

Solent Special Protection Areas

Supplementary Planning Document

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Section 1: Introduction

- 1.1 Portsmouth has an ambitious agenda for growth and development, which is set out in the Portsmouth Plan and the Regeneration Strategy. These plans recognise that the city and the wider Solent area have a wealth of natural habitats and an incredibly scenic coastline which are part of the attractiveness of the area. Large sections of the Solent coastline have been internationally recognised as Special Protection Areas (SPAs).
- 1.2 For the purposes of this guidance, the "Solent SPAs" refers to:
 - Portsmouth Harbour SPA
 - Chichester and Langstone Harbours SPA
 - Solent and Southampton Water SPA
- 1.3 Evidence shows that new development can reduce the quality of the habitat in the Solent SPAs. As a result, in order to meet the requirements of the Habitats Regulations¹, mitigation measures will need to be provided where necessary from development schemes before works can lawfully go ahead. More detail on both the importance of the Solent SPAs and the city council's legal obligations is given below.
- 1.4 This Supplementary Planning Document (SPD) has been prepared to address the identified issues. It will facilitate and guide residential development in the city whilst ensuring that the city council continues to comply with the regulations protecting the SPAs. It ensures that developers can have certainty that the issue can be addressed quickly, simply and at minimal cost.
- 1.5 SPDs expand on or provide further guidance on policies in the Portsmouth Plan. The role of this SPD is to provide advice and detail on the implementation of Policy PCS13 which sets a policy framework to ensure that new development complies with the Habitats Regulations.

The city council's responsibilities

- 1.6 The European Habitats² and Birds Directives³ protect rare species and habitats. Member States are required to classify particular habitats as Special Protection Areas (SPAs) and manage them to a favourable condition. Other 'European Sites' (Special Areas of Conservation (SACs) and Ramsar sites) have also been designated for other habitats and species but the potential impact of development on these sites is not covered by this guidance.
- 1.7 The Directives have been transposed into UK law through the Habitats Regulations. Under these regulations, the city council must assess whether or not a proposed development is likely to have a significant effect on an SPA. This assessment is called a Habitats Regulations Assessment (HRA). It involves an initial 'screening stage' to determine whether the proposal is likely to have a significant effect on a European site. This assessment needs to identify the interest features of the European sites and whether the plan or project would cause harm to them. If necessary, avoidance or mitigation measures could be included to remove the harm which otherwise would have occurred. It is also necessary to look at the

¹ The Conservation of Habitats and Species Regulations 2010 (and subsequent amendments).

² European Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora.

³ European Council Directive 2009/147/EC on the conservation of wild birds.

proposal in combination with other developments in the local area. A second stage, called the Appropriate Assessment (AA), comprises a detailed assessment to determine whether there will be an adverse effect on the site. Only once the HRA has determined that there will not be an adverse effect can the proposal be authorised.

- 1.8 Due to the precautionary approach⁴ in the regulations, it is necessary to demonstrate, with a reasonable degree of certainty, that the project will not be likely to have an effect on the SPA before it can lawfully be authorised.
- 1.9 The Habitats Regulations also ensure that any planning permission which is deemed to be granted through the mechanisms of the General Permitted Development Order (GPDO)⁵ is compliant with the regulations. If consent is given through the GPDO then under Regulation 75 of the Habitats Regulations, a separate HRA will also need to be done.
- 1.10 The National Planning Policy Framework (NPPF) sets out the Government's planning policies and how they should be applied and is a material consideration in planning decisions. The Framework contains a presumption in favour of sustainable development, which informs the framework. However the NPPF also states that this presumption does not apply where development requiring an appropriate assessment is being considered, planned or determined.

The Solent SPAs

- 1.11 A map showing the boundaries of the Solent SPAs is in figure 1 below. These SPAs have been designated mostly for the protection of significant numbers of waders and waterfowl which spend the winter in the Solent.
- 1.12 At their winter peaks, the population of Brent geese in Chichester and Langstone Harbours SPA represents 13% of the national population and 6.5% of the global population of this species. The three SPAs together have been estimated to support between 10% and 13% of the global population of Brent geese and about a third of the UK population.
- 1.13 The Solent also supports in excess of 90,000 waders. Many of these will travel thousands of kilometres to over-winter at the Solent. The intertidal habitat which the Solent provides, particularly the mudflats, shingle and saltmarsh provide ideal feeding and roosting grounds for these species which are specially adapted to feeding in such habitat.

