



**ECOLOGY**SOLUTIONS

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STANFORD HILL  
LYMINGTON

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**Proof of Evidence in  
respect of Ecology and  
Nature Conservation**

by  
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### APPENDICES (Bound Separately)

APPENDIX 1	sHRA v4 (Abbas Ecology, April 2020 [revised September and October 2020])
APPENDIX 2	Consultation Response – Natural England (24 <sup>th</sup> June 2020)
APPENDIX 3	Further Communication - New Forest District Council Development Management Team Leader Ian Rayner (2 <sup>nd</sup> February 2021)
APPENDIX 4	Consultation Response – Chris Hodsman (12 <sup>th</sup> June 2020)
APPENDIX 5	Further Communication – Natural England in response to Heaton Farm Scheme (26 <sup>th</sup> November 2020)
APPENDIX 6	Further Communication - Letter from Kate Holden (Pegasus) dated 17 <sup>th</sup> August 2020

## 1. QUALIFICATIONS

- 1.1. My name is Tim Goodwin. I hold a BSc (Hons) degree in Environmental Biology from Leicester University, an MSc in Environmental Resources from the University of Salford and I am a member of the Chartered Institute of Ecology and Environmental Management and the Institution of Environmental Sciences, on whose council I was elected between 1993 and 2000.
- 1.2. From 1990 to 1991, I was a Director of RPS Clouston, a large environmental consultancy. I previously worked as Development Officer for the Northants Wildlife Trust, followed by a position with the World Conservation Monitoring Centre in Cambridge, a division of the International Union for the Conservation of Nature, Gland, Switzerland. I have carried out consultancy work for the World Wide Fund for Nature (WWF), Greenpeace, the Department for Environment, Food and Rural Affairs and HM Customs and Excise and was retained as an independent consultant by the latter two Government Departments to advise on sections of the Wildlife and Countryside Act 1981, the Endangered Species (Import and Export) Act 1976 and Zoo Licensing Act 1981 until 2005.
- 1.3. In 1992, I formed Epcad, of which I was one of the principal partners, heading the Ecology section. At the end of 2004 Epcad demerged into two companies with the ecology arm becoming known as Ecology Solutions of which I am one of the main Directors. In addition to inquiry work, Ecology Solutions undertakes all types of environmental planning work, in relation to ecology, with recent clients including BAES, CEMEX, the Hanson Group, Belfast City Airport, SITA, E.on, Fulham Football Club, Prudential, Aviva, Prologis, Helios, Pfizer plc, British Aerospace, Legal and General, Stanhope, Northern Ireland Electricity and a range of national house-builders including Countryside Properties, Persimmon, Taylor Wimpey, Linden, Redrow, Bellway, Robert Hitchins, Fairview and Crest Nicholson.
- 1.4. I have extensive experience of considering and evaluating development proposals in relation to a range of sensitive ecological sites including Ramsar Sites, Special Areas of Conservation (SACs) Special Protection Areas (SPAs) Sites of Special Scientific Interest (SSSIs) and County Wildlife Sites. I have particular experience in both the Habitat Regulations and the Habitat and Birds Directives and I have given evidence in a number of high profile cases where

consideration of the provisions within the regulations have been paramount. I have prepared numerous mitigation strategies for a range of protected sites and species including Great Crested Newts, Badgers, Dormice, Bats and Water Voles.

- 1.5. I have been intimately involved in a number of high-profile projects relating to the ecology and conservation of various species and habitats, including Leisure Developments, New Settlements, Mineral Workings, Water / Flood Alleviation Schemes, Highway Proposals and Land Restoration Schemes. I have given evidence at numerous section 78 appeals, call-in inquiries and local plan inquiries, and I have prepared and given evidence for select committee and in the High Court for judicial review proceedings.

## 2. BACKGROUND

- 2.1. Ecology Solutions were first contacted by the Pegasus Ltd on behalf of the Appellant, Renaissance Retirement Ltd in November 2020, and was provided with a briefing bundle comprising copies of the planning applications, and various consultation responses, together with copies of previous ecological surveys that had been undertaken at the Appeal Site. I was instructed to undertake a review of the work carried out in relation to ecology and nature conservation, and to consider my view on the work undertaken, to advise if further work was required in terms of surveys/data collection or its analysis, and to consider the ecology-based claims being made against the proposals and whether I could support the Appeal proposals.
- 2.2. The ecological information which was sent to me included (but was not limited to):
- Preliminary Ecological Appraisal (Abbas Ecology, May 2019) (**CD 1.31**)
  - Phase 2 Survey Report (Abbas Ecology, August 2019) (**CD 1.32**)
  - Shadow Habitat Regulations Assessment (sHRA) v4 (Abbas Ecology, April 2020 [revised September and October 2020]) (**CD 1.33**)
  - Nitrogen Balance Calculator (Arch Associates, May 2020) (**CD 1.36**)
- 2.3. These reports form part of the Core Document (**CD**) list and – with the exception of the sHRA (which forms Appendix 1 of my proof) – are not appended to this proof to avoid repetition. Additional information which is appended to this proof relates to consultation responses and communications from Natural England and the local planning authority, New Forest District Council.
- 2.4. Having read the various ecological survey reports and assessments produced, I can confirm there is nothing of any real significance that I would depart from.
- 2.5. The planning application which is the subject of this Appeal was submitted to New Forest District Council on 1<sup>st</sup> May 2020 and described as:
- “Demolition of existing buildings and the erection of 44 sheltered apartments for the elderly with associated access, mobility scooter store, refuse bin store, landscaping and 34 parking spaces.”*

- 2.6. The Application was considered by the Council's main Planning Committee and was refused on 14 October 2020 for a number of reasons, two of which relate to ecology and nature conservation:

*"4. The proposal has a direct impact on protected wildlife species within the site and fails to demonstrate that the impact on those species is sufficiently offset by any imperative reasons of overriding public interest, in that there is insufficient social or economic benefits that accrue from the development and the Council is not satisfied that there are no reasonable alternatives to providing this development on this particular site. The applicant has provided no substantive evidence that alternative sites within Lymington have been properly and adequately considered. The proposal does not comply with local and national policy for the reasons set out above and does not pass the required tests as set out in the Conservation of Habitats and Species Regulations 2017. The proposal is therefore considered to be contrary to New Forest Local Plan Policy (2014) DM2 and New Forest Local Plan (2016-2036) Policy ENV1*

