



SHADOW APPROPRIATE ASSESSMENT
LAND TO THE EAST OF THE A22 AND SOUTH OF THE
A271, LOWER HORSEBRIDGE
HAILSHAM
EAST SUSSEX
BH3 7HE

MARCH 2024

ON BEHALF OF HERTFORDSHIRE HOLDINGS LTD



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Authorisation

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It is company policy to share species records collected during our surveys with local biological records centres unless instructed otherwise by the client.

CONTENTS

1.0	INTRODUCTION	1
2.0	LEGISLATIVE AND POLICY FRAMEWORK	3
3.0	DEVELOPMENT PROPOSALS AND SCOPE OF ASSESSMENT	5
4.0	BASELINE.....	6
5.0	LIKELY SIGNIFICANT EFFECT TEST.....	8
6.0	APPROPRIATE ASSESSMENT	13
7.0	IN-COMBINATION EFFECTS.....	14
8.0	CONCLUSION	14
8.0	REFERENCES	15
	APPENDIX I: Designated site location.....	16

1.0 INTRODUCTION

- 1.1 LC Ecological Services Ltd was commissioned by Hertfordshire Holdings Ltd to conduct a Habitat Regulations Assessment (Shadow Assessment) for the proposed housing development with associated access on land at Lower Horsebridge, Hailsham, BN27 4DN (Grid Ref TQ 57545 11183). This report has been prepared to support an application for a residential development of upto 124 dwellings including structural landscaping, biodiversity enhancement and new vehicular access from the A271 Horsebridge Road.
- 1.3 The Pevensey Levels Special Area of Conservation (SAC), Ramsar site and Site of Special Scientific Interest (SSSI) is located 2.7 kilometres south-east of the site. This site is designed for ramshorn snail (*Anisus vorticulus*) with multiple sites including Hooe Level, Manxey Levels, Glynleigh and Horse Eye Levels supporting the largest population of this species in the UK.
- 1.4 The need for an Appropriate Assessment is set out in the Conservation of Habitats Regulations 2017 (as amended). The purpose of these regulations is to implement the requirement of the European Union's Habitat Directive and Birds Directive in the United Kingdom (UK). The UK left the European Union on the 31st January 2020. The most recent amendments to regulations, the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 make it clear that Habitat Regulation Assessments continues. SACs are protected under this legislation, by the creation of a National Site Network (NSN) on land and at sea following the 2019 Regulations. These are a network of sites designated for supporting habitats or species of high nature conservation importance in the European context. Any activity that has a detrimental effect on these NSN sites is made an offence under the Regulations.
- 1.5 Ramsar sites are designated as wetlands of international importance and are afforded similar legislative protection to Natura 2000 sites. Government has issued policy statements relating to the special status of Ramsar sites. This extends the same protection afforded to Special Protection Areas (SPAs) that have been designated under the EC Birds and Habitats Directives as part of the EU Natura 2000 network.
- 1.6 Under the Habitats Regulations, the competent authority that will be determining a proposal has the responsibility for ensuring that development control decisions do not adversely affect the integrity of Natura 2000 sites. For planning decisions this would be the local planning authority, however in this case the scheme is at appeal and therefore the competent authority is the Planning Inspector. This document provides information for the Habitats Regulations Assessment that Planning Inspector will need to undertake in determining the outline planning application at the proposed development area (henceforth referred to as 'the site'), and has been prepared to support an appropriate assessment of likely significant effects of the proposals on the SAC and Ramsar both alone, and in combination with other plans and projects.

- 1.7 Acting as the competent authority the Planning Inspector is required to undertake an independent appropriate assessment. They may adopt this document as part of this process once they have reviewed and evaluated the findings and concur with the analysis and conclusions reached. The inspector's assessment in respect to the HRA should be recorded in the appeal decision. A record of the Inspector's assessment process should be recorded.

Site description

- 1.8 The site is approximately 7.67 hectares comprising of grazed modified grassland bounded by species poor hedgerows to the west and north, with a small patch of lowland mixed deciduous woodland and some scrub habitat.

