



Canterbury City Council
District Plan Review

Regulation 18 Consultation
Draft Canterbury District Local Plan to 2045
Land at Blean Common, Blean
Site Submission

January 2023



gladman.co.uk



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1 INTRODUCTION

1.1 Context

1.1.1 Gladman Developments Ltd (herein 'Gladman') are promoting land at Blean Common for residential development. The 4.2 hectare site, shown edged red on Figure 1 below, offers an ideal opportunity to continue growth in Blean and develop a high quality, sustainable residential scheme that could make an important contribution to meeting housing needs in the District and help to continue to ensure the viability of local services and facilities within Blean.

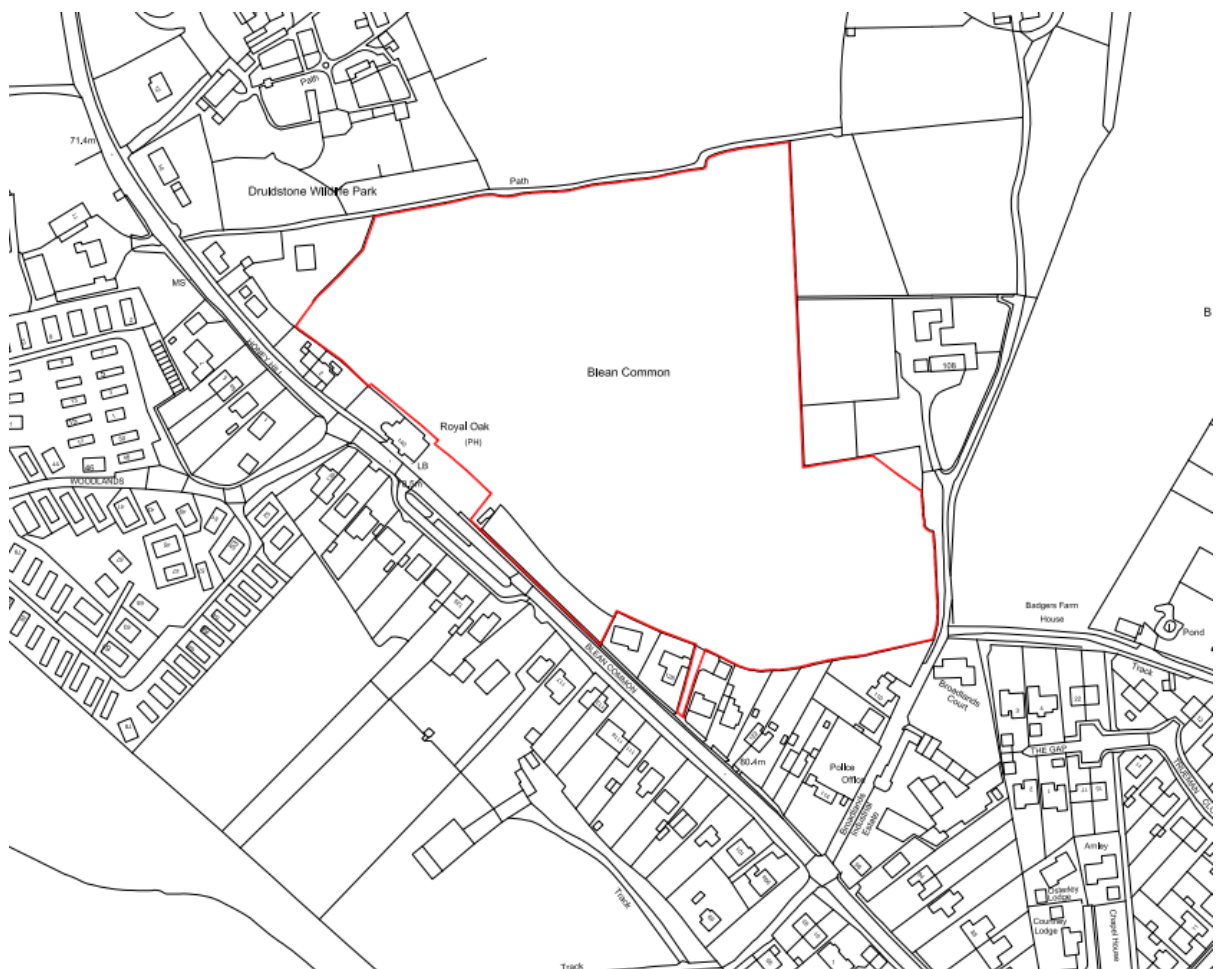


Figure 1: Site Location Plan- Blean Common, Blean

1.2 Local Plan Strategy

- 1.2.1 As Gladman have set out in our principal representation document to the Regulation 18 consultation which focuses on the spatial strategy, district-wide and development management policies, we support the Plan's aims to direct growth to existing sustainable settlements. However, in respect of Blean we do not consider that the allocation proposed in the Plan Review supports this aim, alongside maintaining the vitality and sustainability of the settlement in the future.
- 1.2.2 This site submission details the suitability of Blean, due its level of service and facility provision, to accommodate further growth through the District Plan Review. Blean is classed as a Category 2 – Larger Village in the settlement hierarchy meaning that it is deemed to provide a range of services and facilities, including employment opportunities and access to public transport, which are considered to serve the wider hinterland. Furthermore, the settlement is located only a 10 minute drive or 14 minute bus journey from the centre of Canterbury, with buses running frequently throughout the day, 7 days a week. Despite this, the District Plan Review in its current form, only proposes additional growth of 36 dwellings in Blean through to 2045.
- 1.2.3 Gladman highlights that Land at Blean Common, Blean scores positively within the Strategic Land Availability Assessment (SLAA) where it is assessed under site reference SLAA10.
- 1.2.4 Appendix C of the SLAA states that land at Blean Common, Blean is described as technically suitable (noting, 'any identified constraints may affect yield'), before highlighting that the site is suitable in relation to existing policies, is available and achievable.
