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BY EMAIL ONLY

Dear NKEPG colleagues,

Recreational Pressure and Bird Disturbance

Consultation: Housing policy and plans with the potential to impact on the suite of Special Protection Areas (SPAs) and Ramsar Sites that make up the North Kent Marshes.

Internationally Designated Sites: The Swale, Medway Estuary and Marshes, and Thames Estuary SPAs and Ramsar sites.

We are writing to you to provide the Local Authorities and NKEPG members with Natural England's advice regarding the potential for impact of recreational disturbance from proposed housing on the bird interest¹ features of the three Special Protection Areas and Ramsar² sites listed above which collectively comprise the North Kent Marshes SPAs / Ramsar sites.

Background

Following the South East Plan allocation of around 70,000 houses between 2006 and 2026, across the North Kent area, concerns were raised about the potential impact of recreational disturbance on bird populations of the three SPAs and Ramsar sites of the North Kent Marshes that cover the majority of the North Kent coastline. In response to this, the NKEPG commissioned a number of reports (see annex 1), to assess the current and future levels of recreational activity on the North Kent Marshes SPAs and Ramsar sites.

Natural England is a member of the NKEPG for this project and also has a statutory role in advising on the potential effects of development on the conservation of SPAs and Ramsar sites. We have been working together to collate the evidence requirement to demonstrate in accordance with the Habitat Regulations³ whether the proposed level of housing, now identified as approximately 68,000

¹ SPA site list and qualifying features <http://jncc.defra.gov.uk/> and Ramsar <http://jncc.defra.gov.uk/page-1389>

² Listed or proposed Wetlands of International Importance under the Ramsar Convention (Ramsar) sites are protected as a matter of Government policy. Paragraph 118 of the National Planning Policy Framework applies the same protection measures as those in place for European sites.

³ Requirements are set out within Regulations 61 and 62 of the Habitats Regulations, where a series of steps and tests are followed for plans or projects that could potentially affect a European site. The steps and tests set out within Regulations 61 and 62 are commonly referred to as the 'Habitats Regulations Assessment' process. The Government has produced core guidance for competent authorities and developers to assist with the Habitats Regulations Assessment process. This can be found on the Defra website. <http://www.defra.gov.uk/habitats-review/implementation/process-guidance/guidance/sites/>

houses in local plans coming forward over the next few decades (based upon local plan with end dates between 2026-2033), would significantly impact on the bird interest features of the SPAs and Ramsar sites.

In July 2012, an interim report⁴ was collated that put into context all existing data in relation to bird disturbance for the SPAs and Ramsar sites to enable the findings to be used in the assessment of development.

In summary, the report's conclusions were worded as follows (we have lifted the text directly):

- There have been marked declines in the numbers of birds using the three SPAs. Declines are particularly apparent on the Medway and have occurred at the locations with the highest levels of access.
- Disturbance is a potential cause of the declines. The disturbance study shows birds are responding to the presence of people, and there is evidence that the busiest locations (which have seen the most marked bird declines) support particularly low numbers of birds.
- Access levels are linked to local housing, with much of the access involving frequent use by local residents. Indicative data on future housing development, when used with the visitor data to estimate change in access levels between now and c.2026, would suggest that the SPA/Ramsar sites would see a future increase of approximately 15%.
- All activities (i.e. the volume of people) are potentially likely to contribute to additional pressure on the SPA sites and should be addressed within mitigation plans. Dog walking, and in particular dog walking with dogs off leads, is currently the main cause of disturbance (by far) and therefore should be a focus for mitigation. Other particular activities are those that involve people on the mudflats or the water.
- Development within 6km of access points to the SPAs is particularly likely to lead to increase in recreational use of the SPAs. Local greenspace use such as dog walking, cycling, jogging, walking and to some extent family outings will originate from people living within this radius.
- Beyond 6km from access points onto the SPA, large developments or large scale changes to housing levels will also result in increased recreational use. It would appear that visitors to the North Kent coast mostly originate from a zone north of the M2/A2 between Gravesend and Herne. People living within this broad coastal strip (i.e. beyond 6km from SPA access points and north of the M2/A2) are likely to visit for more coastal specific activities. Assuming users will be drawn to make a dedicated trip to particular features/areas, then the following can be highlighted:
 - the mouth of the Swale (for kite/windsurfing, dog walking with dogs off leads on the intertidal, bait digging);
 - the upper parts of the Swale (boating activities);
 - the upper parts of the Medway around Gillingham, Upnor and Rochester (where considerable infrastructure is present and lots of boating activity including powerboats, RIBs etc.)
 - nature reserves at Sheppey, Oare Marshes, Cliffe and Northward Hill.