2.0 LEGISLATIVE AND POLICY FRAMEWORK

Statutory framework

Tests of the Habitats Regulations

2.1 SACs form part of a network of nature protection areas across the European Union known as Natura 2000 sites, and are protected in the determination of a planning application. Ramsar sites are also considered under this assessment as they are protected government policy. Under Regulation 61 of the Habitats Regulations, the competent authority is responsible for assessing whether land use plans or proposed developments could adversely affect a Natura 2000 site. This requires a process known as a Habitat Regulations Assessment (HRA) encompassing two tests under Regulation 63(1) of the Habitats Regulations.

- **Test 1:** having ascertained that the plan is not directly connected to, or necessary for site management for nature conservation, the first test of the HRA, commonly referred to as a screening test, considers whether or not a plan or project is likely to have a significant effect on a European site either alone or in combination with other plans or projects.

A significant effect is any effect that would undermine the conservation objectives for the respective European site and may include physical loss and/or damage of a habitat, disturbance effects, changes to water availability, deposition of contaminants through changes in air quality etc.

- **Test 2:** the second test of the HRA is relevant to those plans or projects that are screened as likely to have a significant effect alone or in combination with other plans or projects, and requires an appropriate assessment. The role of the appropriate assessment is to consider the implications of the plan or project for the conservation objectives of the European sites in question, and determine whether they will have an adverse effect on the integrity of the site. In carrying out an appropriate assessment, a local authority must have regard to the manner in which the project is proposed to be carried out, or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.

2.2 The European Court Judgment (ECJ) *People Over Wind and Sweetman v Coillte Teoranta* (C-323/17) altered the process of screening for likely significant effects by overturning the 2008 *Hart District Council vs. Secretary of State* judgment (2008), known as *Dilley Lane*. This *Dilley Lane* judgment stated “*there is no legal requirement that a screening assessment.... must be carried out in the absence of any mitigation measures that form part of that plan or project.*”

2.3 The *People Over Wind and Sweetman* ruling states that “*it is not appropriate, at the screening stage, to take account of measures intended to avoid or reduce the harmful effects of the plan or project on that site*”. This means that mitigation measures must be excluded from assessing whether a project is likely to have a significant effect, either alone or in combination with other plans and projects.

- 2.4 A likely significant effect is any effect that is likely to undermine the site's conservation objectives, in light of the characteristics and specific environmental conditions of the SAC.

Conservation objectives

- 2.5 Conservation objectives are identified for all European sites and cover all features that qualify the site for classification or designation. The conservation objectives apply under the Habitats Regulations, Habitats Directive and Wild Birds Directive, and must be considered during a Habitats Regulation Assessment, including an Appropriate Assessment.
- 2.6 For Ramsar sites, a decision has been made by Defra and Natural England not to produce conservation objectives because it is considered that conservation advice available for overlapping European sites is sufficient to support the management of Ramsar interests.
- 2.7 As a matter of policy, the provisions of the Habitats Regulations relating to Habitat Regulations Assessments (HRAs) extend to Ramsar sites. For the purposes of this assessment, the conservation objectives must consider all relevant interest features in the corresponding Ramsar sites.

3.0 DEVELOPMENT PROPOSALS AND SCOPE OF ASSESSMENT

- 3.1 The proposed development is for up to 124 dwellings with associated new access from the A271 Horsebridge Road, landscaping and open green space.
- 3.2 The ecological evaluation of the scheme submitted in support of the planning application considered the potential for impacts to any internationally designated sites. It concluded that no adverse impacts on the internationally designated sites in relation to dust generation associated with construction activity, or from increased emissions and associated pollution related to vehicle movements (during or post-construction) are anticipated.
- 3.3 Section 4 of this document outlines the interest features of the SAC/Ramsar site. Section 5 sets out the likely significant effects assessment where objective information is used to determine if the proposed development will, in the absence of mitigation measures, result in any effect that is likely to undermine the designated site's conservation objectives, in light of the characteristics and specific environmental conditions of the SAC/Ramsar site.
- 3.4 Section 6 is the appropriate assessment of the likely significant effects of the scheme on interest features of the relevant internally designated site(s) as identified in Section 5. Section 6 deals with impacts from the proposed development alone. Section 7 assess the likely significant effects of the proposed development in combination with other plans and projects.
- 3.5 Section 8 sets out the conclusions of the shadow appropriate assessment provided by the applicant for the benefit of the competent authority. In undertaking its own Habitat Regulation Assessment of the proposed development, the competent authority will form its own view on the impacts of the scheme on the internally designated sites.

