

## TOPIC STATEMENT OF COMMON GROUND – HABITATS RfR6

APPEAL REFERENCE APP/X3540/W/19/3242636

DATE OF HEARING/INQUIRY 31<sup>st</sup> March 2020

APPELLANT Capital Community Developments Ltd

### 1. Appeal reference.

APP/X3540/W/19/3242636

### 2. Site address.

Land North Of Gardenia Close And Garden Square Rendlesham Suffolk.

### 3. Summary

- 1) The purpose of this Statement of Common Ground is to set out some of the facts and agreed matters relating to the Habitats Regulations requirement in determining this appeal. The areas of disagreement may be used to frame the agenda of the roundtable discussion on this matter and avoiding covering areas of agreement in detail in the inquiry.
- 2) In respect of matters relating to Conservation of Species and Habitats Regulations 2017 (Habitats Regulations 2017) as amended (including through The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019). The application was determined under the 2017 regulations, the introduction of the EU Exit regulations since has no effect on the considerations and process to be applied.
- 3) For clarity Habitats Sites referred to in this statement are those as defined in the NPPF as:  
*Any site which would be included within the definition at regulation 8 of the Conservation of Habitats and Species Regulations 2017 for the purpose of those regulations, including candidate Special Areas of Conservation, Sites of Community Importance, Special Areas of Conservation, Special Protection Areas and any relevant Marine Sites.*
- 4) For the purpose of this appeal, the Planning Inspectorate is the Competent Authority for this process.
- 5) It is common ground that a Habitats Regulations Assessment of this development is necessary and if the Inspector is minded to allow the appeal then an Appropriate Assessment must be carried out by the inspector.
- 6) Any Appropriate Assessment must be informed by adequate information from the appellant and prior to allowing the appeal the Planning Inspectorate must consult Natural England for its views on the Habitats Regulations Assessment.
- 7) In considering the effects of the development, the dog walking routes in the area will be a material consideration for the inspector. The local walkable road network and public right of way network serving Rendlesham is shown on the definitive map below.
- 8) The appellant submitted a Habitats Regulations Assessment, Landscape Partnership, 22 March 2019 [CD 1.10] as part of the application. Hereon called the Shadow Habitats Regulations Assessment (sHRA)
- 9) It is necessary for the Inspector to be informed on the position of both the Council and appellant, particularly on the mitigation to be secured, to inform the Habitats Regulations Assessment process, irrespective of the reason for refusal and in the consideration of a s106 agreement securing mitigation.

#### 4. Areas of Common Ground:

- 10) The Council considered the Habitats Regulations screening process at application stage which lead to a conclusion that effects of the development would lead to likely significant effects on Habitats Sites. This relates to the potential effect of dog walkers and the availability and attractiveness of dog walking routes for future residents.
- 11) The in-combination effects could be addressed by a Suffolk Coast Recreational Disturbance Avoidance Mitigation Strategy (RAMS) contribution which the appellant agreed to from the outset and has included within the Section 106 agreement and agreed to within the sHRA.
- 12) Reason for refusal 6 states:

*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).*

In respect of the bold section, the Officer's report stated:

*"It has been concluded by the East Suffolk Ecology Officer that the land that is proposed within the site the layout includes one area of greenspace in the north-eastern part of the site and another, smaller area, on the western side. However, it has not been demonstrated that residents of the development would have access from the development to a 2.7km circular walking route, either within the site or connected to existing rights of way. In the absence of demonstration that such a route is available 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 on such sites. 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."*

- 13) If the inspector agrees that likely significant effects cannot be ruled out and goes on to undertake an Appropriate Assessment (if wishing to allow the appeal) she must be satisfied that the proposed development would not result in adverse effects on the integrity on Habitats Sites. Consultation with Natural England is necessary as part of that Appropriate Assessment.

