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Your ref: NKEPG



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BY EMAIL ONLY

Dear NKEPG colleagues,

Advice for Habitats Regulations consultations regarding the screening of likely significant effect of new residential development with the potential to impact through recreational impact on the over-wintering bird interest of the suite of Special Protection Areas (SPAs) and Ramsar Sites that comprise the North Kent Marshes

On 6 January 2015, Natural England wrote to the North Kent Environment Planning Group confirming our advice that it is likely that a significant effect, either alone or in-combination, will occur on the coastal north Kent SPAs/ Ramsar sites from recreational disturbance on the over-wintering bird interest arising from new development proposals.

Following this letter, Natural England has continued to work closely with the NKEPG authorities to advise on establishing and securing the necessary strategic mitigation measures to protect the coastal SPAs and enable development to proceed. Natural England remains firmly committed to this process. These measures, however, will take time to be established, and Natural England recognises the difficulties this presents to your authorities and the potential for delay to the consenting of residential development.

Whilst not a statutory requirement at this stage of the process, it is normal and best practice for competent authorities to seek the informal advice of Natural England early in the process when considering whether projects would be likely to have a significant effect on a European site. We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

As you will be aware, Natural England currently responds stating that we do not object to these proposals with regard to recreational pressure, providing the necessary mitigation is in place. As an alternative to this approach, I confirmed at the last NKEPG meeting in July that Natural England would provide written advice which can be used by the local authorities as representing our formal advice for Habitats Regulations consultations. This is ONLY with regard to the screening of likely significant effect from recreational disturbance on overwintering birds from new residential development with the potential to impact on the suite of SPAs and Ramsar Sites that make up the North Kent Marshes: The Swale, Medway Estuary and Marshes, and Thames Estuary Estuary and Marshes SPAs and Ramsar sites.

Natural England confirms that this letter provides this advice with effect from the date of this letter. The advice below also identifies circumstances where bespoke advice may need to be sought from Natural England. Our advice may be required for other potential impacts from new development depending on their individual circumstance (please refer to our Impact Risk Zones). Note also that

under Regulation 61 of the Habitats Regulations, Natural England must be consulted on an Appropriate Assessment by a Competent Authority.

Interim approach for North Kent Marshes SPAs and Ramsars with regard to bird disturbance from increased recreational pressure from new housing.

Natural England advises that the likely significant effect of recreational impact on the over wintering bird interest from new residential development can be screened out if an appropriate contribution is made to the provision of strategic access management measures across the north Kent marshes. This relates to development within 6km of the SPA/ Ramsar sites, as set out in Natural England's letter to the NKEPG on 6 January 2015. Further guidance on large development sites outside the 6km zone is set out below.

The strategic measures are being developed by the NKEPG authorities, but are likely to be in accordance with the Category A measures identified in the Thames, Medway & Swale Estuaries Strategic Access Management and Monitoring Strategy (SAMM) produced by Footprint Ecology in July 2014. Whilst these measures are being developed, Natural England advises that it supports an interim approach that will enable development to proceed, based on the clear intention of the NKEPG authorities to implement these measures. The key principle, however, is that new dwellings should not be occupied until the mitigation measures are in place. This does not mean that the full suite of measures needs to be up and running from the outset, as the mitigation can be phased in to match the level of impact as the housing coming forward.

However, for the mitigation to be implemented, this will require the necessary mechanisms to be in place to support the collection and allocation of the mitigation tariff, and the identification of, and agreement with, a suitable delivery body or bodies to undertake the mitigation measures. It is therefore up to the NKEPG local authorities to satisfy themselves that these conditions will be met before consenting development.

Whilst recognising the need for an interim approach to be adopted, Natural England advises that the NKEPG local authorities should continue to work towards developing formal policies for the protection of the coastal SPAs and Ramsar sites (where these are not already in place), and that supplementary planning advice should also be developed that formally sets out the necessary mitigation measures, costings, and the corresponding tariff required for strategic mitigation.

Natural England advises that the interim approach needs to be based on the following requirements:

- A local authority having a policy that sets out how likely recreational disturbance impacts on overwintering bird interest from new residential development identified in the Local Plan will be avoided on European sites through strategic mitigation, and which states its intention to support the implementation of the mitigation as a partnership between the North Kent local authorities.
- Where a local authority does not have a relevant policy or a Local Plan in place, an alternative approach would be for the authority to consider developing an Interim Policy Statement, or similar mechanism.
- That an appropriate tariff is collected on the basis that it can be used to fund strategic measures across the Thames, Medway and Swale Estuaries. An indicative tariff is currently being developed by a consultant for the NKEPG, and Natural England advises that the agreed amount should be used as the interim tariff. The tariff, may, however, need to be revised as the specific detail of the mitigation delivery is finalised. The interim tariff should also be collected in anticipation of:
 - An administrative body being identified to manage the strategic tariff collected by the local authorities.

