

# **Capital Community Developments Ltd**

## **TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 APPEAL**

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**APPEAL** by **Capital Community Developments Ltd** against the refusal of planning permission dated 8<sup>th</sup> July 2019 by **East Suffolk Council** in respect of **Land North Of Gardenia Close And Garden Square, Rendlesham.**

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PINS reference: APP/X3540/W/19/3242636  
LPA Reference: APP/121/2019

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**PROOF OF EVIDENCE OF NICHOLAS SIBBETT ON BEHALF OF THE  
APPELLANT**

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**Figures, appendices and core documents are supplied in separate pdf files.**

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## 1 SUMMARY

### **PLANNING POLICIES, LEGISLATION AND OTHER GUIDANCE**

- 1.1 Suffolk Coastal District Council's Site Allocations and Area Specific Policies Development Plan Document (January 2017) includes the appeal site as an allocation for residential development, for around 50 dwellings as policy SSP12. Its HRA concluded that the appeal site was over 1.5km distant from the nearest European site, and that there would be no direct recreational impact from the development.
- 1.2 The Emerging Suffolk Coastal Local Plan 'Final Draft Plan' (January 2019) includes the appeal site subsequent to the 2018 planning application refusal. The accompanying Habitats Regulations Assessment concluded that the Recreational Avoidance Mitigation Strategy enables mitigation for recreation impacts, for all allocations over 1km but under 13km from a European site boundary. A subsequent July 2019 HRA Supplementary Note (in the same month as the planning application was refused!) clarified that allocations between 1km and 13km from a European site have a recreational impact only in combination with other developments and not individually.

### **ECOLOGICAL BASELINE**

- 1.3 The nearest European site to the appeal site is Sandlings SPA, which at its nearest point is a 2.2km (one-way) walk or a 2.9km drive to the nearest car park. The straight-line distance from the appeal site to the nearest point of the SPA is 1.5km. The

component SSSI at this point is Sandlings Forest SSSI, a conifer plantation. Both the SPA and the component SSSI are designated for breeding populations of woodlark and nightjar, which nest on the ground in heaths and clear-felled areas in conifer plantations.

## **ANALYSIS OF THE COUNCIL'S REASON FOR REFUSAL**

1.4 Reason for refusal 6 in the decision notice is

*This application is for more than 50 dwellings and is inside of the 13km Impact Risk Zone of Designated Sites. The current submitted Habitats Regulations Assessment of on site and off site mitigation measures is not adequate for the level of development that is being proposed.*

*The level of development proposed, without adequate on site space to address recreational pressures on European Sites, the proposal would lead to likely significant effects on European Sites and therefore does not pass an Appropriate Assessment. Therefore, the Local Planning Authority cannot conclude 'no likely significant effects' from the development proposal on the designated site(s).*

*The proposal is therefore contrary to the NPPF, and Policies SP14 and DM27(i) (Biodiversity and Geodiversity) of the East Suffolk District - Suffolk Coastal District Local Plan Core Strategy & Development Management Policies Development Plan Document (2013), which seek to protect designated sites in accordance with The Conservation of Habitats*

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*and Species Regulations (2017).*

- 1.5 I can find no Local Plan policy or evidence in the Local Plan HRA that require or even suggest that on-site open space should be routinely delivered in order to address recreational pressures on European sites, other than the requirement in bullet point 7 of SSP12 requiring a dog walk on the remaining greenspace which has been provided.
- 1.6 The Council has initiated a Recreational Avoidance Mitigation Strategy (RAMS) to which the appellant has agreed to pay the appropriate contribution, which will mitigate for all recreational impacts of cumulative residential development within 400m and 13km from a European site. The RAMS contribution is all that should be required in line with the Council's own policy approach.
- 1.7 Moreover, the appeal site has been allocated for residential development for a considerable period, and there is no evidence to indicate that this development falls outside the RAMS scheme of mitigation.
- 1.8 The conclusion at the end of the second paragraph of reason for Refusal 6, that the planning application would have a likely significant effect, leading to the conclusion in the third paragraph, that it is contrary to planning policy, indicates a misunderstanding of the Habitats Regulations process and a misunderstanding of the Council's own policy DM27 of the Core Strategies and Development Management Policies DPD. This clearly states that development proposals

which would cause an adverse effect upon the integrity of European sites will not be permitted. It is impossible to see how such a conclusion could have been reached in this case by reference to the size of the proposed development and the Council's soundly based RAMS policy mitigation strategy.