4.0 BASELINE

- 4.1 The following section sets out the location, designation criteria and conservation objectives of the European site(s) to be included in this shadow appropriate assessment. A 5-kilometre zone of influence was used for this assessment. The locations of these sites relative to the application site are illustrated in appendix 1.

Pevensay Levels SAC/Ramsar

Designation description

- 4.2 Pevensay Levels covers a large and expansive grazing marsh that supports ramshorn snail in both a good population and wide spatial distribution. Ramshorn snails are recorded across the levels at Hooe Level, Manxey Level, Glynleigh and Horse Eye Levels. The western area of the Hooe Level should be regarded as one of the richest locations for this species in the UK. Pevensay Levels supports the largest population of this species in the UK.

Qualifying features

- 4.3 Annex II species that are a primary reason for selection of this site includes 4056 ramshorn snail. The site has no other qualifying features.

Conservation objectives

- 4.4 The conservation objectives of the SAC have been published by Natural England. With regard to the SAC and the individual species for which it has been classified as ‘the qualifying feature’, and subject to natural changes, the conservation objectives aim to ensure that the integrity of the SAC is maintained or restored as appropriate.
- 4.5 The following qualifying features are set out in the European Sites Conservation Objectives for Pevensay Levels Special Area of Conservation Site code: UK0030367:
- The extent and distribution of the habitats of the qualifying features.
 - The structure and function of the habitats of the qualifying features.
 - The supporting processes on which the habitats of the qualifying features rely.
 - The population and qualifying species.
 - The distribution of the qualifying species within the site.

Known vulnerabilities

- 4.6 The Site Improvement Plan for Pevensay Levels SAC outlines known threats to the site including:
- Inappropriate water levels.
 - Invasive species.
 - Water pollution.

- Pollution to groundwater.
- Human induced changes in hydraulic conditions.

Ramsar

- 4.7 For Ramsar sites, a decision has been made by Defra and Natural England not to produce Conservation Advice packages, instead focusing on the production of High Level Conservation Objectives. As the provisions on the Habitats Regulations relating to HRAs extend to Ramsar sites, Natural England considers the Conservation Advice packages for the overlapping European Marine Site designations to be, in most cases, sufficient to support the management of the Ramsar interests. If there are Ramsar qualifying features not covered by overlapping European Marine Sites, Natural England will advise on the best approach on addressing these (e.g. to produce advice on a feature basis) if there is an operational risk.
- 4.8 Pevensey Levels Ramsar supports an outstanding assemblage of wetland plants and invertebrates including many British Red Data Book species. This site is also designated under Criterion 3 for supporting 68% of vascular plant species in Great Britain that can be described as aquatic. This site is one of the best places in the UK for molluscs and one of the five best sites for aquatic beetles.

Known vulnerabilities

- 4.9 The following known vulnerabilities are:
- Pollution from domestic sewage.
 - Introductions of non-native plant species.

5.0 LIKELY SIGNIFICANT EFFECT TEST

- 5.1 The first test of Regulation 63 of the Habitats Regulations requires an assessment of whether the following elements of the scheme, are likely to have a significant effect on the European sites in question, either alone or in combination with other plans and projects.
- 5.2 As set out in paragraph 2.2 a likely significant effect (LSE) is any effect that is likely to undermine the designated site's conservation objectives, in light of the characteristics and specific environmental conditions of the SAC/Ramsar. The likely significant effect test must be based on objective information and the risks must be real, not hypothetical.
- 5.3 Any measures that have been included in the application to reduce impacts on the European site cannot be considered within this test because they are included in the application and would not be included were there not a need to mitigate this impact on European sites (see para 2.3).
- 5.4 Tables 1 on the following pages show the potential pathways through which impacts could arise through development of the project on the European nature conservation sites.