- 1.2.5 The assessment table further recommends a yield of 88 dwellings and notes that there could be an opportunity to provide open space and landscape buffers to mitigate any potential landscape impacts.
- 1.2.6 The one reason provided in the Development Topic Paper for rejection of the Blean Common site for potential allocation is that *"following subsequent advice from the council's environmental consultants, it is understood that sites within 500m of Blean Woods could have the potential to adversely impact the designated sites."* However,

Gladman have demonstrated through their planning application on the site¹, to the satisfaction of Natural England and other key consultees, that development of up to 85 dwellings could be brought forward **without** adverse impact upon Blean Woods SAC. Gladman would therefore question the basis for the decision to reject the site for allocation, which directly conflicts with the detailed Habitats Regulation Assessment information submitted in respect of the site.

- 1.2.7 The HRA submitted as part of the planning application can be found at Appendix 1 of this submission document.
- 1.2.8 In this regard, Gladman contend that the site should be further considered for residential allocation which would support housing delivery in Canterbury and deliver a greater supply contingency above the proposed housing requirement.
- 1.2.9 Gladman also consider that Blean should be directed further residential growth over the plan period to ensure the future viability and sustainability of the services and facilities in Blean. Moreover, directing Blean only 36 dwellings across the plan period does not align with the strategy across the other Rural Settlements, as set out in the table below:

¹ Ref: CA//15/02523

Table 1 - Rural Service Centre Sustainability and Growth

Rural Service Centre	Number of dwellings allocated in the adopted Canterbury District Local Plan (2017)	Proposed Number of Dwellings Allocated	Total Dwellings Allocated 2011-2045	Rural Settlement Study (October 2022) Sustainability Score²
Blean	0	36	36	20
Littlebourne	0	350	350	24
Sturry	1080	160	1,240	41
Bridge*	0	88 ³	88	27
Chartham	20	170	190	36
Hersden	800	168	968	22

**located in the AONB*

1.2.10 Table 1 demonstrates that Blean is comparably sustainable to other rural service centres, including Littlebourne, Bridge and Hersden, according to the Council's own study, but it is proposed to receive significantly less growth between 2011-2045.