- 1.9 There is nothing in the Council's planning policies which could rationally lead to reason for refusal no 6 on Habitats Regulations grounds.
- 1.10 The officer's report which informed the refusal states that it '*there is adequate space within the site to be able to provide mitigation within the site*' contrary to the reason for refusal but '*it has not been demonstrated that the residents of the development would have access to a 2.7km circular walking route either within the site or connected to existing rights of way.... This on site mitigation is necessary for developments over 50 dwellings ...*' I cannot find any policy that requires this, and the emerging Local Plan contains no such requirement except for sites at Saxmundham and Felixstowe.
- 1.11 The officer's report goes on to say that in the absence of a 2.7km walk, there remains the potential that nearby designated sites will be used for regular recreational activities such as dog walking which may result in significant adverse effects. However the SPA is well outside the range of the typical dog walker and thus impacts arising from a visit entirely on foot would not occur. This part of the officer's report has no merit.

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- 1.12 In the Council's undated Statement of Case the Council introduces a template Habitats Regulations Assessment which it says it used to consider and inform the decision-making process.
- 1.13 The template includes a flow chart which leads to the statement that, for a development of 50 dwellings or more within 13km of a European site, the development should include the provision of open space proportionate to its scale, including a number of features such as circular dog walking routes of 2.7km.
- 1.14 The template's existence was not known to the Appellant until it was presented in the Council's Statement of Case. It has not been submitted as part of the emerging Local Plan, the contents are not justified by the Local Plan HRA and it has not been open to public scrutiny nor, I am informed, was it brought to the Appellant's attention during the application process. This draws a major question mark over the Council's transparency.
- 1.15 The statement of case refers to a walking route from the development which it measures as 2.45km from the site to the SPA. The walking route was created in 2016 by a Public Path Creation Agreement containing evidence indicating that the Council considered that there would be no harm caused to the SPA by the route creation, in the context of the emerging Site Allocations and Area Specific Policies Development Plan containing the appeal site as an allocation.
- 1.16 The statement of case also refers to the appellant

having an option to provide part of the delivery of a new walking route east and north-east from the site. The RAMS contribution will mitigate any cumulative recreational impacts so there is no need for that route.

- 1.17 I note that several public bodies, including Suffolk County Council, Forestry Commission, and Suffolk Coast and Heaths AONB Unit (within which East Suffolk Council is a partner) being competent authorities under the Habitats Regulations, actively promote public access for recreational purposes to Rendlesham Forest. The public sector welcomes recreation in the forest, not least when the Council provides a public right of way specifically for the purpose.

## **CONSULTATIONS AND PROCEDURAL ISSUES**

- 1.18 Natural England raised no objection to the appeal site as an allocation in the emerging Local Plan and it did not object to the HRA. I consulted NE in late December 2019 and January 2020. It saw no reason for the application to be refused on Habitats Regulations grounds provided that the RAMS fee is paid and that sufficient green infrastructure was provided with an attractive 2km dog walk loop. A route for this dog walk loop has been identified in Appendix 10.
- 1.19 I have found no Appropriate Assessment under Regulation 63 (1) of the Conservation of Habitats and Species Regulations 2017, despite the reason for refusal implying that one might have been done. It is not possible for the Council to have understood the

impacts of this development without carrying out a formal assessment and consulting Natural England, bearing in mind that the refusal appears to be based on a non-policy based criterion.

- 1.20 Case law demonstrates that there has to be cogent and compelling reasons for departing from Natural England's advice on HRA issues but no reasons have been provided by the Council for not consulting at all.
- 1.21 The failure to carry out an appropriate assessment, and properly to consult NE, was an omission which has led, in my view, to the unjustified reason for refusal on Habitats Regulations grounds. Even though there is no statutory policy requirement for its provision, such consultation would have revealed NE's satisfaction with the available circa 2km walking route.

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## 2 QUALIFICATIONS AND EXPERIENCE

- 2.1 My name is Mr Nicholas Edwin Sibbett. I hold an Honours degree in Ecology from the University of East Anglia and a Master of Science degree in Landscape Ecology, Design and Maintenance from Wye College, University of London.
- 2.2 I have been in practice with The Landscape Partnership since March 2008 and have almost 30 years' professional experience as an ecologist, 12 of which have been spent in consultancy. I was promoted to the position of Principal Ecologist in 2013 and to Associate in 2017. I co-lead the company's ecology team across the practice, with particular responsibility for the Woodbridge and Bedford offices.
- 2.3 I have a wide range of experience in the field of ecology, and in particular in habitat survey and the conservation and management of designated sites; and my background is in protected species, designated site management and Habitats Regulations Assessment. For many years I taught Phase 1 Habitat Survey for the Chartered Institute of Ecology and Environmental Management national workshops programme.
- 2.4 I have been involved in providing ecological services for a wide range of developments, from major housing and infrastructure projects to minerals and waste schemes, across the UK; and have coordinated and undertaken vegetation surveys in a number of habitats, including woodland, parkland, heathland,

and grassland, and for a number of rare and protected species including bats, great crested newts, badgers and reptiles.

