the UK is committed to take special measures to maintain the distribution and abundance of certain priority habitats and species. In particular it is required to designate the most suitable sites as Special Areas of Conservation (SACs).

Within the regulations, the UK has a duty, in exercising their obligations under the *Habitats Directive* to: “take account of economic, social and cultural requirements and local characteristics.”

Under the *Conservation of Habitats and Species Regulations (as amended) 2017* the UK is also required to take special measures to preserve and conserve the habitats of certain rare species of birds and regularly occurring migratory birds. It is required to designate the most suitable areas of such habitats as *Special Protection Areas (SPAs)*. These designations are designed to protect wild birds, and to provide sufficient diversity of natural habitats for all bird species so as to maintain populations at an ecologically sound level.

The protection achieved through the designation of SACs and SPAs requires the taking of appropriate steps to avoid the deterioration of natural habitats and to avoid the disturbance of protected species for which these sites have been originally designated, on the basis that the potential disturbance could be significant in relation to the objectives of the Regulations. It is required that a project proposal not associated with the ecological management or conservation objectives of the designated site which could potentially have a predicated significant effect upon the designated area; either in itself or in combination with other project proposals; should be scrutinised through an appropriate assessment of the project proposal; considering the affect / impact upon the designated area, in view of the area’s established conservation objectives.

Where an appropriate assessment has been undertaken for the project proposal; the competent local authority may approve the project proposal where it has been assessed that it would not adversely impact the integrity or the conservation objectives of the designated area. Where an adverse impact has been highlighted upon the integrity and conservation objectives of the designated area *Article 6(4)* outlines the means by which a project proposal may still be permitted proceed where it can be clearly demonstrated that there are no suitable alternatives and where there are over-riding reasons of public interest for the project proposal to go forward. Where a project proposal is approved to proceed on the basis of over-riding public interest and where there is an adverse effect under the directive of *Article 6(4)*; mitigation and compensatory measures must be proposed and put forward to ensure that the overall integrity and conservation objectives of the *Natura 2000* individual designated sites and network are protected.

The Regulations aims to protect the integrity and conservation objectives of a network of sites in the UK that have rare or important priority habitats and protected species in order to protect biodiversity. Competent local authorities are required to ensure that they protect the integrity and the conservation objectives of these networks of designated sites from all their activities that they regulate and cause no adverse impact on any of the Natura 2000 sites by approving project proposals. Regulation 63 of the Regulations requires that:

“63(1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which; a.) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and is not directly connected with or necessary to the management of the site, must make an appropriate assessment of the implications of the plan or project for that site in view of that site’s conservation objectives.”;

“63(3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.”;

“63(5) In the light of the conclusions of the assessment, and subject to Regulation 64, the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).”;

“63(6) In considering whether a plan or project will adversely affect the integrity of the site, the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.”

Regulation 63 of the Regulations defines an approval process in distinct stages. The initial assessment is to assess whether the project proposal is likely to have a significant effect or impact on the European site in question; the secondary assessment (if applicable) is to determine whether the project will affect the integrity of the protected site (Appropriate Assessment). The specific details of the Regulations have been clarified through some individual case law and the following judgements have been made; ‘Waddenzee’; ‘Sweetman Case’; and ‘People over Wind’ as additional background legislation. These individual case law judgements have been summarised briefly below;

‘Waddenzee Case’

The ‘Waddenzee’ case; the European Court of Justice asserted the trigger for ‘Appropriate Assessment’. It judged that an appropriate assessment would be required for a project proposal where there is a highlighted risk that it would have a significant effect on the integrity and conservation objectives of the Special Protection Area and the need for the appropriate assessment should be provided on a precautionary basis. The judgement asserts at Paragraph 3(a) that:

“...any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site’s conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually, or in combination with other plans or projects.”

The 'Waddenzee' judgement asserts that the specific test of 'likely significant effect' should be assessed in line with the European site's conservation objectives. The judgement states at Paragraph 3(b) that: "where a plan or project not directly connected with or necessary to the management of a site is likely to undermine the site's conservation objectives, it must be considered likely to have a significant effect on that site."

Paragraph 4 of the judgement defines the necessity for the appropriate assessment to be based upon objective scientific information: "...an appropriate assessment...implies that, prior to its approval, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives, must be identified in the light of the best scientific knowledge in the field. The competent national authorities, taking account of the appropriate assessment of the implications...for the site concerned in the light of the site's conservation objectives, are to authorise such an activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects."

