

MEMO

**North
Lincolnshire
Council**

To: Tanya Coggon, Development Management
From: Andrew Taylor, Place Planning & Housing
Your Ref: PA/2021/2151 Ecology
Date: Friday, 20 May 2022

Subject: Outline planning permission for residential development of up to 390 dwellings with associated infrastructure - UPDATE Land to the west of Brigg Road and to the south of Horkstow Road, Barton-upon-Humber

Summary

- Taking together the results of the wintering birds surveys and the records centre search, there is no evidence that the application site is functionally-linked land supporting waterbirds associated with the Humber Estuary SPA or Ramsar site.
- Natural England advises that we should not adopt the applicant's shadow Habitats Regulations Assessment (sHRA).
- Natural England requires the Suitable Alternative Natural Green Space (SANG) to be managed in perpetuity. This may not be possible without a conservation covenant. Such covenants are not yet available.
- Natural England requires a Strategic Access Monitoring and Management scheme into which developers can contribute. North Lincolnshire Council does not yet have such a scheme.
- I do not think that we can determine this application, except for a refusal, at this point in time.

Thank you for consulting Place Planning & Housing on the above application. This update shall address the Habitats Regulations only. Please refer to my earlier memo for other matters.

Habitats Regulations

At the pre-application stage, I advised as follows:

"The Habitats Regulations Assessment of the North Lincs Local Plan Publication Draft says:

"[Policy H1] allocates 36 sites, with 4,137 dwellings, for residential development within 4.42km of the estuary (see Table 6 3). Fearnley et

al. (2012) identifies this distance as being that within which 88% of visitors to the Humber Estuary will travel and it is therefore considered that residential development within this zone could result in a significant increase in visitor pressures to the site. This residential development will facilitate population growth, which is expected to be around 2.4% over the lifetime of the plan, with the largest growth in people over 65 (35% growth is predicted) (North Lincolnshire Council, 2021). This group often have the greatest amount of leisure time, further increasing recreational pressures on the site.”

..and...

“Under policy H1, dependent on the scale of residential development proposed, it is likely that a project level HRA of the direct and indirect impacts of the development of each of the allocated sites will be required, and will be expected to consider changes in recreational pressures and impacts of increased visitor numbers on sensitive habitats. Where impacts cannot be avoided, appropriate mitigation will be required to ensure no adverse effects on the integrity of the site. For example, the provision of open space and recreational/ leisure facilities as part of any development proposed. Policy DQE3 reinforces the need for an Appropriate Assessment for any projects, not connected to the management of a European site, if they are likely to have a significant effect upon them. This assessment will need to consider potential in-combination impacts identified in this assessment, along with any others that may arise.”

Although, the land west of Brigg Road is not specifically allocated under policy H1, it lies comfortably within 4.42km of the estuary, so the same considerations of recreational pressure and Habitats Regulations Assessment apply.

Potential impacts on the Humber Estuary SSSI, SAC, SPA, Ramsar include:

- Water-borne pollution- depending on the drainage and foul water proposals.
- Increased recreational disturbance of SPA/Ramsar qualifying waterbirds due to the increased population within 4.42 kilometres of the Humber.
- Disturbance and displacement of SPA/Ramsar waterbirds that may use land functionally-linked to the Humber Estuary for feeding, roosting and/or loafing.”

The applicant has now provided a shadow Habitats Regulations Assessment and the results of wintering birds surveys. No SPA/Ramsar-listed or assemblage waterbirds were recorded using the application site or nearby fields. Natural England have requested that records from the Lincolnshire Environmental Records Centre should also be considered. A 1 km radius search from the central point of the application site revealed 355 records of waterbirds of 19 species, plus bittern and marsh harrier, from the period 1998 to 2019. All of these records related to the location “Barton upon Humber” in

the Lincolnshire portion of the Ordnance Survey grid square TA02, with no more specific locational information. The area in question is shown below (Reproduced from www.gridreferencefinder.com):



Some of these birds (e.g. bittern, scaup, common scoter) clearly require habitats not found on the application site. None of the records can clearly be attributed to the application site. In the absence of more detailed information, records appear more likely to derive from well-recorded sites such as Chowder Ness, Far Ings, Waters' Edge and the other claypits.

Taking together the results of the wintering birds surveys and the records centre search, there is no evidence that the application site is functionally-linked land supporting waterbirds associated with the Humber Estuary SPA or Ramsar site. It should be noted that the proposed site is influenced by existing housing and the main road. This may restrict its capacity to support passage or wintering waterbirds associated with the Humber Estuary SPA/Ramsar site, as these birds generally prefer to feed and roost in large, undisturbed, open fields where they can readily scan the horizon for predators.

Natural England has given the following advice in relation to the shadow Habitats Regulations Assessment (sHRA):

“Having considered the sHRA, and the measures proposed to avoid/mitigate for any adverse effects, Natural England’s advice is that

this assessment is **not** sufficiently rigorous or robust to allow your authority to reach this conclusion. Natural England advise that it is not possible to ascertain that the proposal will not result in adverse effects on the integrity of the site in question. I advise that your authority should **not** grant a planning permission at this stage.”

Natural England advises that, “the proposed Suitable Alternative Natural Green Space (SANG) mitigation measure is of a suitable scale and location”. However, they also require a management plan and assurances that the open space land can be managed “in perpetuity”. Following appropriate assessment, and assuming that management is financially viable, then long-term management could be secured through planning conditions. However, management “in perpetuity” is an open-ended commitment that appears difficult to secure or enforce, except perhaps through a conservation covenant through brought about via the Environment Act 2021, which will not become available until September 2022.

see:

<https://www.legislation.gov.uk/uksi/2022/48/regulation/5/made#:~:text=The%20following%20provisions%20of%20the%20Act%20come%20into,%28discharge%20or%20modification%20of%20obligations%20under%20conservation%20covenants%29%3B>

Natural England also requires “confirmation of Strategic Access Monitoring and Management (SAMM) that is appropriate to secure the necessary avoidance and mitigation measures and have been secured for a duration proportionate to the timescale of the developments effects (in perpetuity).” Such measures typically involve developer payments towards wardening, information provision and site enhancements to minimise recreational disturbance of waterbirds using the designated site and functionally-linked land. North Lincolnshire Council does not operate such a scheme at present. Indeed, no such schemes yet operate around the Humber, to my knowledge.

Overall implications

The firm advice provided by Natural England means that the Council, as competent authority, will need to carry out its own HRA of the project, including both determination of likely significant effect and appropriate assessment stages. This may take a considerable period of time, given current workloads.

As I understand it, we do not yet have the legal mechanisms available to secure management of the public open space (or SANG) in perpetuity. You may wish to take legal advice on this.

North Lincolnshire Council does not yet have a Strategic Access Monitoring and Management scheme into which developers can contribute, yet such a scheme is now a requirement of Natural England.

Government advice to competent authorities states that "You must consult the relevant SNCB and you should send them a copy of your draft appropriate

assessment. You must consider the advice you get back. You should only disagree with the advice if you have a good reason. "

For all of the reasons set out above, I do not think that we can determine this application, except for a refusal, at this point in time.

If you have any questions, please do not hesitate to contact me.

Andrew Taylor
Natural Environment Policy Specialist