Information to Inform Habitats Regulations Assessment

April 2024

Land South of Ashford Road, Sellindge

Prepared by
CSA Environmental

On behalf of
Gladman Developments Ltd.

Report No: CSA/4509/04

CSA environmental

masterplanning | ecology | landscape | heritage

Report Reference	Revision	Date	Prepared by	Approved by	Comments
CSA/4509/04	-	20/09/2023	JMT	CC	Draft for comment
	A	14/11/2023	JMT	CC	Minor updates
	B	24/11/2023	JMT	CC	Minor updates
	C	16/04/2024	JMT	CC	Revised nutrient neutrality calculations

CONTENTS

1.0 INTRODUCTION

1.1 This document has been prepared by CSA Environmental on behalf of Gladman Developments, in relation to land at Land South of Ashford Road, Ashford Road, Sellindge (hereafter referred to as 'the Site'). Residential development is proposed at the Site, for which outline planning permission for up to 54 dwellings is sought (hereafter referred to as 'the proposed development'). All matters are reserved. The Site forms part of a wider allocation (Policy CSD9 in the Folkestone and Hythe Core Strategy Review) and there is a separate planning application for 105 dwellings, on an adjacent site. The Site location is shown in Appendix A.

1.2 This document provides information to assist Folkestone and Hythe District Council (FHDC) in their consideration of whether the proposed development will have likely significant effects on European sites, and in ascertaining any adverse effects on their integrity. This process is commonly termed Habitats Regulations Assessment (HRA).

1.3 As the decision-making authority, FHDC are the 'competent authority' in respect of Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended). This document is intended to provide the necessary information to FHDC with which to make their assessment (pursuant to Regulation 63(2) of the above Regulations).

Project Background

1.4 The Site occupies an area of c. 2.95ha and is located around central grid reference TR 09970 38206 in Sellindge, Kent. It comprises grazed grassland of differing type and condition and is interspersed with mature trees. The Site is bordered by defunct, species rich hedgerows.. The landscape context around the Site consists of mixed farmland, with scattered parcels of semi-natural woodland connected by a network of field boundary hedgerows and treelines.

1.5 The Folkestone and Hythe Core Strategy Review (2022), sets out strategic policies for the District to 2036/37. As stated within Policy CSD9 of the Core Strategy Review, "*Land to the south and north east of Ashford Road in Sellindge forms a broad location for development to create an improved village centre with a mix of uses … with new residential development of circa 600 dwellings*'.

1.6 The Site forms part of Phase 2 of the Policy CSD9 allocation (adopted 2022). In order to conform with the requirements of the policy, it is proposed that the Site includes up to 54 dwellings as part of the c. 350 dwellings forecast for Phase 2.

Summary of Applicable Legislation and Policy

1.7 Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), termed 'European sites', collectively form part of a suite of sites known in the UK as the national site network. For ease of reference and consistent with their treatment under UK government policy, Ramsar sites are also referred to here as European sites.

1.8 All European sites in England and Wales are afforded strict protection through the Conservation of Habitats and Species Regulations 2017 (as amended). These Regulations, widely referred to as the 'Habitat Regulations', establish a framework for decision-making authorities to assess the potential for harmful effects on European sites to arise as a result of proposed plans or projects. This assessment process is commonly referred to as 'Habitats Regulations Assessment' (HRA).

1.9 Within Folkestone and Hythe, development management policies relevant to the protection of European sites are set out within Policies NE1 and NE2 of the Folkestone and Hythe District Places and Policies Local Plan 2020.

1.10 Further detail of the legislative and case law context, as well as national and local planning policies relevant to HRA, are provided within Appendix B.

2.0 EXEMPTION, EXCLUSION AND ELIMINATION

2.1 It is necessary in the first instance to undertake preliminary screening to determine whether the proposed development is exempt, excluded or eliminated from the Regulation 63 requirements, and to refine which European site designations warrant further consideration. If the proposed development 'passes' any of the preliminary screening tests shown below in Table 1, then no further screening for likely significant effects is required.

Table 1. Preliminary Screening

Preliminary Screening Test	Pass?
Is the scheme directly connected with or necessary to the management of a European site for nature conservation purposes?	No
Is the proposed scheme the continuation, without material change, of ongoing activities not subject to any form of authorisation?	No
In light of the nature, scale, duration and location of the scheme, is it obvious that it could not have any conceivable effect on any European site?	No

2.2 In view of the final preliminary screening test in Table 1, it is the professional opinion of the author that the following European sites could conceivably be affected by the scheme, in view of its nature, scale, duration and location. These designations will therefore be screened for likely significant effects in Section 3 of this document.

- Wye and Crundale Downs SAC (c. 5.3km north of the Site)
- Folkestone to Etchinghill Escarpment SAC (c. 7.4km east)
- Parkgate Down SAC (c. 10km north-east)
- Stodmarsh SPA (c. 23.1km north-east)
- Stodmarsh SAC (c. 23.1km north-east)
- Stodmarsh Ramsar site (c. 23.1km north-east)

2.3 Comprehensive details on the characteristics of the above European sites are presented in Appendix C. These characteristics form the basis of assessment and include their spatial relationship with the Site, component Sites of Special Scientific Interest (SSSIs), qualifying features, published conservation objectives and any known vulnerabilities or threats to their favourable conservation statuses.

3.0 SCREENING FOR LIKELY SIGNIFICANT EFFECTS

Potential Impact Pathways

3.1 In the context of the information on European site characteristics (Appendix C), potential impact pathways shared by the proposed development and the conservation objectives of the European sites identified in Section 2 of this report are screened below (Tables 2a-g).

3.2 Pathways are considered in Tables 2(a-g) on the basis of the development as proposed, i.e. including any facets which, in addition/secondary to their primary purpose, may act to mitigate effects that might otherwise occur on European sites. However, in accordance with the 'People Over Wind' ruling of the Court of Justice for the European Union (CJEU; Case C-323/17), screening for likely significant effects takes place in the absence of measures specifically adopted to avoid or reduce harmful effects on European sites.