In addition to summarising the evidence for recreational disturbance the interim report also considered the distance over which these recreational impacts are likely to be significant and

⁴ Liley, D., Lake, S. & Fearnley, H. (2012) North Kent Interim Overarching Report. Footprint Ecology/GGKM/NE
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identified potential mitigation measures to address the impacts. The importance of monitoring was also highlighted. These issues were summarised in the report as worded below:

- Development beyond 6km (excluding large sites) can be potentially screened out of assessments and assumed to have no likely significant effect on European sites. For development that does fall within 6km (or large sites beyond 6km) it will not be possible to demonstrate no adverse effect on integrity of the European sites and mitigation measures will need to be considered.
- Mitigation measures are discussed within the report and include awareness raising, on-site wardening, provision of signage and access infrastructure, provision/enhancement of green space away from the SPAs and direct contacts with users.
- Areas currently undisturbed, and in particular the main roost sites should, in particular, be protected from additional recreational pressure.
- The importance of monitoring and its role in determining the effectiveness of measures and identifying the need for modifications of measures was explained in section 5.7 of the report.

Natural England's advice to Local Authorities

As the conclusions in the interim report are based on the best available scientific evidence, Natural England's advice is, that it is likely that a significant effect will occur on the SPAs / Ramsar sites from recreational pressure arising from new housing proposals either alone or in-combination in the North Kent coastal area.

The Local Authorities have 2 options if they wish to deliver new housing in the area, these are:

- 1) To carry out further assessment (termed Appropriate Assessment (AA) under the Habitat Regulations) to demonstrate conclusively that bird disturbance from recreational activities of future housing will not be a significant cause of bird numbers declining on the SPAs / Ramsar sites, i.e. it will not cause an adverse effect on the integrity of the sites and therefore does not require mitigation.
- 2) Or that future housing provides suitable mitigation through a strategic approach, in order to ensure that a significant effects from recreational impact does not occur on the SPAs / Ramsar site as a result of this new development.

As the competent authorities for planning under the Habitat Regulations the Local Planning Authorities that comprise members of NKEPG need to consider how best to take this advice forward. Ideally, whichever approach is decided on this would be best delivered jointly through the continued partnership of NKEPG.

Natural England advises that either of the following two approaches can be taken:

1) Further Appropriate Assessment

The Local Authorities could seek to demonstrate conclusively that recreational pressure is not a significant impact on bird declines on the SPAs / Ramsar sites. To do this further assessment (AA) is required of the local authorities' strategic plans and we would suggest that this may need to cover the following issues:

- prey abundance studies within the coastal designated sites
- site specific visitor studies

- detailed ecological modelling based on the above to better understand the possible reasons for bird declines within the coastal designated sites

Until this assessment is completed, future development proposals are still considered likely to have a significant effects. This is because until it can be confirmed through further evidence that there is no risk to the SPAs / Ramsar sites from recreational impacts from future housing, Natural England's advice is, that based on the best available evidence currently, the likelihood of a significant effect on the SPAs / Ramsar sites cannot be ruled out. Therefore for any development to proceed prior to the AA being completed new housing developments would require mitigation measures.

It should be noted that following AA, it is possible that the evidence still remains inconclusive as to whether recreational disturbance is a significant cause of bird decline and mitigation measures may still be required for new housing.

2) Strategic Avoidance / Mitigation

In September 2013 a workshop was held to discuss potential mitigation measures and NKEPG commissioned a report to identify a mitigation package for the SPAs / Ramsar sites. A final version was submitted to the group in July 2014 (as yet unpublished) entitled Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy⁵. This report considered a 'long list' of mitigation options that were refined into the elements considered necessary by the consultants to form the basis of the recommended strategy. These elements were:

- A North Kent Coast Dog Project
- Wardening/Visitor Engagement
- New Access Infrastructure
- Parking: Strategic Review and Changes to Parking
- Codes of Conduct
- Interpretation/signage
- Work with local (interest) club/group
- Refuge (provision for birds)
- Enhancement of existing (access) sites to create hub
- Enhancement to existing GI away from SPA
- Enforcement
- Monitoring

Natural England has yet to provide detailed comments on the proposed mitigation strategy, however the mitigation elements of the strategy cover similar concerns and approaches of other authorities dealing with coastal SPAs / Ramsar sites experiencing bird disturbance from recreational impacts. For coastal sites the main focus is access management. However, the use of green infrastructure / green space if evidenced may also be an important component of the mitigation measures.