- A memorandum of understanding or legal agreement between the local authorities and administrative body to underpin the strategic approach.
- Ensuring a delivery mechanism for the agreed SAMM measures is secured and the SAMM strategy is being implemented from the first occupation of dwellings, proportionate to the level of housing development. Thereby ensuring that the level of recreational disturbance on the over-wintering birds is not increased by future residential development.
- In this interim approach, a local authority may wish to consider funding specific interim measures. Identifying projects to be funded now can provide certainty and reduce the risk of receiving funds without the delivery mechanism in place. However, such measures, to provide strategic mitigation, should be in accordance with, and help initiate / deliver the measures recommended in the SAMM Strategy (the 'Category A' options). Natural England is happy to provide further advice on any such proposals.

If these requirements are met, our advice is that it will not be necessary for the NKEPG authorities to consult Natural England for most residential developments regarding likely significant effects arising from recreational disturbance. We advise however that a local authority should consult Natural England where particular issues arise that would benefit from bespoke advice. These include:

- Development in close proximity to the SPA/ Ramsar sites, particularly development locations within walking distance of an access point.
- Sites where a developer is suggesting only greenspace provision or other bespoke approaches as mitigation.
- Cases where a developer is unwilling to pay, or challenges, the development tariff.
- Development beyond the 6km zone – see below.

The NKEPG local authorities should continue to consult Natural England in the normal manner for all other relevant planning matters that may arise from these or other planning proposals.

Development beyond the 6km zone

In our letter of 6 January 2015 to the NKEPG local authorities, Natural England advised that residential development within 6km of access points to the SPAs is particularly likely to lead to an increase in recreational use of the SPAs. The evidence base indicates 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. within 6km from SPA access points and north of the M2/A2) are likely to visit for more coastal specific activities.

Beyond 6km from access points onto the SPA, large developments, or large scale changes to housing levels may also result in increased recreational use. Natural England's advice should therefore be sought for such developments within the NKEPG local authority's areas beyond the 6km zone, so that these can be considered on a case-by-case basis.

10 or fewer dwellings

Natural England's understanding is that some of the NKEPG local authorities consider it may be inefficient to seek contributions for strategic mitigation from applications for 10 or fewer dwellings. Whilst it must be recognised that all new dwellings within the zone act in-combination with one another to contribute to the impact, we consider it is a matter for a local authority to consider how the mitigation should be funded by the development tariff, provided that the overall sum required is collected, i.e. the mitigation can be fully funded. Our advice is that the overall mitigation required, and thus the tariff income, should be assessed in terms of the overall quantum of housing being

delivered within the plan period. From this calculation, it can be judged what level of tariff should be set for housing developments. Excluding 10 or fewer dwelling applications would however mean that developments above this size threshold would need to cover the cost of the excluded dwellings. Natural England's understanding is that some of the NKEPG local authorities consider it may be inefficient to seek contributions for strategic mitigation from applications for 10 or fewer dwellings.

However, a difficulty arises if there is no clear link between a development and the mitigation required to avoid a likely significant effect. This would be the case if no contribution is made for a dwelling which would, without mitigation, have an effect on the north Kent European sites, and there is no specific local authority policy which sets out how the overall required mitigation income will be collected. An absence of such an approach would not provide the certainty required by the Habitats Regulations, and our advice would therefore be that the local authority could not conclude that the proposed development would not have a likely significant effect. Given this, Natural England advises that until such a policy is in place, it will be necessary for the tariff contribution to be collected from all new housing applications by a suitable mechanism.

Contributions for specific types of development

Whilst residential (Use class C3) development is likely to be the main type of development giving rise to recreational disturbance impacts, Natural England advises that other types of development should be assessed to consider whether it would give rise to a likely significant effect. Whilst it is a matter for local authorities to develop appropriate policies to address the types of development to be considered, Natural England's advice is that the following types of development should also be considered as being likely to lead to recreation disturbance and thus be required to contribute in part or in full towards the development tariff:

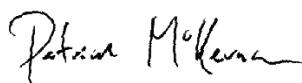
- Houses in Multiple Occupation (HMOs)
- Redevelopment sites
- Student Accommodation

Additionally, the following developments should be considered on a case by case basis by the local planning authorities on whether they would be likely to have a significant effect on the designated sites from recreational pressure.

- Hotels/ guesthouses
- Residential care homes and residential institutions
- Camp sites and caravan sites

I hope that this letter provides clear guidance on Natural England's advice for residential development which may have an effect on the coastal European sites. I look forward to continuing to work closely with the NKEPG in the ongoing development of the SAMM strategy.

Yours sincerely,



Patrick McKernan
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Sussex and Kent team
Natural England