- 14) Natural England have not previously made formal comment on the appeal scheme and were not consulted as part of the planning application. The appellant has made informal contact with Natural England and this has recently been shared with the Council.
- 15) Feedback on the position of Natural England has been requested for the appeal and both parties will work cooperatively with Natural England to ensure that the Inspector is informed on Natural England's views prior to the start of the inquiry.
- 16) The Council's position on consultation with Natural England on the HRA (as set out in an email of 7<sup>th</sup> January 2020) is that "*the requirement to consult for an AA is only necessary where the competent authority intends to permit a project*".
- 17) Natural England were consulted as part of the initial planning consultation for a planning application on the other allocated site in Rendlesham (DC/17/5380/FUL). The LPA consulted Natural England (alongside other statutory consultees) in relation to planning application DC/17/5380/FUL on 22<sup>nd</sup> January 2018; 6 days after validation on 16<sup>th</sup> January 2018.
- 18) Natural England were not consulted as part of the initial planning consultation for the previous planning application 18/2374 on the appeal site. This differs from the approach taken on the other allocated site in relation to a previous planning application there (17/5380). The Habitats Regulations reasons for refusal for the previous application on the appeal site (18/2374) referred to the need for on-site walking routes and for a RAMS contribution with no mention of off-site path requirements.
- 19) Natural England were not consulted as part of the planning application (19/1499) consultations following validation on 9<sup>th</sup> April 2019. That the LPA did not consult Natural England (alongside other statutory consultees) in relation to planning application DC/19/1499/FUL on 15<sup>th</sup> April 2019; 6 days after validation on 9<sup>th</sup> April 2019 (where 2 of the 6 days were taken up by a weekend).
- 20) Habitats Regulations Assessment of the emerging Local Plan says that for developments over 1km distant from a European site impacts only have a recreation impact pathway, in-combination (Suffolk Coastal District Local Plan HRA Supplementary Note July 2019, page 6 penultimate bullet point). SANGS requirements, which include a 2.5km path, only apply to North Felixstowe Garden neighbourhood and South Saxmundham Garden Neighbourhood (Suffolk Coastal District Local Plan HRA December 2018, paragraphs 5.7 and 5.8).
- 21) Case law indicates that for project level Appropriate Assessment, a Competent Authority 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.

## **5. Areas of Disagreement/ Unresolved Matters:**

### **22) Parties disagree on:**

- a) The consultation requirements with Natural England during the application, based on regulation 63 of the Habitat Regulations.

- i) The Council states that it has agreement with Natural England not to consult at planning consultation stage, based on the HRA Record template. The Council claims that consultation is only required when having undertaken an appropriate assessment and intending to consent a project.
  - ii) The appellant is of the opinion that it is at least good practice to seek and take advice from Natural England on SPA and SSSI issues or be able to give good reasons why Natural England advice is not needed.
- b) If there are any alone effects of the proposed development on the Sandlings SPA, specifically not mitigated by the RAMS contribution.
  - i) The Council sets out in its evidence that there would be.
  - ii) The appellant set out in their evidence that there would not be.
- c) The process used to determine any adverse effect upon the integrity of any European site.
  - i) The Council considers that its HRA Record template including what it claims is guidance from Natural England (also informing its pre-agreed consultation process) is an appropriate method for recording HRA and includes guidance for the Council in undertaking assessment.
  - ii) The appellant considers that the emerging Local Plan / HRA should have more weight than the template.
- d) This leads to disagreement on the need for and then demonstration of a daily dog walking route within the appeal evidence. (the definition of daily dog walk is not consistent between witnesses: the Appellant having recently received two definitions; one from the LPA in a template attached to their SoC and one from Natural England in their email of 12/12/19)
  - i) The Council states that a 2.7 km route is required and should be based on the guidance set out in Annex 1 of the Council's HRA Template.
  - ii) The Appellant states that if a daily dog walking route is necessary then there are existing routes of adequate length; some of which accord with recent site-specific advice from Natural England (an email from Francesca Shapland sent to the appellant on 12/12/19 between the refusal and appeal submission).
- e) The adequacy of existing and proposed dog walking and recreational routes available in the village for these purposes and the quality of the routes relied upon.
  - i) The Council claims these are not adequate.
  - ii) The appellant claims that they are.
- f) Whether the provision of a new public right way, secured through the section 106 agreement and dedicated land on the site and to be delivered by the County Council is a material consideration for the purpose of Appropriate Assessment.
  - i) The Council would give this weight as a beneficial addition to routes which may be available in the village, therefore providing mitigation for recreational effects on the Sandlings SPA. In securing this, the Council has claimed since sharing its Statement of Case that it expects that an Appropriate Assessment could be passed and the reason for refusal addressed.