*5. To ensure that the proposal may proceed as sustainable development, there is a duty upon the local planning authority to ensure that sufficient mitigation is provided against any impacts which might arise upon the designated sites. The proposal will result in a new unit of overnight residential accommodation which will potentially have an adverse impact through greater nitrates being discharged into the Solent catchment area thereby having an adverse impact on the integrity of the Solent Special Protection Area (SPA) and Special Areas of Conservation (SAC). A precautionary approach is required to be adopted and in the absence of a completed Section 106 Agreement an adverse impact on the integrity of the SPA and SACs cannot be ruled out. As such, the proposal does not accord with Regulation 63 of the Conservation of Species and Habitats Regulations 2017 in that at present there is inadequate mitigation in place. The proposal is therefore contrary to the provisions of the Conservation of Species and Habitats Regulations 2017, and New Forest Local Plan (2016-2036) Policy ENV1."*

- 2.7. I understand a Statement of Common Ground (SoCG) is yet to be produced and agreed upon.
- 2.8. A consultation response in relation to the Appeal Proposals was received from Natural England, the statutory advisor to Government on nature conservation matters. A copy of this consultation response is included at Appendix 2 of my Evidence. I note that Natural England has no objections in terms of protected species or recreational pressure on relevant local statutory European designated sites. However Natural England does raise concerns with regard to effects on water quality in the Solent European designated sites, namely the issue of nutrient neutrality. I deal with this issue and reason for refusal 5 in the substantive sections of this evidence.
- 2.9. Turning to Reason for Refusal 4 briefly, in light of further communication with New Forest District Council's Local Ecologist Chris Hodsman and New Forest District Council Development Management Team Leader Ian Rayner, it was agreed that reason for refusal 4 falls away with all matters agreed between the parties. In this matter, I refer to communications at Appendix 3. As can be seen, Ian Rayner writes:
- 'We have now had the opportunity to review our objection re protected species as set out in the fourth reason for refusing Planning Application 20/10481 and the sixth reason [with reason six dealing with non-ecology matters] for refusing Planning Application 19/11180.*
- Having regard to the points you have made, I can confirm that we now accept your position and no longer wish to pursue either of these 2 reasons for refusal at the forthcoming public inquiries '.*
- 2.10. Put simply, the Council had applied the wrong test to the relevant section of the Habitat Regulations (Regulation 55(2)(e) and Regulation 55(9)(a) and (b)) in the light of case law (e.g. Prideaux Case No: CO/11458/2012).
- 2.11. The outstanding reason for refusal in terms of ecology is therefore reason 5 – matters pertaining to likely significant effects on the Solent in terms of water quality. As such, reason 5 will be the subject of this proof.
- 2.12. For clarity, it should be noted at this stage that issues pertaining to nitrates and the Solent European sites, have evolved significantly since the refusal on 14

October 2020. In particular headway has been made with regard to developing a strategic resolution to securing nitrate neutrality via an off-site contribution to an identified site known as Heaton's Farm on the Isle of Wight. This strategy has been proposed as an alternative solution in response to the local ecologist's and Natural England's concerns.

### **3. PURPOSE OF MY EVIDENCE**

3.1. Whilst I do not wish to simply repeat any of the points raised previously or unduly waste any inquiry time, in my evidence I outline my professional opinion regarding the ecological issues raised, and the significance which should be afforded to them when considering this Appeal.

3.2. In my evidence I will:

- Outline relevant legislation, policy and caselaw both generally but also with specific reference to the Solent Special Areas of Conservation (SACs) Special Protection Areas (SPAs), and Nitrates in the Solent (Section 4)
- Set out the baseline position of the site and the proposals, and consider the potential impacts of the scheme (Section 5);
- Outline the position of statutory consultees and third-parties and demonstrate that the Appeal Proposals accord fully with all relevant legislation and planning policy relating to ecology (Section 6); and
- Draw together my conclusions with a summary of my evidence (Section 7)

3.3. Although the appendices to my evidence are fairly lengthy, they consist in the main of previous reports and consultation responses. I felt it would be helpful for the Inspector and the Inquiry to collate all of this information together in a single place.

## 4. RELEVANT LEGISLATION, CASE LAW AND PLANNING POLICY

### Legislation

- 4.1. In this section of my proof of evidence I set out the key legislation and case law that is relevant to the ecology and nature conservation matters being considered.

#### The Primary legislation

##### ***Habitat and Birds Directives***

- 4.2. Under the EC Directive on the Conservation of Natural Habitats and of Wild Flora and Fauna, commonly referred to as the Habitats Directive (Council Directive 92/43/EEC), Member States are required to take special measures to maintain the distribution and abundance of certain priority habitats and species (listed in Annexes I and II of the Directive). In particular each Member State is required to designate the most suitable sites as SACs. All such SACs will form part of the Natura 2000 network under article 3(1) of the Habitats Directive.
- 4.3. Article 2(3) sets out that member states have a duty, in exercising their obligations under the Habitats Directive to:

*“.. take account of economic, social and cultural requirements and local characteristics.”*

- 4.4. Under the EC Directive on Wild Birds (the Birds Directive) (Council Directive 2009/147/EEC, previously 79/409/EEC), Member States are required to take special measures to conserve the habitats of certain rare species of birds (listed in Annex I of the Directive) and regularly occurring migratory birds. In particular each Member State is required to classify the most suitable areas of such habitats as SPAs. All Bird Directive SPAs will also be part of the Natura 2000 network under article 3(1) of the Habitats Directive.
- 4.5. Thus there is an obligation under the Habitats Directive and the Birds Directive for member states to designate sites before turning to measures for their protection.

- 4.6. The protection afforded to SPAs is delivered through Article 6 of the Habitats Directive. Article 6(2) requires member states to take appropriate steps to avoid the deterioration of natural habitats and disturbance of species for which the sites have been designated, in so far as the disturbance could be significant in relation to the objectives of the Directive. Article 6(3) and Article 6(4) require that a plan or project not directly connected with the management of the site, but likely to have a significant effect upon it, either individually or in combination with other plans or projects, must be subject to an appropriate assessment of its implications on the site, in view of the sites conservation objectives.
- 4.7. In cases where an appropriate assessment is undertaken, the competent authority may agree to a plan or project if the appropriate assessment shows that the plan or project will not adversely affect the integrity of the site.. If the outcome of the appropriate assessment is negative (i.e. an adverse effect on the integrity of the site cannot be ruled out), Article 6(4) provides that the plan or project may still proceed, provided it can be demonstrated that there are no alternatives and there are imperative reasons of over-riding public interest as to why it must proceed. In the event that a plan or project is to proceed on the basis of imperative reasons of over-riding public interest (i.e. in reliance of Article 6(4)), compensatory measures must be put in place to ensure that the overall coherence of the Natura 2000 network is protected.