Table 2.a. Screening for Likely Significant Effects

Wye and Crundale Downs SAC	
Any potential changes to the site or its qualifying features arising as a result of the following impact pathways:	
Land take by development within European site	None
Fragmentation of European site habitats	None
Increased mortality of key species	None
Disturbance to key species/deterioration of habitats within the European site	None
Disturbance to key species/deterioration of supporting habitats, beyond the European site	None
Atmospheric pollution/air quality	None
Hydrological regime change	None
Pollution of surface/ground water	None
Those facets of the proposed development, or combination of facets, where the above pathways have the potential to give rise to significant effects, or where the scale or magnitude of potential effects is not known:	
Upon review of the characteristics of the SAC, including known vulnerabilities, and of the spatial relationship with the Site, no potential impact pathways have been identified.	

Table 2.b. Screening for Likely Significant Effects

Folkestone to Etchinghill Escarpment SAC	
Any potential changes to the site or its qualifying features arising as a result of the following impact pathways:	
Land take by development within European site	None
Fragmentation of European site habitats	None
Increased mortality of key species	None
Disturbance to key species/deterioration of habitats within the European site	None
Disturbance to key species/deterioration of supporting habitats, beyond the European site	None
Atmospheric pollution/air quality	None
Hydrological regime change	None
Pollution of surface/ground water	None

Those facets of the proposed development, or combination of facets, where the above pathways have the potential to give rise to significant effects, or where the scale or magnitude of potential effects is not known:
Upon review of the characteristics of the SAC, including known vulnerabilities, and of the spatial relationship with the Site, no potential impact pathways have been identified.

Table 2.c. Screening for Likely Significant Effects

Parkgate Down SAC	
Any potential changes to the site or its qualifying features arising as a result of the following impact pathways:	
Land take by development within European site	None
Fragmentation of European site habitats	None
Increased mortality of key species	None
Disturbance to key species/deterioration of habitats within the European site	None
Disturbance to key species/deterioration of supporting habitats, beyond the European site	None
Atmospheric pollution/air quality	None
Hydrological regime change	None
Pollution of surface/ground water	None
Those facets of the proposed development, or combination of facets, where the above pathways have the potential to give rise to significant effects, or where the scale or magnitude of potential effects is not known:	
Upon review of the characteristics of the SAC, including known vulnerabilities, and of the spatial relationship with the Site, no potential impact pathways have been identified.	

Table 2.d. Screening for Likely Significant Effects

Stodmarsh SPA	
Any potential changes to the site or its qualifying features arising as a result of the following impact pathways:	
Land take by development within European site	None
Fragmentation of European site habitats	None
Increased mortality of key species	None
Disturbance to key species/deterioration of habitats within the European site	None
Disturbance to key species/deterioration of supporting habitats, beyond the European site	None
Atmospheric pollution/air quality	None
Hydrological regime change	None
Pollution of surface/ground water	Possible
Those facets of the proposed development, or combination of facets, where the above pathways have the potential to give rise to significant effects, or where the scale or magnitude of potential effects is not known:	
<u>Pollution of surface/ground water</u> Stodmarsh is vulnerable to the effects of eutrophication as a result of high levels of Total Nitrogen and Total Phosphorous inputs into the Stour catchment. Natural England (November, 2020) has published guidance which states that most nutrient inputs are caused by wastewater from existing housing and agriculture; and new growth (resulting in additional inputs into this system) is likely to result in further deterioration in qualifying features for the Stodmarsh designations. The proposed development could result in additional discharges to the Stour catchment (e.g. via surface water or foul water).	

Table 2.e. Screening for Likely Significant Effects

Stodmarsh SAC	
Any potential changes to the site or its qualifying features arising as a result of the following impact pathways:	
Land take by development within European site	None
Fragmentation of European site habitats	None
Increased mortality of key species	None
Disturbance to key species/deterioration of habitats within the European site	None
Disturbance to key species/deterioration of supporting habitats, beyond the European site	None
Atmospheric pollution/air quality	None
Hydrological regime change	None
Pollution of surface/ground water	Possible
Those facets of the proposed development, or combination of facets, where the above pathways have the potential to give rise to significant effects, or where the scale or magnitude of potential effects is not known:	
Pollution of surface/ground water (result effects on habitat quality) As discussed in regards to Stodmarsh SPA; surface and wastewater discharges into the Stour catchment could have an adverse effects on habitats for which the SAC is designated and qualifying species rely.	

Table 2.f. Screening for Likely Significant Effects

Stodmarsh Ramsar Site	
Any potential changes to the site or its qualifying features arising as a result of the following impact pathways:	
Land take by development within European site	None
Fragmentation of European site habitats	None
Increased mortality of key species	None
Disturbance to key species/deterioration of habitats within the European site	None
Disturbance to key species/deterioration of supporting habitats, beyond the European site	None
Atmospheric pollution/air quality	None
Hydrological regime change	None
Pollution of surface/ground water	Possible
Those facets of the proposed development, or combination of facets, where the above pathways have the potential to give rise to significant effects, or where the scale or magnitude of potential effects is not known:	
Pollution of surface/ground water As discussed in regards to Stodmarsh SPA, surface and wastewater discharges into the Stour catchment could have an adverse effects on habitats for which the Ramsar site is designated and qualifying species rely.	

The Proposed Development Alone and In Combination

3.3 At the screening stage it is necessary to consider whether the proposed development will have likely significant effects on European sites (having regard to the meaning of these terms as established by applicable case law) either as a result of potential impacts of the development acting alone, or when considered in combination with other plans or projects. The proposed development will consist of up to 54 dwellings, which forms one component of the proposed 350 dwellings for Phase 2 of Policy CSD9 of the Folkestone & Hythe District Council Core Strategy Review

(March 2022). Further residential development is projected within neighbouring districts.

Recreation

3.4 Recreational pressure is not a listed vulnerability for Wye and Crundale Down SAC, Parkgate Down SAC or Folkestone to Etchinghill Escarpment SAC. However, the proposed development will precipitate an increase in the local population, and therefore has the potential to act in combination with the projected increase in housing within Folkestone & Hythe and adjacent districts to increase recreation pressure at the European sites.

3.5 In-combination recreational effects at the Folkestone to Etchinghill Escarpment SAC were scoped out at Appropriate Assessment within the HRA for the Folkestone & Hythe Core Strategy Review due to the fact that most planned development would be occurring beyond 7km from the SAC, after it was found that most visitors to a comparatively similar SAC (Lydden and Temple Ewell Downs) travelled from within 4km. Furthermore, this study found that visitors would stick to well-trodden paths (Aspect Ecology, 2010). Impacts from recreation at Wye and Crundale Downs SAC and Parkgate Down SAC were scoped out at the screening stage due to the distance between the Sites and development Policy areas SS6 (Otterpool Park) and CSD9 (Sellindge), and the fact that both sites are under warden management. Notably, Parkgate Down SAC is described as having no public access.