Table 1: Pevensey Levels & corresponding Ramsar site – assessment of likely significant effects

√	Likely significant adverse effect on the Natura 2000 site	x	Not likely to have a significant adverse effect on the Natura 2000 site
-	The principle is not relevant to the screening exercise	?	Uncertain effect on the Natura 2000 site

Check list of change Potential impacts	Reduction in area of Annex 1 habitats?	Direct effects on the populations of species for which the site is designated	Indirect effects on the populations of species for which the site was designated or classified due to loss or degradation of their habitat (quantity/quality)?	Changes to the composition of the habitats for which the site was designated (e.g. reduction in species structure, abundance or diversity that comprises the habitat over time)?	Interruption or degradation of the physical, chemical or biological processes that support habitats and species for which the site was designated or classified?
Land take	-	-	-	-	-
	The site lies outside of the boundary of the Pevensey Levels SAC/Ramsar site. No land take within the designated site is required, and no direct impacts on populations for which this site is classified will occur. The proposed development site does not currently contain any habitats suitable for ramshorn snail. Conclusion: No likely significant effect				
Disturbance to key species/deterioration of habitats	-	-	-	√	X
	The proposed development will result in an increase of 297.6 people (based on 2.4 per dwelling) at a minimum distance of 2.7 kilometres of the SAC/Ramsar site. However, recreational disturbance is not cited as a threat to this SAC/Ramsar site. This is likely due to the lack of public rights of way within the Pevensey Levels SAC/Ramsar site. The extensive ditch systems on site are likely to deter people from using the site and is a likely key attribute to the protection of the ramshorn snail. Public rights of way are within the adjacent Cooden Beach and Norman's Bay where public parking and facilities are provided. There is no supporting habitat within the proposed development site to support ramshorn snail and this species was not recorded during the invertebrate surveys in 2020. Ramshorn snails require dense aquatic flora and favour ditches with a diverse flora which is not present within the proposed development site. Therefore, there will be no impact on habitats supporting this species from an increase in people visiting this site.				

Check list of change Potential impacts	Reduction in area of Annex 1 habitats?	Direct effects on the populations of species for which the site is designated	Indirect effects on the populations of species for which the site was designated or classified due to loss or degradation of their habitat (quantity/quality)?	Changes to the composition of the habitats for which the site was designated (e.g. reduction in species structure, abundance or diversity that comprises the habitat over time)?	Interruption or degradation of the physical, chemical or biological processes that support habitats and species for which the site was designated or classified?
	However, an increase in water entering the SAC/Ramsar site could adversely affect the ramshorn snail. Changes in water level have been recorded as a threat to this species therefore, there is a potential for disturbance of ramshorn snail through changes in water levels as a result of the proposed development. Conclusion: Likely significant effect				
Hydrological changes, including: • water quality • flows • abstraction nutrient levels Pollution of surface and ground water	-	√	X	X	X
	The Utilities Appraisal Report (Stantec, 2022) confirmed that the proposal foul drainage will connect to existing Southern Water Drainage infrastructure connecting to Crouch Hall pump station. Whilst the details of the foul drainage arrangements are yet to be determined, the proposed development site is expected to connect to Hailsham North WwTW as this WwTW serves the northern part of Hailsham, Horsebridge and several outlying villages including Hellingly and Lower Dicker. The Hailsham North WwTW discharges treated waste water into the Pevensey Levels, in line with the Environmental Permit granted by the Environment Agency¹. Whilst it is recognised that Hailsham North WwTW treats water to a high quality, the potential for the new residential development (up to 124 dwellings) to alter the discharges of the treated water entering the Pevensey Levels cannot be ruled out at this stage of the AA process. The proposed development is not hydrological connected to the Pevensey Levels and the proposed development incorporates the appropriate SuDS measures. The surface water from the site drains into the River Cuckmere. Whilst the site lies within the wider Cuckmere and Pevensey Levels management catchment, it is within the Cuckmere Upper operational catchment, which covers the area to the west of Hailsham and Polegate and drains into the sea at Cuckmere Haven and not into the Pevensey Levels SAC/Ramsar site (which is located in the Pevensey operational catchment). Therefore, it is considered that there is no direct hydrological link between the site and the Pevensey Levels SAC/Ramsar. Therefore, no effects on the SAC as a result of changes to the quantity or quality of surface water runoff from the site either during or post-construction are concluded. Conclusion: Likely significant effect				