#### ***Conservation of Habitats and Species Regulations 2017***

- 4.8. The Conservation of Species and Habitats Regulations 2017 (as amended), commonly referred to as the Habitats Regulations, transpose the requirements of the Habitats Directive and Birds Directive into UK legislation.
- 4.9. Under the Habitats Regulations, Competent Authorities have a duty to ensure that all the activities they regulate have no adverse effect on the integrity of any of the Natura 2000 sites (e.g. SPAs and SACs). Regulation 63 of the Habitats Regulations requires that:

*“63(1) 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 or a European offshore marine 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.*

*63(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable it to determine whether an appropriate assessment is required.*

*63(3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specifies.*

*63(5) In the light of the conclusions of the assessment, and subject to regulation 64, the authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).*

*63(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it 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."*

- 4.10. Regulation 63 of the Habitats Regulations therefore sets out a two-stage process. The first test is to determine whether the plan / project is likely to have a significant effect on the European site. The second test (if applicable) is to determine whether the plan / project will affect the integrity of the European site.

### Pertinent case law

- 4.11. Some key concepts of the Habitats Directive and Habitats Regulations have been clarified through case law. The most pertinent cases in relation to the development proposals are the *Waddenzee* Judgment, the *Sweetman* Cases, the *Holohan* Judgment, the *Wealden* Judgment, the Dutch Nitrogen Cases and the *Exminster* Judgment. These are considered and discussed below.
- 4.12. Whilst the UK left the European Union on 31 January 2020, EU case law prior to this date continues to be relevant for the purposes of assessment pursuant to the Habitats Regulations. However, relevant cases in the EU after this date are not understood to be relevant to the UK.

### Case Law

#### ***Waddenzee Judgment***

- 4.13. In the '*Waddenzee*' case (C-127/02) [2004] the European Court of Justice (CJEU) considered the trigger for Appropriate Assessment. It decided that an Appropriate Assessment is required for a plan or project where there is a probability or a risk that it will have a significant effect on the SPA. The Judgment states (at paragraph 3(a)) that:

*“...any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site’s conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects.”*

- 4.14. Hence, the need for an Appropriate Assessment should be determined on a precautionary basis. It is noted that this has been incorporated into the National Planning Practice Guidance (NPPG) on Appropriate Assessment.
- 4.15. The Judgment gives clarity that the test of 'likely significant effect' should also be undertaken in view of the relevant Conservation Objectives of the European site. It is stated at paragraph 3(b) that:

*“where a plan or project not directly connected with or necessary to the management of a site is likely to undermine the site’s conservation objectives, it must be considered likely to have a significant effect on that site.”*

- 4.16. Paragraph 4 of the Judgment emphasises the requirement for the Appropriate Assessment to rely on objective scientific information:

*“...an appropriate assessment...implies that, prior to its approval, all the aspects of the plan or project which can, by themselves or in combination with other plans or projects, 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 appropriate assessment of the implications...for the site concerned in the light of the site's conservation objectives, are to authorise such an 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.”*

### **Sweetman Case**

- 4.17. Further guidance in relation to the consideration of impacts in the light of the Habitats Regulations is provided in the ‘Sweetman’ case (*Sweetman v An Bord Pleanala (C-258/11) [2014]*). The case as set out by the Advocate General considered in detail the test for likely significant effect in paragraphs 50 and 51:

*“50. The test which that expert assessment must determine is whether the plan or project in question has ‘an adverse effect on the integrity of the site’, since that is the basis on which the competent national authorities must reach their decision. The threshold at this (the second) stage is noticeably higher than that laid down at the first stage. That is because the question (to use more simple terminology) is not ‘should we bother to check’ (the question at the first stage) but rather ‘what will happen to the site if this plan or project goes ahead; and is that consistent with “maintaining or restoring the favourable conservation status” of the habitat or species concerned’...*

*51. It is plain, however, that the threshold laid down at this stage of Article 6(3) may not be set too high, since the assessment must be undertaken having rigorous regard to the precautionary principle. That principle applies where there is uncertainty as to the existence or extent of risks. The competent national authorities may grant authorisation to a plan or project only if they are convinced that it will not adversely affect the integrity of the site concerned. If doubt remains as to the absence of adverse effects, they must refuse authorisation.”*

- 4.18. The Court of Justice of the European Union (CJEU) agreed with the Advocate General’s conclusions, and held:

*“40. Authorisation for a plan or project, as referred to in Article 6(3) of the Habitats Directive, may therefore be given only on condition that the competent authorities – once all aspects of the plan or project have been identified which can, by themselves or in combination with other plans or projects, affect the conservation objectives of the site concerned, and in the light of the best scientific knowledge in the field – are certain that the plan or project will not have lasting adverse effects on the integrity of that site. That is so where no reasonable scientific doubt remains as to the absence of such effects.”*

- 4.19. Hence a plan or project may be authorised only if no reasonable scientific doubt remains as to the absence of effects. Reasonable scientific doubt will exist if the evidence is not sufficiently conclusive, or if there are gaps in the information.

***People over Wind Case (Sweetman II)***

- 4.20. The CJEU in *People over Wind v Coillte Teoranta (C-323/17)* [2018], commonly referred to as ‘*People over Wind*’ or Sweetman II, has reversed the position adopted under the *Dilly Lane* Decision (English High Court) which found specifically, that it was right and proper for mitigation or avoidance measures, which formed a feature of a plan / project, to be viewed as integral to the plan / project and not excluded when considering the likely significance test at Regulation 63(1).

- 4.21. The decision by the CJEU ruled however that:

*“Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, 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.”*

- 4.22. In accordance with this ruling, avoidance or mitigation measures cannot be considered at the first stage of the test at Regulation 63(1) (the ‘Likely Significant Effect’ stage), and that these can only be considered at the Appropriate Assessment stage. The *People over Wind* ruling therefore overrules domestic case law in this regard. It is noted that this is also addressed in subsequent revisions to the NPPG relating to Appropriate Assessment.