- 2.5 I am a Chartered Ecologist (CEcol), a Chartered Environmentalist (CEnv), Chartered Landscape Architect (CMLI) and a founder member of the Chartered Institute of Ecology and Environmental Management (MCIEEM). I hold various licences from Natural England, including for bat survey (level 2, CL18), trainer for bat roost visitors (CL16), great crested newt survey (CL08), and I have held mitigation licences for development projects where mitigation measures were required for bats and great crested newts.
- 2.6 Before joining The Landscape Partnership I worked for Natural England in its Suffolk office for seventeen years. I was responsible for providing evidence to support notification of new SSSIs, advising landowners on SSSI management, advising regulators such as Local Planning authorities on applications made to them, and managing three National Nature Reserves.
- 2.7 My work with The Landscape Partnership has involved undertaking projects for both private and public sector clients. I have made representations at Examinations in Public and Appeal Hearings from 2008 to the present day, including a case in which proposed housing development within a Local Plan was considered likely to adversely impact a Special Protection Area / SSSI.

2.8 The evidence I have prepared for this Inquiry (Ref: APP/X3540/W/19/3242636) is true and has been prepared, and is given in accordance with, the guidance of my professional institutions, and I confirm that the opinions expressed are my own professional opinions.

### 3 INTRODUCTION AND SCOPE OF EVIDENCE

- 3.1 The Landscape Partnership Ltd (TLP) was appointed by Capital Community Projects (the Appellant) in 2018, to advise on Habitats Regulations Assessment matters in connection with the subsequently refused planning application and later to provide evidence at this Inquiry.
- 3.2 The refused planning application (19/1499) which is the subject of this Inquiry proposed a phased development of 75 dwellings, car parking, public open space, hard and soft landscaping and associated infrastructure and access.
- 3.3 A similar planning application had been made in 2018 to the then Suffolk Coastal District Council (now East Suffolk Council), reference DC/18/2374/FUL which was refused on 6<sup>th</sup> September 2018. The reasons for refusal included reason 7, relating to impacts on European sites. The appellant did not agree with the reason for refusal, partly because it required a contribution to a Recreational Avoidance Mitigation Strategy which did not exist at that time. However, the appellant decided to address all reasons for refusal in the second application, which included waiting for the Recreational Avoidance Mitigation Strategy to emerge, rather than appealing at that time.
- 3.4 My evidence will be structured as follows:
  - a. Overview
  - b. Planning Policies, Legislation and other guidance

- c. Ecological baseline
- d. Analysis of the Council's reasons for refusal
- e. Consultation and procedural issues
- f. Summary

## 4 OVERVIEW

4.1 This Proof of Evidence looks at the planning application and considers the ecological grounds for refusal of the appeal paying attention to potential impacts on European sites. It focuses on the following subjects:

- Whether there is a reasonable likelihood that any impact might occur to any European site;
- Whether any such impact can be successfully mitigated.

4.2 My Proof of Evidence focuses upon the reasons for refusal for the planning application, in particular reason for refusal no 6. The officer's report which preceded the refusal notice is also used to help understand why the reason for refusal 6 was applied.

4.3 The significance of the following points is considered in particular detail:

- The distance between the proposed development site and the nearest European site
- Planning policy which has consistently assessed the planning application site as a site allocation
- The mismatch between the emerging Local Plan and its HRA, and the LPA's use of a non-publicly available<sup>1</sup> template which appears to have influenced its decision

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<sup>1</sup> The Openness of Local Government Bodies Regulations 2014

## 5 PLANNING POLICIES, LEGISLATION AND OTHER GUIDANCE

### Local Planning Policy – 2017 Site Allocations

- 5.1 Suffolk Coastal District Council's Site Allocations and Area Specific Policies Development Plan Document (January 2017) includes the appeal site as an allocation for residential development, for around 50 dwellings as policy SSP12. Another allocation of roughly similar size is also included. Accompanying text says that the village has capacity to accommodate more than the 100 homes proposed, but is limited predominantly by highway factors and the cumulative impact of both residential and employment traffic on the local highway network. No limitation is presented with regard to impacts upon European designated sites and indeed the accompanying text (paragraph 2.95 of the plan) refers to a previous planning condition (relating to the Bentwaters commercial site) requiring the creation of a public right of way to facilitate Rendlesham residents' access to the Rendlesham Forest which is the nearest European site.
- 5.2 The Habitat Regulations Assessment of the Suffolk Coastal District Council's Site Allocations and Area Specific Policies Development Plan Document (January 2017) was carried out by me on behalf of the Council. At that time there had been no contact from the appellant about planning applications at that site or other matters, nor from anyone else connected to the appeal site.
- 5.3 The HRA of the 2017 Site Allocations and Area Specific