⁴ The precautionary principal: if an action or policy has a suspected risk of causing harm to the public or to the environment in the absence of scientific consensus that the action or policy is harmful, the burden of proving it is not harmful falls on those seeking to take the action or adopt the policy.

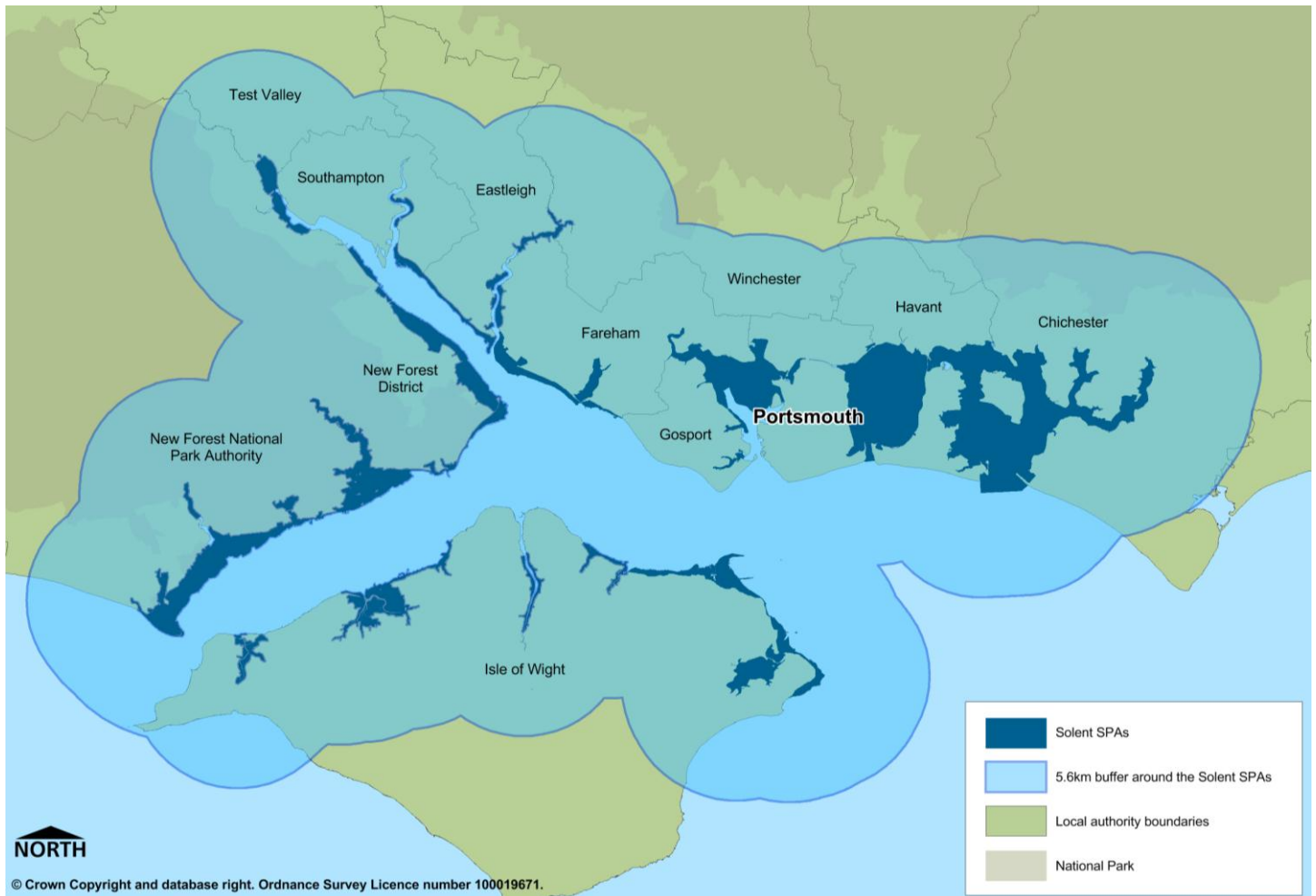
⁵ Town and Country Planning (General Permitted Development) Order 1995.