Air Quality

3.6 Increased traffic flows resulting from the scale and location of the proposed development and wider projected housing growth may give rise to localised air quality impacts. An area of the Folkestone to Etchinghill Escarpment SAC exists within 200m of a major road (A-road or motorway) and could therefore experience localised increases in atmospheric and deposited pollutants. The effects of increased traffic resulting from the proposed development in isolation are unlikely to be appreciable, and for a 55 unit scheme would self-evidently fall far short of the screening thresholds advocated by Natural England (e.g. additional 1000 AADT). The Habitat Regulations Assessment for the Folkestone & Hythe Proposed Submission Core Strategy Review (LUC, 2018) considered an air quality assessment scenario at Appropriate Assessment, based on an additional 8,000 dwellings delivered through the Proposed Submission Core Strategy Review over the plan period 2018/19 to 2036/37 (including the expansion at Sellindge). It was concluded that, given forecast improvements in NOx reductions over the plan period (it is assumed through the uptake of electric vehicles and improved public transport), the NOx deposition rates will fall below the critical load at all links, even adjacent to the A20. It was concluded that no likely significant effect was expected alone or in combination.

3.7 Impacts from the effects of increased air pollution were screened out at the screening stage for Wye and Crundale Downs SAC and Parkagte Down SAC, likely due to the fact that this designated site is located adjacent to infrequently used rural roads that do not connect large residential areas, as was assed at the screening stage in this report.

Pollution of Surface/Ground Water

3.8 In the absence of bespoke intervention, Sellindge Wastewater Treatment Works (WwTW), which deposits treated effluent to the water environment of the Stour and the associated European sites at Stodmarsh, would receive foul water discharges from the proposed development. The qualifying features of these designations are known to be sensitive to and are already suffering from eutrophication (Natural England, 2022). Nutrient (principally nitrogen) loading within treated foul effluent resulting directly from the proposed development is unlikely to have a significant effect on the qualifying habitats and species in isolation, however this may act in combination with wider projected housing growth to undermine conservation objectives.

3.9 Finally, in view of the proposed development site's position within the Upper Stour Catchment, any uncontrolled sources of surface water pollution during construction or operation of the proposed development could impact on designated site features.

3.10 In light of the foregoing, it can be concluded that in the absence of mitigation the proposed development has the potential to result in likely significant effects on three European designations that share roughly the same geographic area. As such, further Appropriate Assessment is required, including consideration of proposed measures intended to avoid or reduce harmful effects, in order that it may be ascertained whether the proposed development will have any adverse effect on the integrity of the above European sites. A summary of screening conclusions is presented in Table 3 below.

Table 3. Screening for Likely Significant Effects

Summary			
Impact pathway	*European site(s)*	*Likely significant effect: development alone*	*Likely significant effect: in combination*
Recreation	Wye and Crundale Downs SAC, Folkestone to Etchinghill Escarpment SAC , Parkgate Down SAC	No	No
Air Quality	Wye and Crundale Downs SAC, Folkestone to Etchinghill Escarpment SAC, Parkgate Down SAC	No	No
Water quality (surface water)	Stodmarsh SPA Stodmarsh SAC Stodmarsh Ramsar site	No	Possible
Water quality (foul drainage)	Stodmarsh SPA Stodmarsh SAC Stodmarsh Ramsar site	No	Possible

4.0 APPROPRIATE ASSESSMENT

The Site

4.1 The Site occupies an area of c. 2.95ha and consists of grazed fields with mature trees. It is largely bounded by hedgerows, with one on-site pond (see accompanying Habitats Plan; CSA/4509/100).

4.2 The Site was subject to a Preliminary Ecological Appraisal (PEA) in July 2022, and a UKHabitat Classification Survey was undertaken in March 2023. A range of further surveys for protected species and assessments of the habitats found on Site were undertaken. This included:

- Habitat Condition Assessment (HCA; June 2023)
- Reptile survey (September 2022)
- Bat surveys (July – September 2022)
- Breeding bird surveys (May – July 2023)

4.3 A full description of baseline ecological conditions at the Site is provided within the accompanying Ecological Impact Assessment (EcIA) (CSA/4509/06). Rather than recounting in full here, findings of the above surveys will be referenced, if relevant, in the below assessment.

The Proposed Development

<u>The Proposed Development</u>

4.4 Outline planning permission is sought for residential development at the Site. The following impact assessment is based on the Development Framework Plan prepared by CSA Environmental (CSA/5622/115) on behalf of Gladman Developments Ltd.

4.5 The construction phase of the proposed development will comprise the following:

- Removal of a section of hedgerow from H4 (c. 20m) for vehicular and pedestrian accesses
- Construction of up to c. 54 residential dwellings
- Construction of associated gardens, parking, access infrastructure, and a play area
- The establishment of Public Open Space (POS) totalling c. 1.06ha, including open grassland and a children's play area, concentrated at the southern and eastern extent of the Site, as well as recreation routes around the periphery of residential areas
- Establishment of a Sustainable Urban Drainage System (SUDS), proposed to be an attenuation basin set within grassland to the north of the developed area

4.6 The operational phase of the proposed development will comprise the following:

- Occupation of new residential dwellings
- Increase in human activity, including use of vehicles and presence of domestic pets
- Increased artificial lighting and anthropogenic noise

Potential Adverse Effects

Eutrophication (surface water pollution/foul water discharges)

4.7 Without mitigation, the current model of disposing of surface water is to discharge to a nearby ditch or watercourse. If unmitigated, the increased wastewater generated from the proposed development will increase the level of nutrients flowing into Stodmarsh.

4.8 Additionally, the Site is within the Sellindge WwTW catchment and therefore foul water discharges from the proposed development site would be treated at that facility during operation. Following treatment of wastewater, final effluent is discharged to the Stour, leading to an impact pathway that has been described to the associated European sites.