Policies document concluded that the appeal site was, over 1.5km distant from the nearest European site, greater than the distance normally walked by people for access to greenspace and that therefore there would be no direct recreational impact from the development. The cumulative impact of the development within Suffolk Coastal was to be addressed by a Management and Monitoring Strategy. The allocation of the appeal site was therefore found to have no impact on any European site, and the plan as a whole was found to be sound on Examination.

### **Emerging Local Plan**

- 5.4 The Emerging Suffolk Coastal Local Plan 'Final Draft Plan (January 2019) which was open to representations from 14<sup>th</sup> January 2019 to 25<sup>th</sup> February 2019 includes the appeal site and the second proposed allocation site in Rendlesham. This is subsequent to the 2018 planning application being refused (section 2 above) and indicates that the LPA does not regard the allocated sites as having any impact on any European site. Again, accompanying text says that the village has capacity to accommodate more than the 100 homes proposed, but housing growth is limited predominantly by highway factors and education provision with no mention of any limiting factors due to the presence of European sites.
- 5.5 The Habitats Regulations Assessment of the Emerging Suffolk Coastal Final Draft Local Plan (January 2019) was carried out by Footprint Ecology (Habitats Regulations Assessment of the Suffolk Coastal Local

Plan at Final Draft Stage (19<sup>th</sup> December 2019)). It looked at the allocation of the appeal site as part of this process. The HRA looked at allocations in relation to distance from European sites. For a number of allocations within 400m of a European site, it concluded that there was a likely significant effect on European sites and that in some cases the significant effect could be ruled out by mitigating factors but in others there would be a need for an appropriate assessment. For allocations between 400m and 1km of any European site, all were considered to have a likely significant effect, but again in some cases significant effects could be ruled out by mitigating factors while in others there is a need for an appropriate assessment.

- 5.6 All allocations over 1km but under 13km from a European site boundary were grouped together, with potential recreation impacts (page 46), which were considered further in the HRA report in its section 5. This concluded that policies relating to the Recreational Avoidance Mitigation Strategy (whereby a tariff payment is made towards management and monitoring of European sites) are considered to adequately enable appropriate mitigation for recreation. The appeal site allocation was not screened-in for further assessment of urbanisation risks (table 4 of the HRA).
- 5.7 The HRA also noted that there were two large-scale developments, at North Felixstowe Garden Neighbourhood and at South Saxmundham Garden

Neighbourhood, which had significant numbers of proposed dwellings and therefore the design and delivery of Suitable Alternative Natural Greenspace (SANGS) was recommended. There were a number of criteria for the SANGS, including a minimum area of 8ha per 1000 residents and creation of a circular walk being enabled of no less than 2.5km. The HRA did not recommend SANGS or circular walks for any other allocation or policy, and consequently none were included in the Local Plan for any other allocation or policy.

- 5.8 A subsequent HRA document provided to the Local Plan Examination by Footprint Ecology *Habitats Regulations Assessment of the Suffolk Coastal District Local Plan Supplementary Note* (July 2019) clarified that allocations between 1km and 13km from a European site only have a recreational impact in combination with other developments and not individually. This was submitted to the Examination in the same month as the planning application was refused.
- 5.9 The emerging final draft Policy SCLP10.1: Biodiversity and Geodiversity contains policy to safeguard European sites, and specifically mentions the need for development to be supported with information to support a Habitats Regulations Assessment. It also mentions the forthcoming Recreational Avoidance and Mitigation Strategy (RAMS) to allow developers to make financial contributions towards strategic mitigation. The accompanying text, paragraph 10.21

of the Local Plan, also recognises that people are reluctant to walk 1km to get to the start of their main walk, and beyond that distance they drive.

- 5.10 It is of great significance that Natural England's response to being consulted on the draft Plan HRA was that it agreed with the conclusion of the appropriate assessment that the plan will not result in an adverse effect on internationally important wildlife sites.