Section 2: Current research

- 2.1 Human disturbance to birds is essentially understood to arise from any activity which results in a change in the bird's behaviour. An acknowledged issue is the impact which disturbance, much of which is caused by recreation, can have on the protected species which use the Solent SPAs and thus on the conservation objectives of the SPAs themselves. Development can increase the population at the coast and thus increase the level of disturbance and the resultant effect on the SPA's conservation objectives.
- 2.2 Disturbance can have a variety of impacts, but these generally involve a reduction in the amount of energy which birds have available:
- habitat that would otherwise be perfectly suitable and has a high density of food could be unused or underused
 - birds could be forced to fly away from the source of the disturbance, using more energy as a result
 - birds could be more alert when feeding, reducing their feeding efficiency over a given time period
- 2.3 Ultimately, this can cause a reduction in the amount of energy which the individual bird has available at the end of the winter period to migrate back to their breeding grounds. If such a reduction occurs, birds will be unable to make the journey and this can result in mortality in the bird population.
- 2.4 Disturbance can sometimes be absorbed by changes in the bird's behaviour, for example increased feeding at night when there are less people and dogs. However this will result in increased pressure put on the system and the SPA population will be more vulnerable in the long-term. There are limits to how much additional pressure a site can absorb whilst still maintaining the SPA bird population.
- 2.5 The city council has been working with neighbouring local authorities along the Solent, the Partnership for Urban South Hampshire, Natural England and other stakeholders to investigate this issue. A great deal of research has now been done, through the Solent Disturbance and Mitigation Project (SDMP)⁶, to assess whether the Solent SPAs suffer from mortality in the bird population due to disturbance caused by recreation. This research has involved:
- a desktop review of existing national and local research
 - a survey of visitors at the Solent SPAs asking them about their visit
 - a survey of households living close to the Solent SPAs about their use of the coast
 - bird disturbance fieldwork at the SPAs to assess how birds respond to potential disturbance events
 - computer modelling to establish whether the patterns of activity which were observed at the Solent SPAs lead to mortality in SPA bird populations
 - advice on the kinds of mitigation measures that could be used to remove any mortality in the SPA bird population.

⁶ This research is available at www.solentforum.org/forum/sub_groups/Natural_Environment_Group/Disturbance_and_Mitigation_Project/

2.6 The research looked at where people travel from to reach the coast and the distance they have to travel. It found that 75% of all visits to one of the Solent SPAs are from 5.6km or less.



Map 1: 5.6km buffer around the Solent SPAs.

- 2.7 The computer modelling looked at SPA bird populations and specifically modelled the level of activity which was recorded, how the birds reacted and where the food was. This modelling found that some species were able to compensate for increased disturbance by altering their feeding habits. However a number of species suffered mortality as a result of disturbance and the rate of mortality would increase as a result of a new development.
- 2.8 Natural England have advised the city council that *"the (Solent Disturbance and Mitigation Project) work represents the best available evidence, and therefore avoidance measures are required in order to ensure a significant effect, in combination, arising from new housing development around the Solent, is avoided"*⁷.
- 2.9 The available evidence shows that a significant effect on the Solent SPAs from recreation caused by new development is likely. As a result, under the regulations, it will be necessary for an HRA to be done on all developments which would result in a net increase in population to ensure that this effect is avoided or mitigated in order to be able to lawfully authorise the development.

⁷ Letter from Simon Thompson to the PUSH Planning Officers Group (31st May 2013)

2.10 In the long-term the most effective solution to this issue would be a joint mitigation framework amongst all local authorities within 5.6km of the Solent SPAs. However whilst work continues on this, an interim mitigation framework will enable development to provide the necessary mitigation in order to go ahead in compliance with the Habitats Regulations.