¹ Habitats Regulation Assessment (HRA) Screening Report Hailsham Neighbourhood Plan (2020).

Check list of change Potential impacts	Reduction in area of Annex 1 habitats?	Direct effects on the populations of species for which the site is designated	Indirect effects on the populations of species for which the site was designated or classified due to loss or degradation of their habitat (quantity/quality)?	Changes to the composition of the habitats for which the site was designated (e.g. reduction in species structure, abundance or diversity that comprises the habitat over time)?	Interruption or degradation of the physical, chemical or biological processes that support habitats and species for which the site was designated or classified?
Dust from construction activities and air quality changes	-	-	X	X	X
	Dust generation related to activities such as soil-stripping. These effects are likely to be localised and short-lived. The Institute of Air Quality Management (IAQM) has proposed guidance on screening the likely impacts related to dust emissions (Holman <i>et al.</i> 2016). The guidance states that the screening “<i>is deliberately chosen to be conservative and will require assessment for most schemes</i>”. It states that assessment will normally be required where an ecological receptor is within 50 metres of the boundary of the site, or 50 metres of the routes used by construction vehicles on the public highway up to 500 metres from the site entrances. Pevensey Levels SAC/Ramsar lie over 2.73 kilometres east of the site, which exceeds well beyond the identified zones. The Air Quality Assessment submitted in support of the planning application confirmed that impacts from construction activities and increase in vehicle emission are not significant in air quality terms. Emissions associated with the proposed development traffic will not cause any exceedance of the National Air Quality Objective (NAQO's) on the identified sensitive receptors. Standard best practice mitigation measures to reduce the potential for dust generation during construction have been detailed in the Air Quality Assessment. It is considered that an increased deposition into the statutory site is highly unlikely due to the intervening distance (2.73 kilometres) between the proposed development and statutory site. Conclusion: No likely significant effect				

- 5.4 The analysis in Table 1 has established that there is a potential pathway that could result in the likely significant effect on the interest features of Pevensey Levels SAC/Ramsar site including:
- Disturbance to key species/deterioration of habitats.
 - Hydrology
- 5.5 The conclusion from table 1 generates the requirement for an appropriate assessment to address the deriving from the scheme on the integrity of Pevensey Levels SAC/Ramsar.

6.0 APPROPRIATE ASSESSMENT

- 6.1 Section 5 identified the possible pathways likely to have a significant effect on each of the Pevensey Levels SAC/Ramsar site. In the absence of mitigation, the analysis identified the need for appropriate assessment of the impacts of changes to hydrology, including from increased water entering Pevensey Levels SAC/Ramsar (and the associated disturbance to the ramshorn snail), to establish whether the proposals will have an adverse effect on the integrity of the European nature conservation sites, either alone or in combination with other projects.