### **National Planning policy**

- 5.11 The National Planning Policy Framework (NPPF) dated February 2019 replaces the first National Planning Policy Framework published in March 2012 and includes minor clarifications to the revised version published in July 2018.
- 5.12 Chapter 15 paragraph 170(d) of the NPPF 2019 states that the planning system should contribute to and enhance the natural and local environment by minimising impacts on, and providing net gains for, biodiversity.
- 5.13 Paragraphs 171 and 172 relate to policy for designated sites of biodiversity or landscape importance. Proposals for any development on or affecting protected wildlife or geodiversity sites or landscape areas will be judged against Local Plans policies which will distinguish between the hierarchy of international, national and locally designated sites and allocate land with the least environmental or amenity value and maintain and enhance networks of habitats and green infrastructure. Further policy is within paragraph 174,

where Local Planning Authorities should within their Local Plans aim to protect and enhance biodiversity by:

*Identifying, mapping and safeguarding components of local wildlife-rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity; wildlife corridors and stepping stones that connect them; and areas identified by national and local partnerships for habitat management, enhancement, restoration or creation; and*

*Promoting the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity.*

5.14 Paragraph 175 says that when determining planning applications Local Planning Authorities should apply the following principles:

*a) If significant harm resulting from a development cannot be avoided (through locating it on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused,*

*b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely*

*impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;*

*c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and*

*d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.*

- 5.15 Paragraph 177 states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a 'habitats site' (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the 'habitats site'.

### **Legislation**

- 5.16 The Council must, under Section 40 of the Natural Environment and Rural Communities Act 2006, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.
- 5.17 The Council has a duty under Section 28G of the Wildlife and Countryside Act 1981 to take reasonable

steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.

### **Case law and guidance**

- 5.18 British Standard BS42020:2013 sets out guidance for ecological impact assessment in relation to planning applications.
- 5.19 Case law indicates that Local Planning Authorities should have all relevant ecological information so that they can make an informed decision. There is also case law which demonstrates that competent authorities under the Habitats Regulations are bound to accord considerable weight to Natural England's advice, and there has to be cogent and compelling reasons for departing from it; for example the Akester (Wightlink Ferries) case no CO/1834/2009 citation 2010 EWHC 232 (Admin) 16<sup>th</sup> February 2010, and the Shadwell Estates case, no CO/8634/2012, Neutral citation (2012) EWHI 12 (Admin) 11<sup>th</sup> January 2013. These two cases are provided as core documents as requested by the Inspector's pre-inquiry conference note annex.

## 6 ECOLOGICAL BASELINE

### Introduction

- 6.1 Rendlesham is a village situated within a rural landscape with arable land the predominant cover in the surrounding area. There are many small parcels of broadleaved, conifer and mixed woodland close in the local area. To the south of Rendlesham lies the large area of land occupied by the former RAF Bentwaters base which includes areas of lowland dry acid grassland. Further afield are the larger areas of Rendlesham Forest to the south, and Tunstall Forest to the east, both of which form part of the Sandlings SPA.
- 6.2 The site itself is a parcel of agricultural land which is bordered by mature trees and residential areas to the south and east. The northern and western site boundaries abut deciduous woodland. A Water Recycling Centre is located within the woodland close to the northern boundary of the site. Vehicular and/or pedestrian links for future access to the proposed development site have been incorporated into the residential development from Tidy Road, Peace Palace Gardens, Gardenia Close and Garden Square.
- 6.3 The Ordnance Survey Grid Reference for the approximate centre of the proposed development site is TM 337 538. The location of the site is shown in Appendix 1 which is an excerpt from SCDC Site Allocations and Area Specific Policies DPD.

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## European sites

- 6.4 The nearest European site to the appeal site is Sandlings SPA, which at its nearest point at Friday Street is a 2.2km (one-way) walk using public roads (Figure 01) or a 2.9km drive to the nearest car park. The straight-line distance from the appeal site to the nearest pint of the SPA is 1.5km. The component SSSI at this point is Sandlings Forest SSSI (Appendix 2). Both the SPA and the SSSI are designated for breeding populations of woodlark and nightjar, which nest on the ground in heaths and clear-felled areas in conifer plantations. Sandlings Forest SSSI is a conifer plantation.
- 6.5 The conservation objectives for Sandlings SPA are to 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;
- 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.

Further information is given in Appendix 3.

- 6.6 Other European sites within 13km of the appeal site are Deben Estuary Ramsar/SPA, Staverton Park and The Thicks Wantisden SAC, Alde, Ore and Butley Estuaries SAC, Alde-Ore Estuary SPA/Ramsar, Orfordness - Shingle Street SAC, and Outer Thames Estuary Marine SPA.

### **Ecological characteristics of the appeal site**

- 6.7 A Preliminary Ecological Assessment by Basecology (2018) was submitted with the refused planning application. The site was predominantly arable with small areas of other habitats especially at boundaries. The report identified no protected species presence although it recommended precautionary mitigation.