4.9 As the Site is within the Upper Stour catchment, which has a hydrological connection to Stodmarsh, discharging surface water runoff to a nearby ditch or watercourse will convey surface water pollutants such as hydrocarbons, oils, grit salts and other chemical pollutants associated with traffic, garden chemicals such as enriching fertilisers or herbicides/insecticides, household detergents, etc. This would be in addition to the treated effluent that is already discharged into the Stour. The transfer of these pollutants to Stodmarsh, which would include nitrates and phosphates, would result in eutrophication of waterbodies to the detriment of the habitats that the qualifying features of the SPA/SAC/Ramsar site depend on. The detrimental effects of eutrophication include extensive algal blooms, decrease of water clarity, bottom-water hypoxia, sediment anoxia (Dorgham, M. M., (2013).

4.10 A Nutrient Neutrality Assessment has been produced by Water Environment (2024), which: 1) assesses the potential increase in nutrient loading as a result of the proposed development in absence of mitigation, and 2) outlines a mitigation strategy to manage surface water and wastewater from the proposed development to ensure that the proposed development will be nutrient neutral.

4.11 Following Natural England guidance (March 2022), it was calculated that the additional nutrient loading of the proposed development in the absence of mitigation would be 172.02 kgN/year and 4.74 kgP/year.

4.12 Given the results of the Nutrient Neutrality Assessment, the size and scope of the proposed development site and its distance to Stodmarsh SPA/SAC/Ramsar site, it is not considered likely that the proposed

development in isolation would cause the significant effects outlined above. However, there is potential for the proposed development Site to act in combination with wider pollution and nutrient enrichment to produce a significant adverse effect on the qualifying features of the Stodmarsh designations through pollution vectored by surface water drainage and the discharge of effluent.

Mitigation Measures

Water Quality

4.13 Surface Water Drainage: The Site will incorporate constructed attenuation basins that will both hold and treat excess surface water generated by the development. These will be permanently wet features and include a variety of native plant species/vegetation types to filter and clean the water.

4.14 This proposed mitigation strategy would result in a total reduction in nutrient loading from 22.93 kgN/year and 1.94 kgP/year to 17.60 kgN/year and 0.97 kgP/year, resulting in an overall betterment to nutrient loading in the River Stour catchment area.

4.15 Foul Drainage/Wastewater: A water recycling centre (WRC) on the neighbouring land at Potten Farm site will process wastewater produced on-site before discharging treated effluent to a nearby watercourse. The WRC will be designed to discharge treated effluent with a TP concentration limit of 7.5 mgN/l and 0.25 mgP/l and will be adopted, operated and maintained in perpetuity by Severn Trent Connect. This will reduce the nutrient load from 153.37 kgN/year and 2.56 kgP/year (unmitigated) to 38.34 kgN/year and 1.28 kgP/year.

4.16 The detailed design of the WRC can be secured via a planning condition to ensure that all wastewater from the development is discharged on site at the required phosphorus discharge concentration limits above. The discharge from the WRC will require an Environment Agency permit which will be secured once planning permission has been agreed and the detailed design of the on-site WRC and the wider foul water drainage network has been finalised. Severn Trent Connect will apply to the Environment Agency for the required permit.

4.17 Therefore, adverse impacts on the Stodmarsh SAC/SPA/Ramsar site resulting from the development scheme could be ruled out, as a betterment on the current situation would be achieved. In this instance, the impact of the development site alone would be fully mitigated and no additional in-combination effect would need to be assessed.

4.18 Nutrient neutrality has been shown to be achievable through the use of an on-site WRC and relatively simple surface water attenuation/treatment features. An approved detailed drainage strategy could be secured via a suitably worded planning condition to

ensure that the proposed development results in a betterment of the current situation (nutrient neutral). Likewise, the ongoing management of the WRC and SuDS features can be secured through appropriate legal agreements and the conditioning of a long-term management strategy for on-site habitats.

4.19 Should further solutions to the wider issue of excess nutrients be identified and implemented by Folkestone & Hythe District Council, the on-site mitigation package may no longer be required (in part or in full). In this event, F&HDC as competent authority, should still be able to determine that the integrity of the Stodmarsh SAC/SPA/Ramsar site would not be undermined by the proposed development.

4.20 Formal agreement will be required with Severn Trent Connect/Environment Agency before development can commence, and implementation of agreed measures will be undertaken prior to first dwelling occupation

Residual Effects on Site Integrity

4.21 Subject to securing the proposed surface and foul drainage strategies through planning conditions and being implemented as set out within this report (and as detailed within the Nutrient Neutrality Assessment (Water Environment, 2024)) no adverse effects on the integrity of Stodmarsh SPA/Ramsar site/SAC are anticipated either alone or in-combination with other plans or projects. Therefore, the proposed development may be permitted without conflict with the provisions of Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended).

4.22 These measures may readily be secured through appropriate legal mechanisms as part of an outline planning permission, therefore the proposed development may be permitted without conflict with the provisions of Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended).