If the Local Authorities are minded to adopt this approach or similar Natural England is available to provide further detailed advice and guidance based on our experience of these strategies elsewhere in the country.

Natural England's advice is that the use of a strategic mitigation set of measures similar to those proposed above would enable the screening out of housing developments, at the first stage of the Habitat Regulations, as having no likely significant effect on the suite of SPAs / Ramsar sites.

There are a number of advantages of applying strategic mitigation in the form of Access

⁵ Liley, D., & Underhill-Day, J., (2013) Thames, Medway and Swale Estuaries – Strategic Access and Management and Monitoring Strategy unpublished.

Management and Monitoring such as:

- cost effectiveness should be part of the strategy design
- the reduction in full AAs that need to be carried out by the competent authorities, as the majority of development would be screened out of further assessment if mitigation is applied.
- the approach is consistent and proportionate to the scale of development and not onerous
- developers know up front what the mitigation measures are and the cost involved
- the comprehensive nature of a strategic approach to be able to consider the SPAs / Ramsar sites as a whole and ensure that measures are specifically targeted whilst ensuring that disturbance is not displaced to other areas of the SPAs / Ramsar sites
- the overall package of measures generally allows for flexibility in implementation, with the introduction of measures that will mitigate for development as it comes forward in the plan
- monitoring of recreational activities in relation to bird numbers is an integral part of the mitigation and this allows measures to respond to the evidence coming forward whilst ensuring no adverse effect occurs on the SPAs / Ramsar sites.

However, if bespoke mitigation is proposed by individual developers, Natural England's advice is that this will require careful consideration in order to demonstrate that the mitigation being put forward would ensure that bird disturbance from recreational pressure would not increase on the SPAs / Ramsar sites as a result of the proposed development. If having considered any mitigation measures proposed, the likelihood of a significant effect cannot be ruled out, an appropriate assessment will be required.

Working Together

Whilst this body of evidence has been growing, communications have continued to take place between Natural England and the Planning Authorities. Natural England is satisfied that these communications have advised the competent authorities that the available evidence needs to be taken into account when making planning decisions and of the potential approaches that are open to them as outlined in this letter.

Natural England is available to advise the group further and we very much hope that NKEPG can continue to take this work forward as a group, as we believe that this is the most efficient and effective way of addressing these concerns.

If the decision is to carry out further assessment to demonstrate that recreational impacts are not a significant issues we can help to advise on the requirements for these further studies and the interim mitigation that is required.

Should the NKEPG decide that the approach to be taken is to secure appropriate mitigation measures that can be applied, on either a site specific or strategic basis, to avoid adverse effects; Natural England is confident that it is possible to implement such measures and will engage with Local Authorities in North Kent on local plans and specific development proposals that are seeking to do so.

We hope that this letter sets out clearly Natural England's advice on the North Kent Marshes SPAs / Ramsar sites in relation to bird disturbance and recreational impacts from future housing and the options available to the Local Authorities. We look forward to discussing these issues with you all at the next NKEPG meeting and we would welcome the proposal of a date for when this will occur.

Yours sincerely

[Redacted Signature]

Sussex and Kent Team

Annex 1:

Previous studies in North Kent that relate to recreation pressure and other potential threats to the bird interest of the SPAs.

- 1) What do we know about the birds and habitats of the North Kent Marshes? (Cruickshanks et al 2011a)
- 2) Bird Disturbance Study, North Kent 2010/11 (Liley & Fearnley 2011)
- 3) North Kent Visitor Survey Results (Fearnley & Liley 2011)
- 4) North Kent Comparative Recreation Study (Fearnley & Liley 2012)
- 5) Estuary Users Survey (Medway Swale Estuary Partnerships, 2011)
- 6) GGKM Roost survey (mapped in Liley & Fearnley 2011)
- 7) Recent Wetland Bird Surveys results produced by the British Trust for Ornithology
- 8) Phase 1 Bird Disturbance Report (Liley, Lake, & Fearnley 2012)
- 9) Thames, Medway and Swale Estuaries – Strategic Access Management and Monitoring Strategy (Liley and Underhill-Day 2013) (unpublished)