Pevensey Levels SAC/Ramsar

Disturbance to key species/deterioration of habitats and Hydrological changes and pollution of surface and ground water

- 6.2 The screening exercise did identify a potential risk for hydrological changes on the SAC/Ramsar arising as a result of the Hailsham North WwTW processing the discharged treated foul water from the proposed development (up to 124 dwellings) could affect the water levels and quality at Pevensey Levels SAC/Ramsar. Changes to water levels/quality have been identified as a potential threat to Pevensey Levels SAC/Ramsar site, with the potential to affect the conservation objectives of this internationally designated site.
- 6.3 Southern Water made no mention was made of headroom in the Hailsham North WwTW, and the need to offer an improved treatment process was not raised before or during the planning application process. However, it is understood that capacity at the Hailsham North wastewater treatment works is currently limited due to water quality issues in respect to the Pevensey Levels, but that an improved treatment solution is to be put in place to provide additional capacity. The Wealden Local Plan HRA indicates that Southern Water's latest draft Wastewater Position Statement (2018), considers a number of options and concludes that a high rate of secondary treatment processes to reduce the discharge levels of phosphate to be the best option. The position statement confirms that Southern Water are upgrading the Hailsham North WwTW to remove a greater amount of phosphorous during the treatment process to benefit the habitats and species at Pevensey Levels SAC/Ramsar.
- 6.4 Southern Water's consultation response to the planning application requires a condition to ensure suitable foul water treatment provisions are made prior to the development being occupied. As such, it is considered that foul water from the development will be appropriately treated and discharged at an appropriate rate to ensure that there is no adverse effect on Pevensey Levels SAC/Ramsar.

7.0 IN-COMBINATION EFFECTS

7.1 The following applications were noted nearby:

- Knights Farm East, Hailsham (WD/2023/2100/DC). The HRA report by Tetra Tech (2023) confirmed that no likely adverse effects will result from the proposed sports hub.
- Land at Mill Road, Hailsham (WD/2023/0999/MRM). The HRA report by Aspect Ecology (2023) confirmed that no likely effect on Pevensey Levels SAC would occur as a result of the proposed 220 residential homes at TQ60310899 (located 2.27 kilometres from this application site).
- Land off Ersham Road, Hailsham BN27 3PN (WD/2023/1924/MRM). No supporting HRA report and the Preliminary Ecological appraisal confirmed no direct or indirect impacts on Pevensey Levels SAC/Ramsar (UES, 2019). This site lies 3.32 kilometres south-east of the application site.
- Land at Park Farm, New Road, Hellingly (WD/2022/0294/MAO). The HRA report by Aspect Ecology (2022) concluded that mitigation in the form of SUDS and construction safeguards will not result in an adverse effect on the integrity of Pevensey Levels SAC/Ramsar site. The ecological report concluded that the proposed development was unlikely to directly or indirectly affect Pevensey Levels SAC/Ramsar (UES, 2019).
- Land to the east of North Street (WD/2019/1575/MAO) for 110 residential units. The Preliminary Ecological Appraisal (Greenlink Ecology Ltd, 2019). There was no supporting HRA for this application. This site lies just over 300 metres north-east of the proposed application site.

8.0 CONCLUSION

8.1 The proposed development is not considered to result in an adverse effect on the integrity of Pevensey Levels SAC/Ramsar as a result to hydrology. The mitigation as detailed in section 6 will ensure that foul water from the development will be appropriately treated and discharged at an appropriate rate to ensure that there is no adverse effect on Pevensey Levels SAC/Ramsar. The proposed development alone and in-combination with other projects, would not result in an adverse effect on the integrity of the Pevensey Levels SAC/Ramsar site. It is considered that no further assessment is required and proceeding to Stage 3 is not required.

8.0 REFERENCES

Aspect Ecology (2022) *Park Farm East, Hellingly, Report to inform a Habitats Regulation Assessment (HRA)*.

Aspect Ecology (2023) *Land at Mill Road, Hailsham, Report to inform a Habitats Regulation Assessment (HRA)*.

Greenlink Ecology Ltd (2019). *Land at the East of North Street Preliminary Ecological Appraisal*.

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Ministry of Housing, Communities and Local Government, 2023. National Planning Policy Framework.

United Environmental Services Ltd (2019). *Preliminary Ecological Appraisal at land at Ersham Road, Hailsham, BN27 3PN*.

APPENDIX I: Designated site location