5.0 REFERENCES

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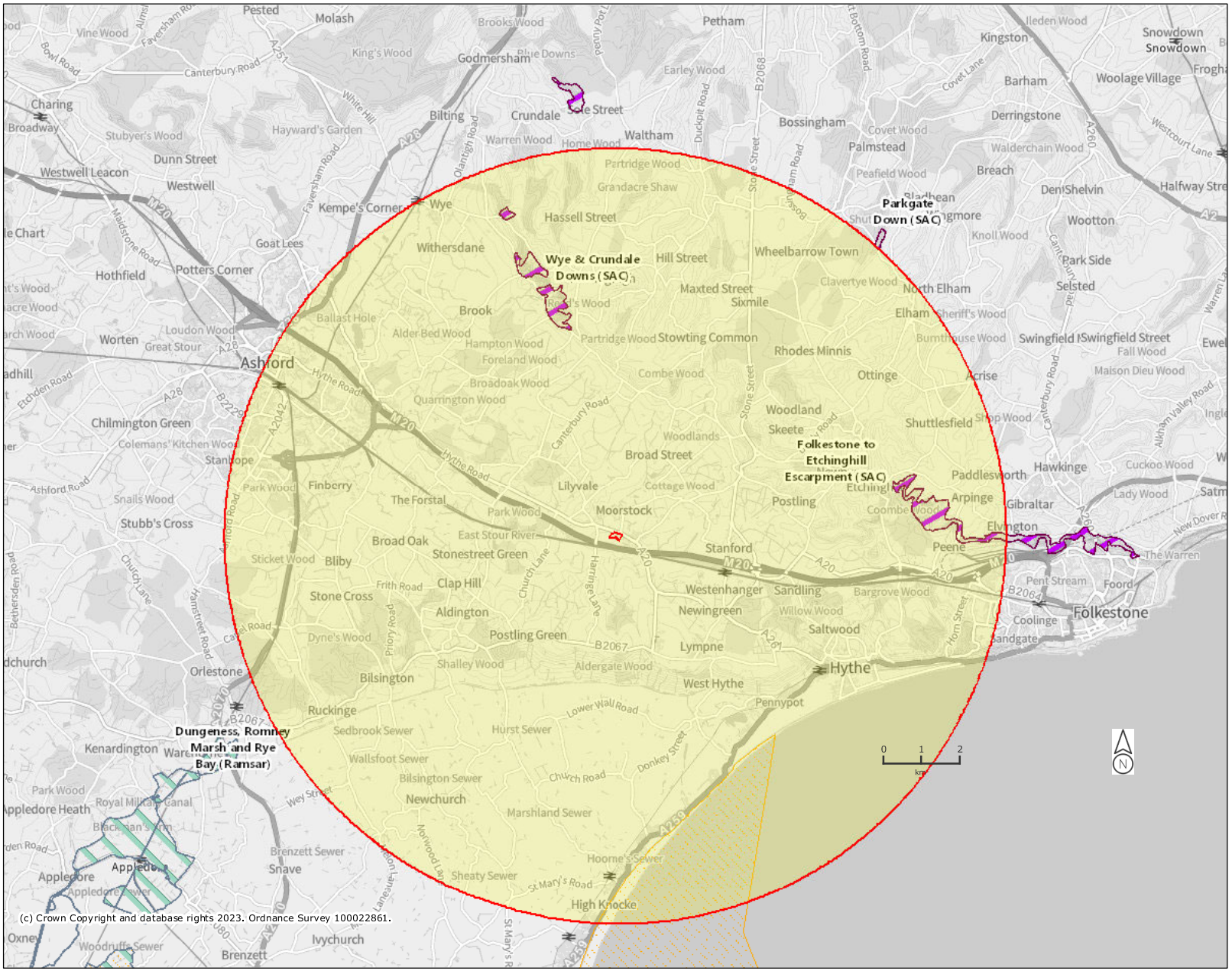
Appendix A

Site Location Plans

MAGIC

Designations Within 10km



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Legend

- Ramsar Sites (England)
- Proposed Ramsar Sites (England)
- Special Areas of Conservation (England)
- Possible Special Areas of Conservation (England)
- Special Protection Areas (England)
- Potential Special Protection Areas (England)

Special Areas of Conservation (Marine Components GB)

- Candidate
- Designated
- Possible

Special Protection Areas (Marine Components GB)

- Classified
- Potential

Projection = OSGB36
xmin = 584600
ymin = 127000
xmax = 635400
ymax = 152000

0 2 4
km

Map produced by MAGIC on 24 August, 2023.

Site Check Report Report generated on Thu Aug 24 2023
You selected the location: Centroid Grid Ref: TR09953820
The following features have been found in your search area:

Special Areas of Conservation (England)

Name	WYE & CRUNDALE DOWNS
Reference	UK0012831
Hectares	113.12
Hyperlink	http://jncc.defra.gov.uk/protectedsites/sacselection/sac.asp?eucode=UK0012831

Name	PARKGATE DOWN
Reference	UK0030338
Hectares	7.02
Hyperlink	http://jncc.defra.gov.uk/protectedsites/sacselection/sac.asp?eucode=UK0030338

Name	FOLKESTONE TO ETCHINGHILL ESCARPMENT
Reference	UK0012835
Hectares	183.36
Hyperlink	http://jncc.defra.gov.uk/protectedsites/sacselection/sac.asp?eucode=UK0012835

Special Protection Areas (Marine Components GB)

UK Site Code	UK9012091
Site Name	Dungeness, Romney Marsh and Rye Bay
Site Status	SPA
Status	Classified
Country	England inshore
CP2 Region	Eastern Channel
Area (Ha)	42417.533923
Consultation Date	18/10/2016
Classification Date	31/10/2017
Responsible Agency	NE
WDPA Code	555541836
LONG	0.835434
LAT	50.89082

Ramsar Sites (England)
No Features found

Proposed Ramsar Sites (England)
No Features found

Possible Special Areas of Conservation (England)
No Features found

Special Protection Areas (England)
No Features found

Potential Special Protection Areas (England)
No Features found

Special Areas of Conservation (Marine Components GB)
No Features found

Appendix B

Legislation and Planning Context

European Sites

1.2. Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), termed 'European sites', collectively form part of a suite of sites known in the UK as the national site network, and are afforded strict protection from the potentially damaging effects of human activities. For ease of reference here, and consistent with their treatment under UK government policy, sites designated by the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention, 1971), or 'Ramsar sites', are also referred to here as European sites.

1.3. All European sites in England and Wales are afforded protection through the Conservation of Habitats and Species Regulations 2017 (as amended). These Regulations are widely referred to as the 'Habitat Regulations'. Regulation 63 of these Regulations states that, "A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which (a) is likely to have a significant effect on a European site…(either alone or in combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives." This assessment process is commonly referred to as 'Habitats Regulations Assessment' (HRA).

1.4. The above Regulations formerly transposed Article 6(3) of Council Directive 92/43/EEC on the 'Conservation of Natural Habitats and of Wild Fauna and Flora', commonly referred to as the 'Habitats Directive'. This Directive is the means by which the European Union meets its obligations under the Bern Convention (1992) on the Conservation of European Wildlife and Natural Habitats. Following the UK's departure from the European Union, the provisions of the Regulations have been retained through enactment of the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019, which came into force on 31 December 2020.

Notable Case Law

1.5. Many procedural facets of HRA have been established through case law. In light of Section 6(3) EU (Withdrawal) Act 2018 (as amended), UK courts will continue to be bound by HRA judgments handed down by the Court of Justice for the European Union CJEU prior to 31 December 2020 when interpreting the Conservation of Habitats and Species Regulations 2017 (as amended). A non-exhaustive summary of some of some key judgements is provided below:

In Relation to HRA Screening

Waddenzee (ECJ Case C-127/02; 07.09.04.)