#### ***ESB Wind Developments (Sweetman III)***

- 4.23. In this case, a request for a preliminary ruling was made to the CJEU concerning the interpretation of Articles 6(3) and 6(4) of the Habitats Directive. The request was made in relation to proceedings brought by Mr Peter Sweetman and Edel Grace against the decision of An Bord Pleanála concerning the latter’s decision to grant ESB Wind Developments Ltd and Coillte permission for a wind farm project within an SPA. The ruling was handed down on 25th July 2018 (C-164/17).
- 4.24. This ruling distinguishes between, for the purpose of the application of Articles 6(3) and 6(4) of the Directive, ‘mitigation’ that consists of measures intended to avoid or reduce harm to the protected site, and measures intended to compensate for any harm (compensatory measures). It is stated:

*“Article 6 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that, where it is intended to carry out a project on a site designated for the protection and conservation of certain species, of which the area suitable for providing for the needs of a protected species fluctuates over time, and the temporary or permanent effect of that project will be that some parts of the site will no longer be able to provide a suitable habitat for the species in question, the fact that the project*

*includes measures to ensure that, after an appropriate assessment of the implications of the project has been carried out and throughout the lifetime of the project, the part of the site that is in fact likely to provide a suitable habitat will not be reduced and indeed may be enhanced may not be taken into account for the purpose of the assessment that must be carried out in accordance with Article 6(3) of the directive to ensure that the project in question will not adversely affect the integrity of the site concerned; that fact falls to be considered, if need be, under Article 6(4) of the directive.”*

- 4.25. The ruling clarifies (in the context of the specifics of that project, which concerned development *within* a designated site) what constitutes mitigation and what should correctly be termed compensation. It confirms that mitigation should be subject to Appropriate Assessment under Article 6(3) but that measures designed to compensate for any harm rather than prevent it, cannot be considered under Article 6(3) (Appropriate Assessment). In such instances, the proposal must be considered under Article 6(4) and thus it cannot be permitted unless there are “Imperative Reasons of Overriding Public Interest”.

### ***Holohan Judgment***

- 4.26. In the case of *Holohan v An Bord Pleanala* (C-461/17) [2018] the CJEU considered the Appropriate Assessment procedure to be adopted when considering potential impacts on a European Site. In considering this case, the CJEU ruled, amongst other matters:
- a) An Appropriate Assessment must catalogue the entirety of the habitat types and species for which a site is protected.
  - b) It must also identify and examine the implications of the proposed project for the species present on that site and for which that site has not been listed. Additionally, it must examine the implications for habitat types and species outside the boundaries of the protected site, insofar as those implications are liable to affect the site’s Conservation Objectives.
  - c) Where the competent authority rejects the findings of an expert that additional information must be obtained, the Appropriate Assessment

must include a detailed statement dispelling all reasonable scientific doubt concerning effects on the protected site.

### ***Wealden Judgment***

- 4.27. In relation to air quality impacts on designated sites, until relatively recently, Natural England's advice regarding the screening threshold for a likely significant effect may be summarised as follows: "*Where either the resulting deposition / concentration equates to 'less than 1% of the relevant benchmark', or the predicted Annual Average Daily Traffic (AADT) value is less than 1000, a likely significant effect can be screened out for the project when it is considered both alone and in combination with other plans or projects*".
- 4.28. However, relevant guidance has changed in the light of the High Court judgment in *Wealden v SSCLG* [2017] EWHC 351 (Admin) (commonly referred to as 'the Wealden Judgment').
- 4.29. The Wealden Judgment confirms that the use of the project / plan level 1000 AADT threshold (equivalent to 1% of the critical level/load for receiving habitat) as the only means of addressing in-combination effects was not appropriate, particularly where other AADT values are known and importantly which, when added together, breach the threshold. The 1000 AADT (and 1%) thresholds themselves were not questioned in terms of their use for assessment purposes.
- 4.30. The Judgment clarified that whilst the 1000 AADT (and 1% of the critical load / level) threshold is appropriate for use in screening assessments when applying the tests of the Habitats Regulations, a true in combination assessment must be undertaken, in view of all relevant AADT data.

### ***The Dutch Nitrogen Cases***

- 4.31. On 7 November 2018, the Judgment of the CJEU was handed down pursuant to a reference for a Preliminary Ruling relating to the application of Article 6 of the Habitats Directive in joined cases C-293/17 and C-294/17. The cases concerned authorisation schemes for agricultural activities which cause nitrogen deposition on Natura 2000 (European) sites in the Netherlands.
- 4.32. Key parts of the ruling (insofar as they are relevant to this assessment) are discussed below.

- 4.33. In line with preceding case law (*Waddenzee* and *Sweetman*, as discussed above), the need for scientific rigour and firm conclusions as to the absence of effects are a pre-requisite for authorisation of a plan / project. Ruling 3 in the case states:

*“Article 6(3) of Directive 92/43 must be interpreted as not precluding national programmatic legislation which allows the competent authorities to authorise projects on the basis of an 'appropriate assessment' within the meaning of that provision, carried out in advance and in which a specific overall amount of nitrogen deposition has been deemed compatible with that legislation's objectives of protection. That is so, however, only in so far as a thorough and in-depth examination of the scientific soundness of that assessment makes it possible to ensure that there is no reasonable scientific doubt as to the absence of adverse effects of each plan or project on the integrity of the site concerned, which it is for the national court to ascertain.”*

- 4.34. Ruling 4 in the case states:

*“Article 6(3) of Directive 92/43 must be interpreted as not precluding national programmatic legislation, such as that at issue in the main proceedings, exempting certain projects which do not exceed a certain threshold value or a certain limit value in terms of nitrogen deposition from the requirement for individual approval, if the national court is satisfied that the 'appropriate assessment' within the meaning of that provision, carried out in advance, meets the criterion that there is no reasonable scientific doubt as to the lack of adverse effects of those plans or projects on the integrity of the sites concerned.”*

- 4.35. Ruling 6 in the case confirms that any measures which are relied upon to mitigate or avoid adverse effects on the integrity of the European site in question, must be certain at the time of assessment. It is stated:

*“Article 6(3) of Directive 92/43 must be interpreted as meaning that an 'appropriate assessment' within the meaning of that provision may not take into account the existence of 'conservation measures' within the meaning of paragraph 1 of that article, 'preventive measures' within the meaning of paragraph 2 of that article, measures specifically adopted for a programme*

*such as that at issue in the main proceedings or 'autonomous' measures, in so far as those measures are not part of that programme, if the expected benefits of those measures are not certain at the time of that assessment."*

### **Exminster Judgment**

- 4.36. In the Court of Appeal, specific consideration was afforded to the extent to which the views of a professional ecological expert can be considered as objective evidence for the purposes of Article 6(3) of the Habitats Directive in *Smyth v SSCLG* [2015] EWCA Civ 174 (the 'Exminster Judgment').
- 4.37. Contrary to the position advanced by the Appellant's advocates, in paragraphs 46 to 48 inclusive, Lord Justice Sales ruled that it is appropriate to place reliance upon evidence put forward by a professional and experienced ecological expert:

*"46. Mr Jones submitted that Mr Goodwin's evidence amounted merely to assertion, unsupported by any objective evidence. I do not agree. Three points should be made. First, I consider that on a fair reading of Mr Goodwin's proof of evidence it can be seen that he has drawn on specific information relevant to the SPA and the SAC, as well as the development site and proposed mitigation measures, in a manner which supports in an entirely conventional and acceptable way his expressions of opinion as an ecological expert... Contrary to Mr Jones' assertion, Mr Goodwin's evidence was very far from being unsupported, free-standing assertion.*

*47. Secondly, in my view it is acceptable and to be expected that an expert will draw on his own background knowledge, experience and expertise in the field to inform the opinions which constitute his evidence to the relevant decision-maker...*

*48. Thirdly, expert evidence of the kind given by Mr Goodwin was objective evidence on which the competent authority, the Inspector, was entitled to rely in making his assessment for the purposes of Article 6(3) of the Directive... the views of an expert ecologist drawing on his practical experience and knowledge of the effectiveness of ecological initiatives elsewhere may constitute highly material and relevant objective evidence..."*

4.38. Paragraphs 84 and 86 continue:

*“84. ...Mr Goodwin’s evidence set out careful reasoning by him, with reference back as appropriate to underlying facts, to explain his opinion and expressions of view. It was expert evidence in conventional form and good quality. Mr Goodwin was entitled to draw on his own experience and expertise as well, in forming his opinion.*

*86. In my judgment, therefore, the Appellant’s complaint that the Inspector did not have information before him which he could rationally and lawfully regard as “objective information” and “the best scientific knowledge in the field” for the purposes of proceeding under Article 6(3) should be rejected.”*

4.39. In writing this evidence I have applied the various provisions established by case law, such that I have considered and taken due note of the qualifying interest features, which are referred to wherever appropriate in Section 4 below. The relevant information, as submitted to Europe, is included as relevant appendices to this assessment and referenced where appropriate. Consideration has been given to implications for habitats and species located outside of the international / European designated sites, with reference to the site’s Conservation Objectives.

### Planning Policy

4.40. In order to consider the extent to which the proposals accord with the relevant planning policy framework that relates to ecology and nature conservation, in this section I outline the relevant policies applicable to the proposed development at the Appeal site.

4.41. The planning policy framework that relates to nature conservation at the Appeal Site, is issued at two main administrative levels: nationally through the National Planning Policy Framework (NPPF); and at the local level through the New Forest District Council Local Plan 2016-2036 Part One: Planning Strategy.

## **National Policy – National Planning Policy Framework**

- 4.42. Guidance on national policy for biodiversity and geological conservation is provided by the NPPF, published in March 2012, revised on 24 July 2018 and updated on 19 February 2019.
- 4.43. The key element of the NPPF is that there should be “a presumption in favour of sustainable development” (paragraphs 10 to 11). It is important to note that this presumption “does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site” (paragraph 177). ‘Habitats site’ has the same meaning as the term ‘European site’ as used in the Habitats Regulations 2017.
- 4.44. Hence the direction of Government policy is clear; that is, the presumption in favour of sustainable development is to apply in circumstances where there is potential for an effect on a European site, if it has been shown that there will be no adverse effect on the integrity of the designated site as a result of the development in prospect, in this case the Appeal Proposals.
- 4.45. A number of policies in the NPPF are comparable to those in PPS9, including reference to minimisation of impacts to biodiversity and provision of net gains to biodiversity where possible (paragraph 170).
- 4.46. The NPPF also considers the strategic approach that Local Authorities should adopt with regard to the protection, maintenance and enhancement of green infrastructure, priority habitats and ecological networks, and the recovery of priority species.
- 4.47. Paragraphs 174 to 176 of the NPPF comprise a number of principles that Local Authorities should apply, including encouraging opportunities to incorporate biodiversity in and around developments; provision for refusal of planning applications if significant harm cannot be avoided, mitigated or compensated for; applying the protection given to European sites to potential SPAs, possible SACs, listed or proposed Ramsar sites and sites identified (or required) as compensatory measures for adverse effects on European sites; and the

provision for the refusal for developments resulting in the loss or deterioration of 'irreplaceable' habitats – unless there are 'wholly exceptional reasons' (for instance, infrastructure projects where the public benefit would clearly outweigh the loss or deterioration of habitat) and a suitable compensation strategy exists.

- 4.48. National policy therefore implicitly recognises the importance of biodiversity but that with sensitive planning and design, development and conservation of the natural heritage can co-exist and benefits should be realised.
- 4.49. As I will demonstrate through my evidence, the Appeal Proposals would not lead to any adverse impact on designated sites. Full consideration has been given to the tests contained within The Conservation of Habitats and Species Regulations 2017 (as amended) ("Habitats Regulations") and appropriate mitigation / avoidance measures have been put forward.
- 4.50. Subject to the delivery of the proposed mitigation measures, all of which conform to agreed and accepted principles applied to new developments throughout the country, it has been concluded that the Appeal Proposals would not lead to any significant ecological harm. This is a view shared by both Abbas Ecology and myself. Further, it is also evident that the local authority no longer have such concerns.

#### **Local Plan 2016-2036 Part One: Planning Strategy**

- 4.51. The Local Plan 2016-2036 Part One: Planning Strategy was formally adopted by New Forest District Council on 6 July 2020. This document replaces The Local Plan Part 1: Core Strategy, adopted in 2009, and parts of The Local Plan Part 2: Sites and Development Management, adopted in 2014, except where policies in these earlier Local Plans have been Saved for continued use. It includes multiple policies of relevance to nature conservation.
- 4.52. Of relevant to this proof is Policy ENV1 'Mitigating the impacts of development on International Nature Conservation sites'. This policy relates to developments which may have an adverse effect on designated sites. The policy also specifically deals with 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, including guidance on nutrient management:

*Evidence suggests uncertainty as to whether or not housing development in southern Hampshire in the later part of the Plan period would be likely to have a significant adverse effect on the River Itchen and the Solent due to nutrient enrichment. Applying the precautionary principle, subsequent Natural England advice is that harmful effects cannot be ruled out from the development of additional dwellings, visitor or institutional overnight accommodation. In the longer term the situation may be resolved by future arrangements for water supply and wastewater treatment in south Hampshire, which have their own regulatory processes. Until any such arrangements are operational, new development in the Solent must achieve nitrate neutrality for both foul drainage and surface water run-off by other appropriate means, on- or off-site.*

*The Council will support the Environment Agency, Natural England, water companies and surrounding authorities in the development and implementation of solutions to achieve nitrate neutral development and projects which reduce nutrient inputs to the Solent designated sites from wastewater discharges. Where necessary based on evidence of harmful impacts or by application of the precautionary principle, additional mitigation measures may be applied to developments that directly or indirectly discharge wastewater into the Solent.*

- 4.53. As I will demonstrate, an appropriate mitigation and avoidance package of measures has been proposed in relation Solent Special Protection Areas (SPAs) and Special Areas of Conservation (SACs). Subject to the implementation of these measures, it can be concluded that the Appeal Proposals will not give rise to likely significant adverse effect upon the integrity of these European Protected sites. I consider therefore that the Appeal proposals fully comply with Local Plan Policy ENV1.