## 7 ANALYSIS OF THE COUNCIL'S REASON FOR REFUSAL

### Reasons for refusal

7.1 Reason for refusal 6 in the decision notice is

*This application is for more than 50 dwellings and is inside of the 13km Impact Risk Zone of Designated Sites. The current submitted Habitats Regulations Assessment of on site and off site mitigation measures is not adequate for the level of development that is being proposed.*

*The level of development proposed, without adequate on site space to address recreational pressures on European Sites, the proposal would lead to likely significant effects on European Sites and therefore does not pass an Appropriate Assessment. Therefore, the Local Planning Authority cannot conclude 'no likely significant effects' from the development proposal on the designated site(s).*

*The proposal is therefore contrary to the NPPF, and Policies SP14 and DM27(i) (Biodiversity and Geodiversity) of the East Suffolk District - Suffolk Coastal District Local Plan Core Strategy & Development Management Policies Development Plan Document (2013), which seek to protect designated sites in accordance with The Conservation of Habitats and Species Regulations (2017).*

7.2 The first paragraph complains that the submitted Habitats Regulations Assessment is not adequate and refers to, I think, the second paragraph rather than

some other unexplained reasons for perceived inadequacy.

- 7.3 The second paragraph of the reason for refusal 6 implies that the Council that there is inadequate space on site to address recreational pressures on European sites. I can find no Local Plan policy or evidence in the Local Plan HRA (in either the Site Allocations and Area Specific Local Plan 2017, the emerging Local Plan currently under examination, or in the Core Strategy and Development Management Policies Development Plan Document (2013)) that require or even suggest that on-site open space should be routinely delivered in order to address recreational pressures on European sites, other than the requirement in bullet point 7 of SSP12 requiring a dog walk on the remaining greenspace.
- 7.4 Recreational pressures on European sites arise directly from development within 400m of a European site, and arise as a cumulative impact of all developments within 400m - 13km of a European site. The Council has initiated a Recreational Avoidance Mitigation Strategy (RAMS) to which the appellant has agreed to pay the appropriate contribution, which will mitigate for all recreational impacts of cumulative residential development. The appeal site is around 1.5m in a straight-line distance from the SPA and 2.2km walk to the nearest point of the SPA (Figure 01) and so clearly falls outside the zone where direct impact would arise, and so the RAMS contribution is all that should be required in line with the Council's own policy approach.

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- 7.5 Moreover, the appeal site has been allocated for residential development for a considerable period, the allocations have found to be sound at Examination in 2017 and have not been questioned in the 2019 Examination which is continuing, and Natural England has not objected or even commented on the appeal site allocation. There is no reason to suppose, and no evidence to indicate, that the modest number of additional dwellings proposed by the Appellant in this case would take this development, either individually or cumulatively, outside the RAMS scheme of mitigation.
- 7.6 It appears, therefore, that the council has incorrectly applied the requirements for SANG, i.e. providing on-site recreational greenspace, to the appeal site, but which in the emerging Local Plan only applies to the large-scale residential developments of the South Saxmundham Garden Neighbourhood (800 dwellings, policy SCLP12.29) and the North Felixstowe Garden Neighbourhood (up to 2000 dwellings, SCLP 12.3).
- 7.7 SANG has already been applied to the planning permission for Brightwell Lakes (2000 homes) and some land is allocated for greenspace to serve the Ipswich Garden Suburb proposal in the adjacent Ipswich Borough. A few allocations mention the need for a Habitats Regulations Assessment eg Eyke, 65 dwellings (policy SCLP12.51) but none of those require a SANG or walking routes to be provided. Allocations at Rendlesham are conspicuously free from the need for a HRA that is present for allocations such as Eyke.

- 7.8 The conclusion at the end of the second paragraph, that the planning application would have a likely significant effect, leading to the conclusion in the third paragraph, that it is contrary to planning policy, indicates a misunderstanding of the Habitats Regulations process and a misunderstanding of the Council's own policy DM27 of the Core Strategies and Development Management Policies DPD. This clearly states that development proposals which would cause an adverse effect upon the integrity of European sites will not be permitted. It is impossible to see how such a conclusion could have been reached in this case by reference to the size of the proposed development and the Council's soundly based RAMS policy mitigation strategy.
- 7.9 NPPF paragraph 177 also maintains the presumption in favour of sustainable development where an appropriate assessment has shown no adverse effect upon the integrity of any European site, so the Council's claim that the planning application is contrary to NPPF is misplaced.
- 7.10 My conclusion is that there is nothing in the Council's planning policies which could rationally lead to reason for refusal no 6 on Habitats Regulations grounds. I deal with NE's extra-policy requirement for a dog walking route below.