1.2.11 It is important to understand the degree to which new housing development and consequential population growth has on the sustainability and vitality of settlements. An under-delivery of housing has real-world impacts, such as those experienced by Tadcaster. Tadcaster is a market town situated in Selby District, North Yorkshire and while the town has a larger population than the parish of Blean the context and experiences are relevant.

1.2.12 Since 2011 Tadcaster has only experienced housing growth of 25 new dwellings, despite having been allocated a minimum housing target of 500 between 2011-2027.

² Rural Settlement Study (October 2020) Canterbury City Council:
<https://storymaps.arcgis.com/stories/d6393d28d79243f4b634e7edecb75c3b>

³ The allocation of site/s for 75 dwellings of this requirement is deferred for consideration through the Bridge Neighbourhood Plan

Housing delivery in the town appears to have been significantly limited prior to 2011 and as a result the town's population has only increased by 254 people or 2% between 2001-2020. In comparison to a population increase of 20% across Selby District and 14% nationally.

- 1.2.13 Furthermore, the number of children in Tadcaster (i.e. those aged 0-15 years old) declined by 132 (-9.1%) over the period 2001 to 2020, compared to an increase of 5.5% in Selby District and as high as 9.5% nationally. The number of residents aged between 16- 24 living in Tadcaster fell by 62, or -10.1%.
- 1.2.14 Limited housing growth and options for first time buyers, family houses and affordable homes has restricted opportunities for younger families to live in the settlement. This has resulted in all schools within the town being under-capacity, a retail vacancy rate above 20% and house prices increasing by 56% since 2011 (in comparison to 42% locally and 20% across England).
- 1.2.15 While Blean and Tadcaster are settlements of different scales, Tadcaster represents a clear example of how limited housing growth can impact settlements. While it is difficult to ascertain the demographic statistics of the settlement, Blean has significant available capacity in the local primary school⁴. Restricting housing delivery in the settlement further may impede the vitality and sustainability of local schools, shops and businesses further.

⁴<https://www.get-information-schools.service.gov.uk/Establishments/Establishment/Details/118356?searchQueryString=SelectedTab%3DEstablishments%26SearchType%3DLocation%26SearchType%3DLocation%26LocationSearchModel.Text%3Dblean%26LocationSearchModel.AutoSuggestValue%3D51.3066596984863%252c1.04328000545502%26b%3D1%26b%3D4>

2 SITE AND SETTLEMENT

2.1 Site Location

2.1.1 The site is located adjacent to the northern edge of Blean village, off the A290 Blean Common measuring 4.20 hectares and capable of delivering approximately 85 dwellings. The site represents a suitable and sustainable location for housing, well related to the built form alongside being well contained within the landscape, important trees and landscape features will be retained where possible.

2.2 Access

2.2.1 Gladman have instructed highways consultants to undertake a detailed access appraisal which demonstrates that safe vehicular access can be achieved into the site off Blean Common.

2.2.2 It is proposed that the site will be accessed from Blean Common, via a simple priority-controlled T-junction. It has been confirmed that the required visibility splays can be achieved and that the site access junction will operate comfortably within capacity in both the morning and evening peak periods with the proposed development traffic.

2.3 Blean

2.3.1 With a population of 1,449 residents, the Canterbury District Local Plan (2017) identifies Blean as a 'Local Centre'. While the emerging Local Plan identifies the settlement as a Tier 2, 'Rural Service Centre' whereby new development within settlement boundaries will be supported.

2.3.2 Blean benefits from a wide and varied range of services and facilities, all of which would be accessible for future residents of the site on foot, thus reducing the need to rely on private vehicles. The services available in Blean include, but are not limited to, a primary school, doctors' surgery, Lonsdale Superstore and Post Office, village hall, public house and church.

2.4 Public Transport

- 2.4.1 The site benefits from being located in close proximity to very good public transport links with a frequent bus service to Canterbury city centre, while the nearest railway station is located at Canterbury West which is situated 4.1km south east of the development site.
- 2.4.2 The site is within close walking distance to existing shops, services and employment opportunities while the Crab and Winkle Way cycleway, a Sustrans National Cycle Network route, runs along minor roads and a disused railway between Canterbury and Whitstable, runs c.600m north east of the site, and is accessible from the site via public rights of way and Chapel Lane (a minor road). This provides a pleasant, attractive and direct cycle route into the centre of Canterbury. On site pedestrian and cycle accessibility will be designed to provide safe and convenient links to the existing highway and footpath network.