#### Summary

- 4.54. As I go onto demonstrate below, the implications of the Appeal Proposals for the Solent SPAs and SAC have been fully considered and all necessary mitigation / avoidance measures have been put forward and agreed with Natural England. I consider that the Appeal Proposals fully accord with all relevant legislation and planning policy.

## 5. BASELINE CONDITIONS AND CONSIDERATION OF POTENTIAL IMPACTS

5.1. In the paragraphs below, I outline the survey work that has been conducted within the Appeal Site in order to determine the baseline situation for impact assessment purposes. I have also summarised the potential effects that would arise from the Appeal Proposals in terms of effects on habitats and species, and any mitigation and enhancements which would need to be brought forward. References to the Ecological Appraisal, Phase 2 Survey Report and information contained in the sHRA are given where necessary.

5.2. The Appeal site has been subject to a number of ecological surveys, assessment and consideration by Abbas Ecology. The following surveys have been undertaken:

- Desk study to highlight any existing records of wildlife utilising the Appeal Site or surrounding area and to identify any designated sites within or around the Appeal site (by Abbas Ecology) [my Appendices 1 and 2];
- An extended Phase 1 habitat survey to map the habitats present and assess opportunities for protected species (by Abbas Ecology in January 2019) [CD 1.31];
- Specific bat surveys / comprising;
  - Internal and external building assessments (by Abbas Ecology in January 2019 [CD 1.31];
  - Dusk emergence and dawn re-entry bat surveys of buildings (four surveys undertaken by Abbas Ecology between May and June 2019) [CD 1.32];
- Specific Badger survey (by Abbas Ecology in January 2019) [CD 1.31];
- Specific Great Crested Newt Pond Scoping Surveys *Triturus cristatus* surveys (by Abbas Ecology in January 2019) [CD 1.31];
- Nesting bird surveys (by Abbas Ecology in January 2019) [CD 1.31]; and
- Specific attention was also paid to the potential presence of other protected species such as Dormice and reptiles (Abbas Ecology, my CD 1.31).

- 5.3. The survey methodology and results for the work undertaken by Abbas Ecology is outlined in the Ecological Appraisal and the Phase 2 Survey Report.
- 5.4. Having reviewed the results of the surveys undertaken by Abbas Ecology, I am satisfied that all surveys have been undertaken by trained professional ecologists, and in accordance with all current legislation and relevant guidance. As such I consider that the information as set out in this Proof of Evidence is up to date and is in line with best practice, allowing the baseline situation to be established against which potential effects of the Appeal proposals may be considered.

### **Ecological Features of the Appeal Site**

- 5.5. The Appeal Site comprises a mix of amenity garden space, hardstanding and existing buildings (residential), typical of suburban landscapes. The habitats found within the Appeal Site are of negligible intrinsic ecological value.
- 5.6. Further information on the habitats present within the Appeal Site are set out in within the Ecological Appraisal (**CD 1.31**).

### **Wildlife Use of the Appeal Site**

- 5.7. The Appeal Site has been subject protected species surveys by Abbas Ecology, which have in turn been reviewed by Ecology Solutions. The results of the surveys undertaken are reported in full in the Ecological Appraisal (Abbas Ecology [**CD 1.31**]) and the Phase 2 Survey Report (Abbas Ecology [**CD 1.32**]).
- 5.8. In summary, bat surveys demonstrated that one of the buildings supports a Brown Long-eared *Plecotus auritus* bat roost, and one building supports a Common Pipistrelle *Pipistrellus pipistrellus* roost. The site also has potential to support nesting birds.
- 5.9. No evidence of Badgers or Great Crested Newts was recorded during specific surveys, nor evidence of any other protected species.
- 5.10. Following discussions with New Forest District Council Local Ecologist Chris Hodsman and New Forest District Council Development Management Team Leader Ian Rayner (Appendix 3 of my evidence), matters pertaining to

protected species have been dropped as a reason for refusal. However if any other party has concerns, all of the necessary information is available through the various appendices of this evidence. As such no further consideration is afforded to protected or notable species issues within this Proof of Evidence.

## **Designated sites**

### *Statutory Designated Sites*

5.11. There are no statutory designated sites of nature conservation interest within the Appeal Site or immediately adjacent to the appeal site. The nearest statutory designated site is the New Forest Site of Special Scientific Interest (SSSI), which lies approximately 1km to the west of the Appeal Site at its closest point. A number of European / International designated sites are also situated in close proximity of the Appeal Site. The closest of these include:

- The Solent and Southampton Water SPA and Ramsar Site (approximately 1.1km north-east of the Appeal Site at its closest point);
- The Solent Maritime SAC (approximately 1.4km south of the Appeal Site at its closest point);
- The Solent and Isle of Wight Lagoons (approximately 1.6km south-east of the Appeal Site at its closest point); and
- The New Forest SAC (approximately 1.8km west of the Appeal Site at its closest point).
- The New Forest SPA (approximately 3km north of the Appeal Site at its closest point); and
- The New Forest Ramsar site (approximately 3km north of the Appeal Site at its closest point).

5.12. Further details in relation to statutory designated sites, including their respective Conservation Objectives are given in the sHRA (Abbas Ecology) at Appendix 1 of my Evidence.

5.13. It is considered that the Appeal Site in combination with other plans and projects may give rise to increased recreational pressure upon the Solent and Southampton Water SPA and Ramsar Site, the New Forest SAC, and the New Forest SPA and Ramsar Site without appropriate mitigation being secured. It is

however agreed between the parties, together with Natural England, that subject to the appropriate financial contributions being secured in line with the Solent Recreation Mitigation Strategy and Mitigation for Recreational Impacts on European Sites Supplementary Planning Document (SPD) (**CD 4.6**), the proposals will not give rise to adverse impacts on the above sites through increased recreational pressure. In this respect, draft legal agreements providing for the payment have been submitted to the LPA. Subject to the completion of an appropriately worded and legally binding agreement, both parties agree that there will be no pathway for adverse impacts to relevant protected sites through increased recreational pressure.