'Sweetman Case'

Consideration of potential impacts surrounding *The Habitats Regulations* is defined by the 'Sweetman' judgement. The case judgement published by the Advocate General assessed in detail the test of 'likely significant effect' within Paragraphs 50 and 51. The Court of Justice of the European Union aligned with the Advocate General's assessment and assertion concluded within the following statement:

"50. The test which that expert assessment must determine is whether the plan or project in question has 'an adverse effect on the integrity of the site', since that is the basis on which the competent national authorities must reach their decision. The threshold at this (the second) stage is noticeably higher than that laid down at the first stage. That is because the question (to use more simple terminology) is not 'should we bother to check' (the question at the first stage) but rather 'what will happen to the site if this plan or project goes ahead; and is that consistent with "maintaining or restoring the favourable conservation status" of the habitat or species concerned'... and;

"51. It is plain, however, that the threshold laid down at this stage of Article 6(3) may not be set too high, since the assessment must be undertaken having rigorous regard to the precautionary principle. That principle applies where there is uncertainty as to the existence or extent of risks. The competent national authorities may grant authorisation to a plan or project only if they are convinced that it will not adversely affect the integrity of the site concerned. If doubt remains as to the absence of adverse effects, they must refuse authorisation."

The Court of Justice of the European Union aligned with the Advocate General's assessment and assertion concluded within the following statement:

“40. Authorisation for a plan or project, as referred to in Article 6(3) of the Habitats Directive, may therefore be given only on condition that the competent authorities – once all aspects of the plan or project have been identified which can, by themselves or in combination with other plans or projects, affect the conservation objectives of the site concerned, and in the light of the best scientific knowledge in the field – are certain that the plan or project will not have lasting adverse effects on the integrity of that site. That is so where no reasonable scientific doubt remains as to the absence of such effects.”

'People Over Wind Case'

Guidance for consideration of the tests at Regulation 63 is provided through the case judgment provided for the 'People Over Wind Case' (Case C-323/17); published by the CJEU on 12 July 2018 which ruled that when considering the test at Regulation 63(1) the following must apply;

“Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.”

In conclusion, any avoidance or mitigation measures which forms an integral part of a project proposal cannot be included at this first stage of the scoping test (*assessment of the 'likely significant effect'*) and can only be assessed within the *Appropriate Assessment* stage. Therefore, all projects that could have a likely significant effect upon a designated site or habitat need to be assessed through appropriate assessment irrespective of the scheme mitigation measures proposed. This case judgement overrides domestic case law which has previously confirmed that it is acceptable to consider mitigation measures at the *'likely significant effect'* stage.

Other Published Guidance

Guidance for the use of key terminology and objectives outlined within relevant European and UK legislation to highlighted European designated sites is provided within publications by the European Commission and UK organisations; JNCC and Natural England. This guidance is described below.

Managing Natura 2000 Sites (European Commission, 2000)

'Managing Natura 2000 Sites' outlines the undertakings of 'Article 6; Habitats Directive 92/43/CEE'; published by the European Commission in 2000 and provides guidelines to European Member States for the objectives of Article 6; Habitats Directive. Section 2.3.3 asserts that the conservation objectives and mitigation measures outlined must correspond to the ecological requirements of the protected habitats and species present for which the site is designated and that these prescriptions *“involve all the ecological needs necessary to ensure their favourable conservation status”*.

Section 3.5 defines deterioration and disturbance of habitats or species and states; *“Deterioration or disturbance is assessed against the conservation status of species and habitats concerned. At a site level, the maintenance of the favourable conservation status has to be evaluated against the initial conditions provided in the Natura 2000 standard data forms when the site was proposed for selection or designation, according to the contribution of the site to the ecological coherence of the network. This notion should be interpreted in a dynamic way according to the evolution of the conservation status of the habitat or the species.”*

Section 4.4.1 defines a potential ‘significant’ effect that should consider the conservation objectives of the site and more baseline information. Section 4.4.1 states; *“In this regard, the conservation objectives of a site as well as prior or baseline information about it can be very important in more precisely identifying conservation sensitivities.”*

Section 4.5.3 defines the requirements of the European Member States to provide specific scientific information in order to include a designated site within the Natura 2000 Network. This information is standardised and provided in a format provide and outlined by the European Commission (*The Natura 2000 Standard Data Form*). The connection between *The Natura 2000 Standard Data Form* and the definition of the sites’ conservation value and objectives are defined in Section 4.5.3 of the guidance where it is stated: *“The information provided according to the standard data form established by the Commission forms the basis for a Member State’s establishment of the site’s conservation objectives.”*

