

What regulations enable the Local Planning Authority to require developers to consider biodiversity when submitting a planning application?

All planning decisions must be made in accordance with the Development Plan and it is therefore that Plan, which is primarily made up of the Portsmouth Plan 2012, which dictates what can be required from developers. Policy PCS13 of the Plan requires all new development to ensure *'that development retains and protects the biodiversity value of the development site and produces a net gain in biodiversity wherever possible. Any unavoidable negative impacts on biodiversity as a result of development should be appropriately mitigated.'* Greater protection and scrutiny is provided for proposed development on sites of local, national and international importance for nature conservation. This local policy ensures planning decisions meet the duty placed on all public authorities to have regard in exercising their function to the purpose of conserving biodiversity by s40 of the Natural Environment and Rural Communities Act 2006.

This general duty is in addition to the duty imposed to comply with the 'Habitats Regulations' in respect of specific designated sites, such as the Solent Waters Special Protection Area ('SPA'). This regulatory requirement is that no planning permission can be granted for a scheme that is likely to have a significant effect on the designated site, whether alone or in combination with other projects unless it is directly connected with or necessary to the management of that designated site.

While strategic scale schemes, or developments in particular proximity to the SPA around Portsmouth, can have a direct 'likely significant effect' when considered on their own the requirement to consider all projects in combination with other projects has meant that Habitat Regulation Assessment is needed in respect of a large proportion of new development in Portsmouth. This applies primarily to residential development that increases the number of people living in proximity to the SPA. When such development is combined together this results in both increased recreational disturbance of wildfowl, including species for which the SPA is designated, and increased waste water following into the SPA resulting in eutrophication and associated adverse impacts on the SPA and relevant species. These significant effects therefore require mitigation before development can be granted planning permission and the cost of that mitigation is a requirement placed on developers. Recreational disturbance is managed through a range of mitigation measures collectively called the 'Bird Aware' programme, and eutrophication resulting from increased nitrates and phosphates is managed through the 'Interim Nutrient Neutral Mitigation Strategy'. Both these strategies require a financial contribution to developers to fund mitigation schemes to resolve the adverse effects resulting from the proposed development.

Finally, it can be noted that following the introduction of the Environment Act at the end of 2021 Government intends to change how biodiversity conservation and enhancement will be achieved through the Planning system. Further secondary legislation is required before this new approach is introduced so full details are not yet known, but the Act makes provision for a requirement for a net gain in biodiversity to be a condition of all planning permission. The Act also makes provision, subject to further legislation, for the general duty referred to above to be amended not just to conserve, but also enhance biodiversity and increase the obligations on local authorities to

publish reports on biodiversity in their area. The regulatory and statutory regime for biodiversity within the Planning process is therefore going through a very significant review and is likely to be significantly more beneficial to biodiversity and onerous on both developers and Councils within the next few years.