#### **Officer's report prior to the decision**

- 7.11 The officer's report which informed the refusal contains additional information regarding the Reason

for refusal 6. On the 53<sup>rd</sup> page of the officer's report, under a heading Habitats Regulations Assessment, it states that it '*there is adequate space within the site to be able to provide mitigation within the site*' (contrary to the reason for refusal!) but '*it has not been demonstrated that the residents of the development would have access to a 2.7km circular walking route either within the site or connected to existing rights of way... This on site mitigation is necessary for developments over 50 dwellings within the Zone of Influence in addition to strategic mitigation in the form of a RAMS contribution*'. This indicates that East Suffolk Council required that a 2.7km circular walking route be delivered as part of the development, but I cannot find any policy that requires this, nor was it mentioned at a pre-application advice meeting I attended on 11<sup>th</sup> December 2018. Clearly the emerging Local Plan contains no such requirement (Section 4 above) except for sites at Saxmundham and Felixstowe.

- 7.12 The officer's report goes on to say that in the absence of a 2.7km walk, there remains the potential that nearby designated sites will be used for regular recreational activities such as dog walking which may result in significant adverse effects. Figure 1 of this Proof demonstrates that the nearest part of the Sandlings SPA is a 2.2km walk, or a 4.4km return trip thus the SPA is well outside the range of the typical dog walker and thus impacts arising from a visit entirely on foot would not occur. This part of the officer's report therefore has no merit.

- 7.13 Appendix 4 shows a readily identifiable existing route within Rendlesham, connecting existing greenspace with the proposed greenspace on the appeal site which would provide a walking route available to residents of the proposed development and to residents of the existing village. Although it is shorter than 2.7km, it provides an adequate walk and route variations can be made by taking in other residential streets.

### **Statement of case**

- 7.14 I have examined the Council's undated Statement of Case to see if there any is any further information to support the reason for refusal 6. In paragraph 5.47 the Council introduces a template Habitats Regulations Assessment which it says it used to consider and inform the decision-making process. The Council states that this was developed in collaboration with Natural England. The template is provided as appendix 8 of the Statement of Case.
- 7.15 The Council has, it seems, been influenced by this template, which includes a flow chart which, if followed, leads to the statement that, for a development of 50 dwellings or more, within 13km of a European site, the development should include the provision of open space proportionate to its scale, including a number of features such as circular dog walking routes of 2.7km. It appears that the template provided in Appendix 8 of the Council's Statement of Case was not actually used to assess this specific development as the template is blank and has not been filled in with site details. An example of a

completed template, for comparison, is included in Appendix 5 which was found by an internet search after the Council's Statement of Case was received.

It was not supplied to the team working on behalf of the appellant as part of the pre-application advice, it was not made available during the planning application determination period, and neither was it added to the Council's web page for this planning application. Indeed, it cannot be found on the council's website. Its existence was not known to the Appellant until it was presented in the Council's Statement of Case.

The Council's own ecologist makes no reference to it in his May 2019 consultation response, preferring to reference a Hampshire guidance document as a basis for the 2.7km route.

- It has not been submitted as part of the emerging Local Plan and the contents are not justified by the Local Plan HRA.
- It is not known when the template was first used by the Council, but its use seems to have been superseded by the emerging Local Plan and its HRA. The Council has had the opportunity to submit it to the Examination but has not done so and the requirement for walking routes of this length has not found expression in existing or emerging policies.
- Its use has not been subject to public consultation or scrutiny.
- It was not explicitly used to assess the refused

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application and there is a lack of transparency in the Council's approach.

- 7.16 The statement of case also refers in paragraph 5.48 to a walking route from the development which it measures as 2.45km from the site to the SPA. Although the actual measured route is 2.2km (figure 01 of my proof) the difference in measurements is not significant as it provides a non-circular return trip significantly in excess of a 2.7km circular walk.
- 7.17 The walking route was created in 2016 by a Public Path Creation Agreement (Appendix 6). Within the agreement, it clearly states that Suffolk Coastal District Council has had due regard to nature conservation in concluding the Agreement, indicating that the Council considered that there would be no harm caused to the SPA by the route creation. This was in the context of the Site Allocations and Area Specific Policies Development Plan Document being at an advanced stage of preparation at that time, containing the appeal site as an allocation.
- 7.18 The statement of case also refers to a car park at Friday Street, on the edge of Sandlings SPA which is a short drive from Rendlesham. It is inferred by the Council that there may be recreational impacts from greater use. This was referred to in the planning application's HRA report, and of course any cumulative impacts occurring here or at any other European site are able to be mitigated through the RAMS project.
- 7.19 The statement of case also refers to the appellant

having an option to provide part of the delivery of a new walking route east and north-east from the site. The route is described as being necessary for wider public connectivity to the countryside. Because the RAMS contribution will mitigate any cumulative recreational impacts to any European site there is no need for a new walking route to be provided to prevent harm to any European site. In any case the appellant has no direct control over the land and cannot know its likelihood of being delivered or its final route and so the route is undeliverable by the client.