Where an assessment is undertaken of the likely impact of a project proposal upon a designated site, the ‘integrity of the site’ is defined at Section 4.6.3 as: *“... the coherence of the site’s ecological structure and function, across the whole area, or the habitats, complex of habitats and / or populations of species for which the site is or will be classified.”* It is clear that the assessment as to the implications of a project proposal upon the integrity of a site should be focused only upon an assessment which is aligned with the sites’ defined conservation objectives; *“The integrity of the site involves its ecological functions. The decision as to whether it is adversely affected should focus on and be limited to the site’s conservation objectives.”*

Section 5 considers Article 6(4) of the Habitats Directive which has been superseded now by other guidance issued by the European Commission entitled *“Guidance document on Article 6(4) of the Habitats Directive 92/43/EEC”* (2007). This document summarised below for context.

Assessment of Plans and Projects Significantly Affecting Natura 2000 Sites - Methodological Guidance on The Provisions of Article 6(3) And (4) of The Habitats Directive 92/43/EEC (European Commission, 2001)

This document, published by the European Commission in 2001, gives guidance on carrying out and reviewing those assessments required under Article 6(3) and (4) of the Habitats Directive. It is provided as supplementary guidance and does not over-ride or replace any of that set out within *Managing Natura 2000 (European Commission 2000)* which as stated at page 6 of the document, *“is the starting point for the interpretation of the key terms and phrases contained in the Habitats Directive”*. The guidance provided is not mandatory and it is clearly set out that its use is *“optional and flexible”* and that it is for *“Member States to determine the procedural requirements deriving from the directive”*.

The guidance sets out the key stages in following the tests contained within the Habitats Directive where stages one and two are relevant. Stage one is the screening stage assessing the likelihood of a plan / project resulting in a significant effect upon the European site. The second comprises the appropriate assessment.

Section 3.2.4 is concerned with Appropriate Assessment and the assessment against the conservation objectives of the European Site. Box 9 provides a list of five example conservation objectives for differing broad habitat types. One such example, that for a coastal site, taken from Box 9 is provided below: “to maintain the status of the European features of this coastal site in favourable condition, allowing for natural change. Features include coastal shingle vegetation and lagoons (within a candidate special area of conservation (SAC), which is also a SPA).”

Internal Guidance to Decisions on ‘Site Integrity’: A Framework for Provision of Advice to Competent Authorities (English Nature, 2004)

Natural England (formerly English Nature) has produced an internal guidance document on the provision of advice to competent authorities regarding the concept of ‘site integrity’ in undertaking an appropriate assessment.

This guidance sets out a definition for integrity. It states that integrity is considered at the site level and gives the following definition, as taken from *Planning Policy Guidance 9 (PPG9)*: “The coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and / or levels of populations of the species for which it was classified”.

Integrity is further defined within Section 3.0 where it is stated that; “In a dynamic context ‘integrity’ can be considered as a site having a sense of resilience and ability to evolve in ways that are favourable to conservation.” The need to maintain, or restore the site to, favourable conservation status is dealt with in the final paragraph of Section 3.0. Natural England quotes guidance issued jointly by the Environment Agency, English Nature and Countryside Council for Wales.

The guidance provides a checklist within Section 4.1; for assessing the likelihood of an adverse effect on integrity occurring as a result of the proposed plan / project. It is stated that if the answer to all of the questions posed within the checklist is “yes” then it is reasonable to conclude that there will be no adverse effect upon integrity. In the event that one or more of the answers is no, then the guidance suggests that a series of further site-specific factors, listed at 4.2 – 4.7 of the guidance must be considered in detail.

Common Standards Monitoring (JNCC, 2004)

Common Standards Monitoring is a means by which condition objectives for habitats, species, or other features of designated sites (such as Sites of Special Scientific Interest – SSSIs, and SPAs) are set based on key attributes of the features. The Joint Nature Conservation Committee (JNCC) and the Country Conservation Agencies (Natural England) developed guidance on the setting and assessing of condition objectives, as required under *The Birds and Habitats Directives* and set out a framework for this in 1999. This framework is provided in the form of *Common Standards Monitoring (CSM)* guidance which comprises a suite of documents including an “Introduction to the Guidance Manual on Common Standards Monitoring” and several species / habitat specific documents, including those for lowland heathland, birds, reptiles and invertebrates. The Introduction to the Guidance Manual covers various relevant concepts and terms. It also provides a background to the setting of conservation objectives and sets out the desired approach to setting targets, monitoring, management and reporting on conservation measures in designated sites.