1.6. This case considered when Appropriate Assessment might be triggered and concluded that it is required where there is a, "*probability or risk*," of significant effects, and that, "*such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will not have significant effects on the site concerned*." The ruling clarifies that, "*in case of doubt as to the absence of significant effects such an assessment must be carried out*."

1.7. The ruling further states that, "*in assessing the potential effects of a plan or project, their significance must be established in the light, inter alia, of the characteristics and species environmental conditions of the site concerned by that plan or project*." As such, when assessing potential effects the current condition of the features for designation of a European site must be considered. Such information may be provided within, amongst other sources, published Condition Assessments of component Sites of Special Scientific Interest (SSSI's) and Site Improvement Plans (SIPs).

Boggis v Natural England (EWCA Civ 1061; 20.10.09.)

1.8. This case built upon guidance for the correct interpretation of what constitutes a 'likely' significant effect from that provided in Waddenzee. It was ruled that, "*Notwithstanding the word 'likely'...the precondition before there can be a requirement to carry out an appropriate assessment is not that significant effects are probable, a risk is sufficient...*" however this must be, "*real, rather than a hypothetical, risk…*"

People over Wind (CJEU Case C-323/17, 12.04.2018)

1.9. The recent 'People Over Wind' ruling determined whether mitigation measures may be considered when determining if a an effect is 'likely' and therefore whether it should be 'screened-in' for further assessment within the HRA process (i.e. be subject to Appropriate Assessment). Previously it has been established (R (Hart DC) v SSCLG; known as the 'Dilly Lane' decision) that any measures introduced to avoid or mitigate effects on a European sites could be considered in the initial screening stage. However, in the People Over Wind case the CJEU ruled that that such measures not be considered during HRA screening.

1.10. Paragraph 40: "*…in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site*."

In Relation to Appropriate Assessment

Waddenzee (ECJ Case C-127/02; 07.09.04)

1.11. Paragraph 59 of the ruling provides guidance on confidence thresholds in Appropriate Assessment, stating that, "*An appropriate assessment of the implications for the site concerned of the plan or project implies that prior to its approval, all the aspects of the plan or project which can…affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field. The competent national authorities, taking account of the conclusions of the appropriate assessment of the implications of [a project] for the site concerned, in light of the site's conservation objectives, are to authorise such activity only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects*."

National Policy

1.12. The term 'European site' used in reference to SACs and SPAs is derived from the above Regulations. The National Planning Policy Framework (NPPF) (Department for Levelling Up, Housing and Communities, 2023) establishes that sites designated by the Convention on Wetlands of International Importance especially as Waterfowl Habitat (Ramsar Convention, 1971), or 'Ramsar sites', as well as 'potential SPAs' and 'possible SACs', should be given the same protection as European sites.

1.13. At paragraph 182, the Framework establishes that the presumption in favour of sustainable development (also known as the 'tilted balance' in planning) does not apply where the plan or project is likely to have a significant effect on a European site, unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the European site.

Local Policy

1.14. The adopted Folkestone & Hythe District Council Core Strategy Review (2022) sets out development management policies relevant to HRA in the district. These are shown in Table B.1 below.

Table 1. Summary of relevant local planning policies

Policy	Summary
Folkestone & Hythe District Council Core Strategy Review 2022	
Policy CSD4: Green Infrastructure of Natural Networks, Open Spaces and Recreation	*1.The council will require development proposals over their lifetime:* *i. To provide net gains in biodiversity at least to comply with statutory and/or national policy requirements (assuming no residual loss);* *ii. To demonstrate that they protect and enhance valued landscapes, sites of biodiversity or geological value and soils, commensurate to their status and quality;*

Policy	Summary
	iii. So far as possible, to deliver improvements in green infrastructure (GI) assets in the district and ensure positive management of areas of high landscape quality or high costal/recreational potential identified in the Green Infrastructure Report (2011) (or any updates to this report). *2. Green infrastructure will be protected and enhanced and the loss of GI uses will not be allowed, other than where demonstrated to be in full accordance with national policy, or a significant quantitative or qualitative net GI benefit is realised or it is clearly demonstrated that the aims of this strategy are furthered and outweigh its impact on GI. Moreover:* *i. The highest level of protection in accordance with statutory requirements will be given to protecting the integrity of sites of international nature conservation importance;* *ii. A high level of protection will be given to nationally designated sites (Sites of Special Scientific Interest and Ancient Woodland) where development will avoid any significant impact;* *iii. Appropriate and proportionate protection will be given to habitats that support higher-level designations, and sub-national and locally designated wildlife/geological sites to include Local Wildlife Sites (LWS), Kent Biodiversity Action Plan habitats, and other sites of nature conservation interest;* *iv. Planning decisions will have close regard to the need for conservation and enhancement of landscape and scenic beauty in the Kent Downs Area of Outstanding Natural Beauty (AONB), which will be given the highest status of protection in relation to these issues. Development within the setting of the AONB should be sensitively located and avoid or minimise adverse impacts on the AONB. Elsewhere development must not jeopardise the protection and enhancement of the district's distinctive and diverse local landscapes, and must reflect the need for attractive and high-quality open spaces throughout the district; and* *v. Planning applications will need to be supported by ecological surveys, mitigation strategies (when required) and enhancement plans, in order to follow and apply the mitigation hierarchy, as appropriate.* *3. The GI network shown in Figure 5.2 and identified in supporting evidence, and other strategic open space, will be managed with a focus on:* *i. Adapting to and managing climate change effects;* *ii. Protecting and enhancing biodiversity and access to nature, particularly in green corridors and other GI strategic opportunities in Figure 5.2, with appropriate management of public access (including the Sustainable Access and Recreation Management Strategy for Dungeness and together with a strategic approach to the international sites as detailed above); and also avoiding development which results in significant fragmentation or isolation of natural habitats;*