- 5.14. No concerns in terms of recreational pressure were raised by Natural England subject to the appropriate financial contributions. For completeness I attach at Appendix 2 of my evidence correspondence from NE confirming the above.
- 5.15. It is considered that without appropriate mitigation, the development proposals for the Appeal Site could give rise to adverse impacts on Solent SPAs, SACs and Ramsar sites through increased nutrient discharge. In this regard, I examine the relevant responses from statutory consultees within Section 6 of my evidence.

*Non-statutory Designated Sites*

- 5.16. There are no non-statutory designated sites of nature conservation interest within or immediately adjacent to the Appeal Site. A total of 23 Sites of Importance to Nature Conservation (SINC) are present within a 2km radius of the Appeal Site.
- 5.17. The LPA have not raised any concerns regarding non-statutory designated sites.

## 6. POSITION OF STATUTORY CONSULTEES

- 6.1. Consultation responses regarding the proposed development which are of relevance to ecology and nature conservation were received from Natural England, the government's statutory advisors in relation to ecological matters. Copies of Natural England's Consultation response is appended to my Evidence (Appendix 2) and is considered in detail below.

### Natural England

- 6.2. Firstly it is evident that the statutory authority has not objected to the Appeal Proposals on the grounds of protected species. In their consultation response Natural England reminded the LPA of their duty to ensure that protected species are a material consideration in the planning process and to ensure that adverse indirect impacts are considered and (where relevant) mitigated for within planning proposals.
- 6.3. Similarly, Natural England did not object on the grounds of potential adverse impacts on statutory designated sites as a result of increased recreational pressure. However, this was on the basis that the applicant adheres to the local Mitigation Strategy for European Sites SDP (**CD 4.6**) – a mechanism for securing financial contributions to offset any potential recreational impacts.
- 6.4. In their initial consultation response dated 24 June 2020, Natural England confirmed that the only matter upon which they had concerns and needed to be addressed was to be addressed related to potential effects on water quality in the Solent European designated sites. To avoid unnecessary repetition of material in Appendix 5, I will simply summarise here that Natural England had a principal concern regarding the use of a package treatment plants (PTP) which had originally been proposed by the Appellant and that overall, the proposals for the Appeal Site would not currently be able to achieve nutrient neutrality.
- 6.5. It is worth noting that there is currently an inherent conflict between the advice offered by Natural England and the advice offered by the Environment Agency. Natural England approve of the use of PTPs as long as these can be demonstrated to clean waters to an environmentally acceptable standard. The Environment Agency object to use of PTP (regardless of their ability to resolve

nitrate matters) when it is otherwise possible to connect to a strategic sewer network.

*Natural England's Position on the Solent and Nutrient Neutrality*

- 6.6. In recent years, nutrient neutrality has become an issue for authorities within the Solent area. The key consideration is whether the wastewater from a development will ultimately drain to one of the relevant designated sites (SPAs, pSPAs and SACs).
- 6.7. The Partnership for South Hampshire (PfSH), a collaboration of twelve local authorities around the Solent, commissioned the Integrated Water Management Study (IWMS) looking into the effects of planned future development on water quality and water resources. The subsequent report was published in March 2018. The report found that in most cases, Solent waterbodies had 'less than good' ecological status for elements such as dissolved inorganic nitrogen (made up of nitrates, nitrites and ammonium). It was also found that many Wastewater Treatment Works (WwTW) would soon reach capacity, at which point suitable mitigation works would be required. It is envisaged that a comprehensive mitigation package will come forward in the future, which when adopted by relevant Councils, will provide a vehicle to off-set increased nutrient load. However, no such strategy was in place and available at the time of the planning application for the Appeal Site.
- 6.8. Natural England advised the New Forest District Council verbally on the 9<sup>th</sup> August 2019 that development which would result in an increase in 'overnight' stays, should achieve nitrate neutrality in order not to give rise to potential likely significant effects. The Council acting as competent authority under the Habitats Regulations, must have regard to Natural England's advice as the appropriate statutory consultee and the Council should only depart from the advice of Natural England for cogent and justified reasons.
- 6.9. In lieu of a strategic mitigation package (which is still being developed by PsFH and others), Natural England has produced guidance on how to calculate nitrogen budgets for developments. The calculations compare the existing land use to the proposed land use in terms of nitrate loading and use assumptions on water use and occupancy rates to help planning applicants determine

whether more or less nitrate will come from the site either through run off or via the sewerage system. In the absence of a strategic approach, some Councils are also using Grampian Conditions as a vehicle to securing nutrient neutrality. This is New Forest District Council's position, as set out in its position statement. It is clear that the evidence base is available to understand the issue and also how to mitigate the potential effects. However, the practical element of delivering the mitigation often lags behind the evidence base.

*Position of New Forest District Council*

- 6.10. New Forest District Council refused Outline Planning Permission, citing impacts on protected species (Reason 4) and Solent SPAs and SACs (Reason 5) as reason's for refusal. As outlined above, reason for refusal 4 has since been dropped and so will not be considered here.
- 6.11. The Council's position was supported by the New Forest District Council Ecologist, Chris Hodsman, who in his ecology response (Appendix 4 of my evidence) outlined concerns pertaining to nutrient neutrality and specifically, the unsuitability of the proposed package treatment plant (PTP) and ultimately recommended refusal on this basis:
- "In summary, I am not of the opinion that use of PTP is appropriate for nitrate mitigation in this situation and is likely to meet regulatory resistance from the Environment Agency from whom a consent to discharge would be required."*
- 6.12. In line with current guidance, the Appellant was able to demonstrate, through using a Nitrogen Balance Calculator, that the Appeal Site would achieve a reduction in nutrient discharge, resulting in a net decrease of 10.9 kg TN/yr (**CD 1.36**) utilising a PTP. Nonetheless the Appellant accepts that an on-site mitigation package, which discharges to the sewage network could still give rise to likely effects since the sewage treatment works always discharges at a given nutrient concentration, irrespective of what level of nitrates arrives at the treatment works.
- 6.13. The appellant has therefore pursued an off-site mitigation solution. In many cases, off-site mitigation would entail securing agricultural land and converting it

to a use that reduces nitrogen inputs (e.g. grassland or woodland). In some instances, it may be possible for developers to join a nutrient neutrality scheme whereby land is bought and converted on a large scale, offering developers the chance to buy 'credits' within this strategic approach. The Heaton Farm Scheme which operates on the Isle of Wight, owned and managed by Heaton Farms, is an example of such a scheme.