The *Guidance Manual and CSM* guidance for individual site attributes and its bird interest set out specific criteria regarding the identification of interest features, targets and methods of assessment. There is in-built flexibility and allowances for 'judgements to be made' when assessing, for example, favourable condition.

It is understood that Natural England applies the *Common Standards Monitoring* approach to European designated sites through an assessment of the SSSI unit condition. This is undertaken on a cycle of approximately six years. The assessment does not relate to the Conservation Objectives of the European site but provides a tool for tailoring future management of the SSSI such that favourable condition of the interest features can be maintained or restored as appropriate.

This document, published by the European Commission in 2007, is intended to provide clarification on key terms / concepts as referred to within "*Managing Natura 2000 Sites*" and replaces the section on Article 6(4) within that earlier document.

Guidance Document on Article 6(4) of the 'Habitats Directive' (European Commission, 2007)

The above guidance document covers in particular the concepts of Alternative Solutions, Imperative Reasons of Overriding Public Interest, Compensation Measures, Overall Coherence and the Opinion of the Commission.

With regard to ensuring the quality of an appropriate assessment, and to define exactly what needs to be compensated, it is stated at Section 1.3 that: "*Assessment procedures of plans or projects likely to affect Natura 2000 sites should guarantee full consideration of all elements contributing to the site integrity and to the overall coherence of the network, both in the definition of the baseline conditions and in the stages leading to identification of potential impacts, mitigation measures, and residual impacts. These determine what has to be compensated, both in quality and quantity.*"

The need to use information contained within the *Natura Standard Data Form*, in tandem with the sites conservation objectives when undertaking an appropriate assessment is specifically referred to.

This document, published by the European Commission in 2007, is intended to provide clarification on key terms / concepts as referred to within "*Managing Natura 2000 Sites*" and replaces the section on Article 6(4) within that earlier document.

Section 1.3.2 gives guidance on the application of Article 6(4) in respect of reasons of overriding public importance and Section 1.4.1 gives guidance on the application of Article 6(4) in respect of compensatory measures.

Natura Standard Data Forms

A standard reporting format has been developed for Natura 2000 sites to ensure that the relevant site selection information is reported and stored in a consistent manner which can be easily made available.

A standard reporting form for SPAs and SACs was developed by the European Commission and published in 1996. The form is used for all sites designated or proposed to be designated as SPAs and SACs under the relevant Directives, with the information to be stored on a central database.

Article 4 of the Habitats Directive provides the legal basis for providing the data. Article 4 states that information shall include a map of the site, its name, location, extent and the data resulting from application of the criteria specified in Annex III and that this shall be provided in a format established by the Commission. Under *Article 4 (Paragraph 3) of the Birds Directive*; Member States are required to provide the Commission with all relevant information to enable it to take any appropriate steps in order to protect relevant species in areas where the Directive applies.

Whilst it is the relevant country agency (*Natural England*) that is responsible for designating a site, it is the JNCC who are responsible for collating the lists of European and international designated sites, together with relevant supporting information. *The Nature 2000 Data Forms* for SPAs and SACs are therefore made available by the JNCC.

Within the explanatory notes for *Natura Standard Data Forms (European Commission 1996)* the following “main objectives” of the Natura Data Form / Database are given: “to provide the necessary information to enable the Commission, in partnership with the Member States, to co-ordinate measures to create a coherent NATURA 2000 network and to evaluate its effectiveness for the conservation of Annex I habitats and for the habitats of species listed in Annex II of Council Directive 92/43/EEC as well as the habitats of Annex I bird species and other migratory bird species covered by Council Directive 79/409/EEC.”; and;

“to provide information which will assist the Commission in other decision-making capacities to ensure that the NATURA 2000 network is fully considered in other policy areas and sectors of the Commission's activities in particular regional, agricultural, energy, transport and tourism policies.”; and;

“to assist the Commission and the relevant committees in choosing actions for funding under LIFE and other financial instruments where data relevant to the conservation of sites, such as ownership and management practice, are likely to facilitate the decision-making process.” And;

“to provide a useful forum for the exchange and sharing of information on habitats and species of Community interest to the benefit of all Member States.”

The formal European Site Conservation Objectives for SPAs and SACs are published by Natural England.