Policy	Summary
	iii. Identifying opportunities to expand the GI functions of greenspaces and their contribution to a positive sense of place (including enhancements to public open spaces and outdoor sports facilities); and *iv. Tackling network and qualitative deficiencies in the most accessible, or ecologically or visually important GI elements, including improving the GI strategic fringe zones in Figure 5.2 through landscape improvements or developing corridors with the potential to better link greenspaces and settlements.*
Policy CSD9: Sellindge Strategy	N.B. only the section relevant to ecology has been included here. *e. The design and layout of the development shall be landscape-led and include within it structural landscaping with woodland planting to be provided on the rural edge of the development, particularly around the western boundary of Site A, to retain the rural character, and on the eastern boundary of Site B, to avoid or minimise adverse impacts on the Kent Downs AONB and views into and out of the AONB. All landscaping shall be planted at an early stage of the development and provide new habitats for priority nature conservation species. Applications shall be accompanied by a landscape and visual impact assessment that should inform the landscaping scheme and address structural and local landscape matters;*
Folkestone and Hythe District Council Places and Policies Local Plan 2020	
Policy NE2: Biodiversity	***European Sites*** *Development will safeguard and protect all sites of European and Global importance, designated as Special Areas of Conservation (SAC), Special Protection Areas (SPA) and Ramsar sites. Development must not result in significant adverse effects on these internationally important nature conservation sites, either alone or in combination with other projects and plans. The Council will expect development proposals to demonstrate and contribute to appropriate mitigation and management measures to maintain the ecological integrity of the relevant European site(s).* ***National Sites*** *For nationally important sites, including Sites of Special Scientific Interest (SSSI) and National Nature Reserves (NNR), where developments may have a significant impact, an ecological impact assessment will be required. For proposals where impacts cannot be avoided or adequately mitigated, these will be refused, unless exceptional circumstances can be demonstrated.* ***Local Sites*** *Local sites, including Local Nature Reserves (LNR), Key Wildlife Sites (KWS) and Regionally Important Geological and Geomorphological Sites (RIGS) will be safeguarded from development, unless the benefits of the development outweigh the nature conservation or scientific interest of the site. Where development is considered necessary, adequate mitigation measures or, exceptionally, compensatory measures, will be required, with the aim of providing an overall improvement in local biodiversity and/or geodiversity. Opportunities will be sought to access and enhance the value of such sites for*

Policy	Summary
	educational purposes, particularly in relation to promoting public awareness and appreciation of their historic and aesthetic value. ***Protected Species*** *Development proposals that would adversely affect European Protected Species (EPS) or Nationally Protected Species will not be supported, unless appropriate safeguarding measures can be provided (which may include brownfield or previously developed land (PDL) that can support priority habitats and/or be of value to protected species).* ***Development and the Natural Environment*** *All new development will be required to conserve and enhance the natural environment, including all sites of biodiversity or geodiversity value (whether or not they have statutory protection) and all legally protected or priority habitats and species. The Council will support development that:* *i. Enhances, retains and protects existing sites and features of nature conservation value including wildlife corridors, ancient woodland and geological exposure that contribute to the priorities established through the Biodiversity Action Plan and the Green Infrastructure Plan;* *ii. Does not reduce, and where feasible, improves species' ability to move through the environment in response to predicted climate change, and to prevent isolation of significant populations of species; and* *iii. Incorporates features that enhance biodiversity as part of good design and sustainable development, including the creation of new pollinator habitat suitable to the scale of development.* *The District has a number of undesignated sites, which may nevertheless host rare species or valuable habitats. Where a site is indicated to have such an interest, the applicant should observe the precautionary principle and the Council will seek to ensure that the intrinsic value of the site for biodiversity and any community interest is enhanced or, at least, maintained.* *Where an impact cannot be avoided or mitigated (including post-development management and monitoring), compensatory measures will be sought. The Council may, in exceptional circumstances, allow for biodiversity offsets, to prevent loss of biodiversity at the district level. Such compensation will be directed to Biodiversity Opportunity Areas (BOAs) within the district or projects identified in the Council's Green Infrastructure Plan.*
Policy NE5: Light Pollution and External Illumination	*Applications for major development, and development including significant external lighting, will be approved if:* *1. The proposal does not materially alter light levels outside the development site;* *2. The proposal does not adversely affect the use or enjoyment of nearby buildings or open spaces; and*

Policy	Summary
	3. The proposed lighting scheme accords with the best practice guidance provided by the Institution of Lighting Professionals (ILP) (2011) relevant to the particular Environmental Zone. *For proposals involving sensitive uses (such as hospitals or residential institutions) the Council will have regard to whether an existing neighbouring light source would make the proposed used unsuitable for the site.* *Applications should include a lighting assessment with details of the following:* *i. Where the light shines;* *ii. When the light shines,* *iii. How much light shines; and* *iv. **Possible ecological impact.*** Please see the Policy in the Local Plan to see a detailed Table of what is and what is not considered acceptable in certain situations.

Appendix C

European Site Characteristics

Table 1. Site Characteristics: Wye and Crundale Downs SAC

Wye and Crundale Downs SAC	
Distance and direction from Site	c. 5.3km north
Size	111.32ha
Grid reference	TR 084 444
Component SSSIs	Wye and Crundale Downs SSSI
Qualifying features	Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (important orchid site); Dry grasslands and scrublands on chalk or limestone (important orchid sites).
Published Conservation Objectives	Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring; • The extent and distribution of qualifying natural habitats • The structure and function (including typical species) of qualifying natural habitats, and • The supporting processes on which qualifying natural habitats rely
Known vulnerabilities	The following vulnerabilities have all been ranked as 'high' threats on the Natura 2000 standard data form; • Air pollution, air-borne pollutants • Grazing Biocenotic evolution, succession

Table 2. Site Characteristics: Folkestone to Etchinghill Escarpment SAC

Folkestone to Etchinghill Escarpment SAC	
Distance and direction from Site	c. 7.4km east
Size	187ha
Grid reference	TR 183 388
Component SSSIs	Folkestone to Etchinghill Escarpment SSSI
Qualifying features	Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (important orchid sites)
Published Conservation Objectives	Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring; • The extent and distribution of qualifying natural habitats • The structure and function (including typical species) of qualifying natural habitats, and • The supporting processes on which qualifying natural habitats rely
Known vulnerabilities	The following vulnerabilities have all been ranked as 'high' threats on the Natura 2000 standard data form; • Air pollution, air-borne pollutants • Grazing • Biocenotic evolution, succession

Table 3. Site Characteristics: Parkgate Down SAC

Parkgate Down SAC	
Distance and direction from Site	c. 10km north-east
Size	187ha
Grid reference	TR 183 388
Component SSSIs	Folkestone to Etchinghill Escarpment SSSI
Qualifying features (Directive 92/43/EEC Annex I habitats / Annex II species)	Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (important orchid sites)
Published Conservation Objectives	Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring; • The extent and distribution of qualifying natural habitats • The structure and function (including typical species) of qualifying natural habitats, and • The supporting processes on which qualifying natural habitats rely
Known vulnerabilities	The following vulnerabilities have all been ranked as 'high' threats on the Natura 2000 standard data form; • Air pollution, air-borne pollutants • Grazing • Biocenotic evolution, succession