- 6.14. Natural England has confirmed that the Heaton Farm Scheme is appropriate to offset nitrogen from waste water discharging from the Pennington waste water treatment works (Appendix 5 of my evidence) and from the appeal site.
- 6.15. In an effort to resolve the matter, the appellants tried to engage with the LPA over the potential to utilise the Heaton Farm Scheme (Appendix 6 of my evidence) but it is understood that the Council did not engage with the appellant on this particular point until after the application was refused. The appellant continued to seek to progress the planning agreements for a number of months following refusal without a meaningful response from New Forest District Council.
- 6.16. Prior to the refusal of the Application, the appellant proposed two options for securing suitable mitigation through the Heaton Farm Scheme. **Option 1** is on the basis of two separate agreements, the first of which was an overarching agreement between Mr Heaton of Heaton Farm, New Forest District Council and Isle of Wight Council to secure the mitigation scheme via the Heaton Farm scheme. The second agreement was between Lifestory Group (made up of Pegasus and Renaissance Retirement Ltd) and New Forest District Council and would have obliged Lifestory to acquire credits to offset the nutrient status and restricts occupation of any proposed development granted by planning permission, until those credits have been secured. This would have had the same effect as the proposed Grampian condition.
- 6.17. **Option 2** comprises one composite agreement. The draft agreement for Option 2 was substantially based on a similar agreement that Fareham Borough Council has already entered into on another scheme.
- 6.18. **Option 1** and **Option 2** would both require Isle of Wight Council to be a party to the agreement. Since the Appeal was submitted, the Isle of Wight Council has confirmed that it will monitor the Heaton Farm Scheme but that it will not

engage in respect of **Option 2** as it will not engage on an application by application basis.

- 6.19. Therefore, following the provision of Option 1 by the appellant, the Isle of Wight Council and New Forest District Council are now progressing the overarching agreement with Mr Heaton in order to secure the Heaton Farm Scheme. This agreement will allow for the acquisition of credits and for corresponding land at the Heaton Farm Scheme to be taken out of agricultural use. I understand that this agreement has not yet been completed, but I am not aware of any reason as to why this agreement will not complete and the Heaton Farm Scheme will not be secured pursuant to it.
- 6.20. The Heaton Farm Scheme is accepted by all stakeholders as appropriate to mitigate the nitrates impacts of the development (Natural England and New Forest District Council) and will be monitored by Isle of Wight Council.
- 6.21. Therefore, I consider subject to the imposition of a Grampian condition as agreed and in accordance with the Council's Statement of Case and given the progress of the overarching agreement which will secure the Heaton Farm Scheme, the proposals will fully accord with relevant legislation, planning policy and case law.
- 6.22. Once the overarching agreement is entered into and these credits are secured, any consent granted on appeal could be occupied without any potential effects arising from nitrate issues. On that basis the competent authority is able to reach the decision that it is certain beyond all reasonable scientific doubt that there will not be an effect on the integrity of the European sites alone or in combination with other plans and projects.

## 7. SUMMARY AND CONCLUSIONS

- 7.1. Ecology Solutions were first contacted by the Pegasus Ltd on behalf of the Appellant, Renaissance Retirement Ltd in November 2020, and was provided with a briefing bundle comprising copies of the planning applications, and various consultation responses, together with copies of previous ecological surveys that had been undertaken at the Appeal Site. I was asked if I would undertake a review of the survey information previously prepared for the Appeal Site by Abbas Ecology and Arch Associates and consider whether I could support the Appeal proposals.
- 7.2. Having reviewed the ecological information I can confirm that I agree with the principal findings as set out in the documents produced to date.
- 7.3. The Appeal Site is in close proximity to a number of statutory designated sites, including a number of SPAs, SACs and Ramsar sites. As such, without adequate assessment and suitable mitigation, there is risk that the Appeal Site could have an adverse effect on European / International sites of importance. There are no non-statutory designated sites which would be affected by the development proposals.
- 7.4. Habitat and species surveys have been undertaken by Abbas Ecology and the baseline ecological condition of the Appeal site is well understood.
- 7.5. The habitats present within the Appeal Site are considered to be of generally negligible biodiversity value, comprising significant areas of hardstanding and residential buildings with limited semi-natural habitat present.
- 7.6. Detailed surveys undertaken within the Appeal Site have confirmed that the Appeal Site supports two bat roosts of limited conservation value. The development proposals will retain and enhance foraging and commuting opportunities for any bats which may be present in the wider area.
- 7.7. Reason for Refusal 4 related to protected species (bats) the failure of the Development Proposals to meet the three derogation tests as set out by the Habitats Regulations. However, refusing the application on these grounds, the Local Planning Authority appeared to have fundamentally misunderstood the provisions of the Habitat and Species Regulations 2017, and indeed the role of

the Local Planning Authority in such matters.

- 7.8. Following engagement with the Local Planning Authority, Reason for Refusal 4 was subsequently dropped.
- 7.9. As such, whilst issues have been raised with regard to protected species, none of the current reasons for refusal relate to the ecological surveys or the baseline position established from a suite of ecological surveys, or perceived impacts on protected species.
- 7.10. The key focus expressed by New Forest District Council and Natural England is in relation to impacts on statutory designated Solent sites, due to the potential for increased recreational pressure and nitrogen output as a result of development (i.e. Reason for Refusal 5).
- 7.11. In my Proof of Evidence, I discuss the issues relating to the potential for increased recreational pressure, and achieving a reduced nitrogen output. In terms of potential impacts from recreation pressure, this has been resolved by an appropriate financial contribution to the strategic measures which will be secured in a planning agreement. In addition the available mechanisms for securing off-site mitigation regarding the discharge of nutrients into the Solent have been explored and progressed with the Council, and this will be secured by a suitably worded Grampian style condition and the conclusion of the overarching planning agreement to secure the Heaton Farm Scheme that New Forest District Council and Isle of Wight Council are negotiating.
- 7.12. In conclusion, I am satisfied that subject to the agreed and appropriately worded Grampian condition, there are readily available routes which will fully mitigate any potential for adverse effects on statutory designated sites of European and international importance.
- 7.13. In light of the above, I consider the Appeal Proposals accord with relevant nature conservation objectives and are in step with relevant legislation, national and local planning policy and all relevant guidance in relation to nature conservation. There are clear routes to securing suitable mitigation in respect of European and International sites in terms of recreation and nutrient enrichment. It can therefore be concluded that there are no justifiable reasons for dismissing the appeal or rejecting the appeal proposals on the grounds of ecology and nature conservation.



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