

# Statement of Common Ground in relation Habitat Mitigation matters

Between:

**AJC Group**

and

**New Forest District Council**

In relation to

**Orchard Gate, Noads Way, Dibden Purlieu, Hythe**

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

PLANNING AND COMPULSORY PURCHASE ACT 2004

<b>Signed:</b>  	<b>Signed:</b>  
<b>Name:</b> James Gilfillan	<b>Name:</b> GILLES MOR
<b>On behalf of:</b> New Forest District Council	<b>On behalf of:</b> AJC Group
<b>Date:</b> 28 September 2023	<b>Date:</b> 28 <sup>th</sup> SEPT. '23

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## 1.0 Introduction

- 1.1 This Statement of Common Ground (SoCG) has been prepared by Chapman Lily Planning on behalf of AJC Group (“the Appellant”) in agreement with New Forest District Council (“the LPA”). It relates to a Section 78 appeal concerning the proposed development of Orchard Gate, Noads Way, Dibden Purlieu, Hythe (“the appeal site”).
- 1.2 The purpose of this SoCG is to identify the areas where the principal parties (the Appellant and the LPA) are in agreement in relation to habitat mitigation matters. This SoCG should be read alongside the principal SoCG and the accompanying, topic based, SoCG relating to viability matters.
- 1.3 Planning application 22/10813 was refused on the 19<sup>th</sup> December 2022, the fourth reason for refusal is relevant to this SoCG:

4	The recreational and air quality impacts of the proposed development on the New Forest Special Area of Conservation, the New Forest Special Protection Area, the New Forest Ramsar site, the Solent and Southampton Water Special Protection Area, the Solent and Southampton Water Ramsar site, and the Solent Maritime Special Area of Conservation would not be adequately mitigated and the proposed development would therefore be likely to unacceptably increase recreational pressures on these sensitive European nature conservation sites, contrary to Policies ENV1 of the New Forest District Local Plan Part 1: Planning strategy 2020 and DM3 of the New Forest District Local Plan Part 2: Sites and Development Management 2014 and the Mitigation for Recreational Impacts on New Forest European Sites SPD 2021, Air Quality Monitoring SPD 2022 and the Bird Aware Solent Strategy.
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- 1.4 It is common ground that the appeal scheme would give rise to increased recreational activity effecting protected habitats and species in the New Forest and Solent and result in increased vehicle trips through the New Forest potentially increasing acid deposition, from nitrogen oxide and ammonia in exhaust fumes, harmful to New Forest habitats.

- 1.5 It is common ground that the development will give rise to an increase in the volume of waste water sent to the Waste water treatment Works at Slowhill Copse WWTW. That Treatment works discharges treated water to the Solent.
- 1.6 Due to the protection afforded to habitats in the Solent, the Council received the Natural England letter dated 16<sup>th</sup> March 2022 in relation to the requirement that development is nutrient neutral, due to the negative effect additional nutrient loading is having on Solent habitats.

## **2.0 Planning Policy Context**

- 2.1 It is common ground that policy ENV1 of the New Forest District Local Plan Part 1: Planning strategy 2020 identifies that development will only be permitted where the LPA is satisfied that any necessary mitigation, management or monitoring measures are secured in perpetuity as part of the proposal and will be implemented in a timely manner, such that, in combination with other plans and development proposals, there will not be adverse effects on the integrity of any of the following International Nature Conservation sites:
- The New Forest Special Area of Conservation (SAC), the New Forest Special Protection Area (SPA) and the New Forest Ramsar site;
  - The Solent Maritime SAC, Solent and Isle of Wight Lagoons SAC, the Solent and Southampton Water SPA, and the Solent and Southampton Water Ramsar site;
  - The River Avon SAC, Avon Valley SPA and Ramsar site; and
  - The River Itchen SAC
- 2.2 Policy ENV1 states that for residential development adverse effects can be adequately mitigated by implementing approved measures relevant to the site location, including as set out in the Mitigation for Recreational Impacts SPD and in the Solent Recreational Mitigation Strategy.