Table 4. Site Characteristics: Stodmarsh SPA

Stodmarsh SPA	
Distance and direction from Site	c. 23.1km north-east
Size	481.33ha
Grid reference	TR 209611
Component SSSIs	Stodmarsh SSSI
Qualifying features	**Over winter:** Bittern *Botaurus stellaris*, 2 individuals representing at least 2.0% of the wintering population in Great Britain (5 year peak count, 1987/8-1991/2). Hen Harrier *Circus cyaneus*, 9 individuals representing at least 1.2% of the wintering population in Great Britain (5 year peak count, 1987/8-1991/2). **Breeding:** Gadwall *Anas strepera*, supporting 1% of the British breeding population (5 year peak mean up to 1992). **Wintering:** Gadwall *Anas strepera*, 77 individuals (winter count 1987/88 to 1991/92) representing 1.2% of the British wintering population Shoveler *Anas clypeata*, 165 individuals (winter count 1987/88 to 1991/92) representing 1/8% of the British wintering population.

Published Conservation Objectives	[see http://publications.naturalengland.org.uk/publication/6543516511502336] Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring; • 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 of each of the qualifying features, and the distribution of the qualifying features within the site
Known vulnerabilities	The following threats which could result from nearby development and the features they affect have been identified within the Site Improvement Plan (SIP)[1] for Stodmarsh; • Water pollution: waterbird assemblage • Air pollution, impact of atmospheric nitrogen deposition:

Table 5. Site Characteristics: Stodmarsh SAC

Stodmarsh SAC	
Distance and direction from Site	c. 23.1km north-east
Size	563.27ha
Grid reference	TR 209611
Component SSSIs	Stodmarsh SSSI
Qualifying features	Desmoulin's whorl snail *Vertigo moulinsiana*.
Published Conservation Objectives	Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring; • The extent and distribution of the habitats of qualifying species • The structure and function of the habitats of qualifying species • The supporting processes on which the habitats of qualifying species rely • The populations of the qualifying species, and, • The distribution of the qualifying species within the site.
Known vulnerabilities	The following threats which could result from nearby development and the features they affect have been identified within the Site Improvement Plan (SIP)[2] for Stodmarsh; • Water pollution: although it should be noted that potential impacts of changes in water quality on Desmoulin's whorl snail are unknown. • Air pollution: impact of atmospheric nitrogen deposition on vegetation although it should be noted that potential impacts of changes in air quality / nitrogen deposition on Desmoulin's whorl snail are unknown

[1] Natural England. (2014). Site Improvement Plan: Stodmarsh. Available at: //publications.naturalengland.org.uk/publication/5749196032311296
[2] Natural England. (2014). Site Improvement Plan: Stodmarsh. Available at: //publications.naturalengland.org.uk/publication/5749196032311296

Table 6. Site Characteristics: Stodmarsh Ramsar site

Stodmarsh Ramsar site	
Distance and direction from Site	c. 23.1km north-east
Size	481.33ha
Grid reference	TR 209611
Component SSSIs	Stodmarsh SSSI
Qualifying features	The site is justified as a Ramsar designation under Criterion 2. **Criterion 2:** The site hold size British Red Data Book wetland invertebrates, two nationally rare plants, and five nationally scarce species. A diverse assemblage of rare wetland birds. **Qualifying species/populations (As identified at designation):** *Species regularly supported during the breeding season:* Gadwall, *Anas strepera strepera*, NW Europe. 6 pairs, representing an average of 1% of the GB population (1998-92) *Species with peak counts in spring/autumn:* Gadwall, *Anas strepera strepera*, NW Europe. 267 individuals, representing an average of 1.5% of the GB population (5 year peak mean 1998/9-2002/3) *Species with peak counts in winter:* Great bittern, *Botarurus stellaris stellaris*, W Europe, NW Africa. 2 individuals, representing an average of 2% of the GB population (1998/9-2002/3) Northern shoveler, *Anas clypeata*, NW & C Europe. 274 individuals, representing an average of 1.8% of the GB population (5 year peak mean 1998/9-2002/3) Hen harrier, *Circus cyaneus*, Europe. 9 individuals, representing an average of 1.2% of the GB population (5 year winter period peak count 1987/8-1991/2)
Published Conservation Objectives	For Ramsar sites, a decision has been made by Defra and Natural England not to produce Conservation Advice packages, instead focussing on the production of High Level Conservation Objectives. • As such it is considered that the Publish Conservation Objectives for the Stomarsh SPA / SAC are relevant to this Ramsar designation.
Known vulnerabilities	The following threats which could result from nearby development and the features they affect have been identified within the Site Improvement Plan (SIP)[3] for Stodmarsh; • Water pollution: waterbird / invertebrate assemblage • Air pollution, impact of atmospheric nitrogen deposition: could affect habitats which support the waterbird / invertebrate assemblage

[3] Natural England. (2014). Site Improvement Plan: Stodmarsh. Available at: //publications.naturalengland.org.uk/publication/5749196032311296

Appendix D

Habitats Plan

N

- Site boundary
- Other lowland dry acid grassland (g1d)
- Other neutral grassland (g3c)
- Modified grassland (g4)
- Ponds (r)
- Hedgerows with trees (h2) (190)
- Hedgerows (Priority Habitat) (h2a)
- Line of trees (w1g6)
- Individual rural trees
- F — Field reference
- H/LT — Hedgerow / treeline reference
- Target notes:
  TN1 - Veteran / ancient tree (T55)
  TN2 - Notable sweet chestnut trees (T35 & T36)
  TN3 - Notable tree with veteran features (T40)
  TN4 - Notable tree with veteran features (T59)
  TN5 - Notable tree with veteran features (T60)
  TN6 - Notable tree with veteran features (T71)

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Project	Land South of Ashford Road, Sellindge	Date September 2023	Drawing No. CSA/4509/107
Drawing Title	Baseline Habitats Plan	Scale Refer to scale	Rev A
Client	Gladman Developments Ltd	Drawn CVJ	Checked CC

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