Section 3: The solution

3.1 The city council is proposing the mitigation framework below as an interim measure. This will be a way for developments to provide a sufficient mitigation package in order to go ahead whilst further discussions take place between local authorities, PUSH, the Solent Local Enterprise Partnership and Natural England to establish a long-term mitigation framework.

What type of development is this applicable to?

3.2 Following the results of the research, mitigation will be sought from any development which would lead to a net increase in population. Mitigation will be sought at either the outline or full planning stage. Developments which will lead to a net increase in population will be:

- proposals for one or more (net) new dwellings falling within class C3 of the Use Classes Order (please note that this includes new dwellings created as a result of approval granted under the General Permitted Development Order).
- development intended to provide residential accommodation on a permanent basis outside of the C3 use class, including purpose built student accommodation.

3.3 Mitigation will generally not be sought from proposals for changes of use from dwellinghouses to Class C4 Houses in Multiple Occupation (HMOs) as there would not be a net increase in population. A change of use from a Class C4 HMO or a C3 dwellinghouse to a sui generis HMO is considered to represent an increase in population equivalent to one unit of C3 housing, thus resulting in a significant effect and necessitating a mitigation package to be provided.

3.4 Purpose built student accommodation⁸ will result in a net increase in population, and thus a significant effect on the Solent SPAs. However due to the characteristics of this kind of residential development, specifically the absence of car parking and the inability of those living in purpose built student accommodation to have pets, the level of disturbance created, and thus the increase in bird mortality, will be less than C3 housing. The SDMP research showed that 47% of activity which resulted in major flight events was specifically caused by dogs off of a lead⁹. As such, it is considered that level of impact from purpose built student accommodation would be half that of C3 housing and thus the scale of the mitigation package should also be half that of C3 housing.

3.5 The average number of study bedrooms in a unit of purpose built student accommodation in the city is five. As such, for the purposes of providing SPA mitigation, five study bedrooms will be considered a unit of residential accommodation.

3.6 An example calculation for a purpose built student accommodation development is set out in appendix 1.

3.7 Developments such sheltered accommodation (retirement housing (C3))¹⁰, sheltered accommodation (extra care (C3))¹¹ and nursing/rest homes (Class C2) may need to provide

⁸ As defined in paragraph 2.2 of the Student Halls of Residence SPD

⁹ See paragraph 3.15 of the Solent Disturbance and Mitigation Project Phase II bird disturbance fieldwork.

¹⁰ self-contained accommodation for the active elderly, which may include an element of warden support and / or communal facilities.

¹¹ warden supported self-contained accommodation for the less active elderly and includes the full range of communal facilities.

mitigation and will be assessed on a case-by-case basis based on an analysis of the likely impact of the residents, the level of care and other relevant issues.

- 3.8 All other proposed development will generally not need to provide mitigation. Nonetheless, if it is considered necessary to do so in accordance with the regulations, the city council will conduct project level HRAs on such proposals in consultation with Natural England.
- 3.9 Local authorities along the Solent have agreed that mitigation should be sought from all relevant developments within 5.6km of a Solent SPA. This covers all of Portsmouth and so mitigation measures will be sought from any applicable development proposed in the city.
- 3.10 It should be noted that the proposals in this SPD are one way in which developments could provide a package of mitigation measures which would remove the likelihood of a significant effect as a result of disturbance on the Solent SPAs. Applicants are free to propose an alternative approach to the protection of the Solent SPAs from disturbance caused by recreation and this will be considered by the city council.
- 3.11 A development could also have a significant effect on the Solent SPAs due to other issues, such as coastal squeeze, disruption to flightpaths or air quality which this SPD does not cover. Furthermore, it should be noted that there may be some developments which, due to the scale or location, could cause a significant effect alone, regardless of other development which might take place nearby. In these situations, developers will need to present a bespoke mitigation package for the development.

What type of mitigation will be put in place and how much will it cost?