- 2.3 The Council have adopted a Supplementary Planning Document to identify how the identified Likely Significant Effects arising from increased residential development across the plan area can be mitigated. That SPD is found at Core Document (CD 7-5).
- 2.4 In this instance the appropriate mitigation, as identified by the SPD is for the scheme to make financial contributions.
- 2.5 The Bird Aware Solent strategy covers all areas with 5.6km of the Solent sites, not just those within the New Forest District Plan area. The appropriate mitigation is also financial contributions
- 2.6 The New Forest District Air Quality SPD includes a section on the impact of Air Quality on sensitive protected habitats in the New Forest. At the time of preparing the Local Plan Part 1: planning strategy, the effect of the housing growth planned for on air quality in those sensitive habitats adjoining the plan area could not be ruled out, as such in accordance with the precautionary principle a strategy for monitoring the air quality and potential acid deposition has been prepared. Should that monitoring identify a significant effect is occurring then a strategy for avoidance or mitigation would be devised.
- 2.7 The LPA and the appellant agree that securing suitable mitigation as identified in the relevant adopted strategies ensure that there will be no adverse effects on the integrity of the International Nature Conversation sites.
- 2.8 Policy ENV1 also identifies the need for residential development to secure nutrient neutrality.
- 2.9 It is agreed that the Council's position statement of 4<sup>th</sup> September 2019 in relation to nutrient neutrality and the impact on the Solent Maritime SAC and Solent and Southampton Water SPA (Solent SPA and SACs) identifies that such adverse impacts would

be avoided if approvals of planning permission were conditional that appropriate mitigation and measures are secured. The appropriate measures are to undertake nutrient neutrality calculation and to secure the requisite level of contribution (to be informed by the calculation). A calculation has been undertaken (attached as appendix 1) for the appeal proposal which concludes that the total annual nitrogen load arising from the proposal (and requiring mitigation) is 49.46kg TN/year. The appellant has secured confirmation from Roke Manor (attached as appendix 2) – Roke Manor being an appropriate provider for Solent SPA and SACs mitigation that they (Roke Manor) have sufficient mitigation capacity and have reserved the required level of mitigation credits to mitigate the impact of the appeal proposal.

2.10 As set out in the Councils Case Officer report, the matter of Nitrate Neutrality was not a reason for refusal and is capable of being achieved by way of condition.

### **3.0 Conclusion**

3.1 The appellants have confirmed that a unilateral undertaking securing the following contributions (in relation to habitat mitigation) will be completed as part of the appeal:

- New Forest Habitats recreational mitigation Infrastructure £145,476
- New Forest Habitats recreational mitigation non-infrastructure £21,716
- Solent Bird Aware £19,820
- New Forest Habitats Air Quality monitoring £2,472.00

3.2 Having regard to the Planning Practice Guidance (PPG) - paragraph: 010 Reference ID: 21a-010-20190723 both the Local Planning Authority and the Council agree that it is appropriate to apply a Grampian condition in relation to the matter of nutrient neutrality. As it has been demonstrated that there is certainty that the mitigation can be provided and that 'nutrient neutrality' can be achieved.

- 3.3 A condition gives flexibility that any changes in circumstances or inputs to the Natural England Solent Nitrate specific calculator or the principles around the approach to achieving Nutrient Neutrality Nationally can be responded to by the Developer.
- 3.4 Both the Local Planning Authority and Appellant are of the view that the level of mitigation detailed in paragraph 3.1 , being appropriate to the scale of the appeal proposal, together with the measures that have been entered into to secure such mitigation will enable the Inspector, as the competent authority, to undertake an appropriate assessment and conclude that in combination with other developments and projects the appeal proposal will not result in adverse effects on International Nature Conservation sites.