### **Promotion of public access to Rendlesham Forest**

- 7.20 We note that several public bodies, being competent authorities under the Habitats Regulations, actively promote public access for recreational purposes to Rendlesham Forest.
- 7.21 Suffolk County Council's official website for countryside access promotion 'Discover Suffolk' promotes access in the forest. A printout of one of its leaflets is in Appendix 7.
- 7.22 Forestry Commission manages a visitor centre in Rendlesham Forest and welcomes over 100,000 visitors per year. Its latest Forest Design Plan is included as evidence in Appendix 8.
- 7.23 Suffolk Coast and Heaths AONB Unit, of which East Suffolk Council is a partner, also actively promotes recreation in Rendlesham Forest, with a sample leaflet included in Appendix 9.

- 7.24 With all these public sector bodies actively promoting public access, one would think that the public sector would welcome recreation in the forest, not least when the Council provides the village of Rendlesham with a public right of way specifically for the purpose.

## 8 Consultations and procedural issues

### Consultations with Natural England

- 8.1 The emerging Local Plan, which included the appeal site as an allocation, was commented upon by Natural England which raised no objection to the appeal site. Similarly Natural England did not object to the HRA (section 4 above). This indicates that Natural England was satisfied with the allocation.
- 8.2 I consulted Natural England by email in late December 2019 and January 2020. The email trail and the walking route identified on 10<sup>th</sup> January 2020 are included in Appendix 10. Natural England saw no reason for the application to be refused on Habitats Regulations grounds provided that the RAMS fee is paid and that sufficient green infrastructure was provided on site with an attractive 2km dog walk loop. A route for this dog walk loop was identified on 10<sup>th</sup> January and is the drawing in Appendix 10.

### Consultation with Suffolk Wildlife Trust

- 8.3 We note that Suffolk Wildlife Trust was consulted on the planning application. Its letter of 3<sup>rd</sup> May 2019 said that it had read the Habitats Regulations Assessment report in support of the development and it was satisfied with the findings.
- 8.4 **Internal consultation with the Council's Ecology officer**
- 8.5 On 20<sup>th</sup> May 2019, the Council's own ecologist noted the RAMS payment offer and also stated that the

development of this scale should provide onsite greenspace for recreational activities which was recognised as having been achieved. The ecologist recommended to the planning case officer that further information be requested from the applicant regarding recreational access and that Natural England should be consulted (Appendix 11). Neither of these two recommendations were progressed by the Council. Had they done so, the issue of the template would have been open to discussion.

### **Procedural Issues**

- 8.6 I have found no document purporting to be an Appropriate Assessment under Regulation 63 (1) of the Conservation of Habitats and Species Regulations 2017, despite the reason for refusal implying that one might have been done '*the proposal .... therefore does not pass an Appropriate Assessment*'. This assessment must be carried out before deciding to permit the application if it is likely to have a significant effect upon a European site. By the same token, if a reason for refusal is to be based on such a conclusion, one might reasonably expect such a conclusion to be justified by evidence. The Council's Statement of Case paragraph 5.51 points out that a Habitats Regulations 63(1) appropriate assessment is not required for a refusal. However, in my professional opinion, it is not possible for the Council to have understood the impacts of this development on European sites to a sufficient degree to be able to refuse the application on those grounds without carrying out a formal

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assessment and/or (at the very least) consulting Natural England, bearing in mind that the refusal appears to be based on a non-policy based criterion.

- 8.7 The Council in its Statement of Case admits that it did not consult Natural England. It appears that this decision was initially taken shortly after the application was made, when statutory and other consultees were initially consulted, and the decision not to consult was repeated later in May 2019, notwithstanding that the Council's Ecology Officer recommended that it be done.

The informal use of this template by the Council appears to have materially influenced its decision (see Section 6 above), despite the fact that it has no statutory policy significance and, notwithstanding that it purports to be based upon NE guidance, appears to have been applied as if it were policy and, in my opinion, without proper transparency and the use of appropriate discretion.

- 8.8 The failure to carry out an appropriate assessment, and/or properly to consult NE, was an omission which has led, in my view, to an unjustified reason for refusal on Habitats Regulations grounds. Even though there is no policy requirement for its provision, such consultation would, in any event, have revealed NE's satisfaction with a circa 2km walking route in this case: see Appendix 10.