- 3.12 Based on evidence gathered through the recent research, the following interim mitigation scheme will be implemented:
- a team of rangers who will work on the ground at European sites to reduce disturbance levels and initiate specific measures at the sites to reduce disturbance levels
 - a delivery officer to oversee the mitigation scheme as a whole and initiate further mitigation measures as necessary
 - A coastal dogs project
 - a monitoring scheme
- 3.13 This mitigation scheme is being operated by all of the local authorities along the Solent, and has been scaled based on the amount of development in current and forthcoming Local Plans. This allows developers to benefit from economies of scale in implementing the mitigation and acknowledging that disturbance from a new development can occur across several local authorities.
- 3.14 This package of measures is considered sufficient in order to effectively mitigate the significant effect which will arise from that development in current Local Plans across the Solent. The package of measures will need to be secured in perpetuity, in order to ensure that it is in place for the lifetime of the development. As such, sufficient funds will need to be invested so that at the end of the plan period, the mitigation scheme is self-financing.
- 3.15 Natural England has endorsed this approach as an effective interim solution.

3.16 The total cost of the mitigation framework will be £172 per net additional dwelling provided through a development scheme. An administration charge will also apply.

Implementing the framework

3.17 The city council will conduct an HRA on all development proposals at the full or outline planning stage, as required by the Habitats Regulations. For most developments, if a planning obligation or funds by Deed¹² is completed prior to granting planning permission which provides a necessary level of mitigation, proportionate to the scale of development being proposed, then it should be possible for the HRA to conclude that a significant effect on the SPA as a result of the development is unlikely.

3.18 Development proposed under the General Permitted Development Order will require a separate HRA to be done, alongside the prior approval process. As part of this process, mitigation will be need to be secured from the new development, proportionate to the scale of development being proposed. This will require a Section 106 agreement to be prepared.

3.19 The measures set out in the interim mitigation scheme are not considered to be infrastructure under Regulation 123 of the Community Infrastructure Levy Regulations. As a result, they can be secured from new development using a legal agreement.

3.20 Template Unilateral Undertakings are available on the city council's website. The appropriate template should be downloaded, completed in draft and submitted at the same time as the application. The city council provides a checking service to ensure that the Undertaking has been completed correctly and so ensure that the mitigation package has been secured. Please note that there is an administration charge for the checking service.

3.21 If a legal agreement, such as for provision of affordable housing, would have been required regardless of the need to provide SPA mitigation, then securing the mitigation package can be done through this legal agreement. There is no need for a separate Unilateral Undertaking to secure the mitigation package.

¹² A planning obligation, secured by agreement with the city council, by the landowner or a unilateral undertaking given by deed in accordance with Section 106 of the Town and Country Planning Act 1990 (as amended). For further details, please see the city council's website.

Section 4: Next steps

- 4.1 The interim mitigation framework is designed to allow developments to provide a suitable mitigation package in order to proceed in compliance with the Habitats Regulations. It is designed to secure the funds necessary to provide a proportionate amount of mitigation in relation to the harm caused to the Solent SPAs from the new development.
- 4.2 The city council will keep the framework under close review to ensure that it continues to meet these goals.
- 4.3 The city council will continue to work with other local authorities, PUSH, the Solent LEP and Natural England to establish a long term mitigation framework which will replace this SPD in due course.
- 4.4 The annual monitoring report will be used to monitor the implementation of this framework and the long term framework once it has been approved.

Appendix 1: Purpose built student accommodation example calculations

- A1.1 The draft Solent Special Protection Areas SPD sets out in section 3.4 that purpose built student accommodation will result in a significant effect which is half the scale of that created by C3 housing. It also sets out how such development will be scaled in order to calculate a contribution in section 3.5, that five study bedrooms would be considered a unit of residential accommodation.
- A1.2 As such, in order to calculate the level of the mitigation package required, the following formula should be used:

$$\left(\frac{S}{5}\right) \times \left(\frac{172}{2}\right)$$

S - number of study bedrooms

Example scheme

- A1.3 A development of purpose built student accommodation is proposed which would be comprised of 50 self-contained studio study bedrooms, 17 cluster flats of 7 study bedrooms each and 43 cluster flats of 4 study bedrooms each. The development has a total of 341 study bedrooms.
- A1.4 As such, for this scheme, the mitigation package would be calculated as follows:

$$\left(\frac{341}{5}\right) \times \left(\frac{172}{2}\right) = 68.2 \times 86 = \text{£}5,865.20$$

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