3 CONCLUSION

3.1 Summary

- 3.1.1 Gladman support the Council's aim to direct growth towards the most sustainable settlements within the district, however without further growth directed towards Blean then there may be real implications for the sustainability and viability of the settlement. In addition, further growth in Blean which represents a sustainable location in close proximity to Canterbury city could support the Council's development strategy and provide an additional supply buffer above the housing requirement.
- 3.1.2 Gladman submit that the land off Blean Common, Blean is suitable, available, and deliverable and should be considered for allocation to support housing delivery in the settlement comparable to that of other Local Centres or Rural Service Centres.
- 3.1.3 We are keen to engage in constructive conversations about the site's future potential with the Council and local stakeholders and the opportunity it presents to deliver benefits to existing and future residents of Blean.

4 APPENDICES

4.1 Appendix 1: Shadow HRA – Gladman Developments



Gladman Developments Ltd.

Land at Blean Common, Blean

SHADOW HABITAT REGULATIONS ASSESSMENT

August 2022

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Figure 1: Site Location Plan

APPENDICES

Appendix A: Legislation and National Policy

1.0 INTRODUCTION

- 1.1 The following Shadow Habitats Regulations Assessment has been prepared by FPCR Environment and Design Ltd., on behalf of Gladman Developments Ltd., to assess the potential effects of the proposed Blean Common planning application (REF: CA/16/01153), henceforth referred to as “the Site”, on nearby Natura 2000 sites, in accordance with the Conservation of Habitats and Species Regulations 2019.
- 1.2 The purpose of this sHRA is to provide the “Competent Authority” (Canterbury City Council), under the Habitats Regulations, the required information to either a) conduct their own HRA, as is their legal obligation, or b) adopt this document as the official HRA.

Proposals and Site Context

- 1.3 The Site (*Figure 1*), which measures approximately 4.2ha in area, lies on the northern periphery of the village of Blean (central OS Grid Reference: TR 119 613), and consists of a single arable field compartment, with associated field margins composed of common and widespread species, typical of cultivated habitat. The site was bound by hedgerows, fence lines, species-poor semi-improved grassland margins, mature standard trees, and ditches.
- 1.4 Field margins along the southern edge of the field featured an extensive tall ruderal component, with occasional scattered scrub. Dense scrub was present along the eastern boundary, with a small woodland compartment adjacent to the southern boundary, and a larger woodland copse, bordering the northern boundary.
- 1.5 The Site is being submitted for outline planning for up to 85 residential dwellings, with associated access, green infrastructure, attenuation features, buffer strips, equipped play area, and public footways/cycleways.
- 1.6 Hedgerows along the site boundaries are to be retained, although a small section of the woodland/scrub to the south will require removal to facilitate site and pedestrian access. Green infrastructure will comprise a range of habitat creation measures, including woodland/scrub, wildflower grassland, standard trees, and wetland/drainage habitat. The most up to date version of the Development Framework Plan (*FPCR, drawing ref 6581-L-02 rev Z*) has been used to inform this assessment.

The HRA Process and Legislation

- 1.7 The relevant legislation and national policy are summarised in *Appendix A*.
- 1.8 The HRA process has developed into a four-stage process summarised as follows:
- Stage One: Screening - also known as the Test of Likely Significant Effect (TOLSE). If the Competent Authority cannot screen out a *likely significant effect (LSE)*, an Appropriate Assessment is required.
 - Stage Two: Appropriate Assessment - the Competent Authority will only agree to plans or projects that will not affect the *integrity* of a European site, assessed via a process also known as the “Integrity Test”. “Integrity” is assessed against a given European site’s published Conservation Objectives.

- Stage Three: Alternative Solutions - assesses any alternative solutions of a potentially damaging plan, or project, that failed the Integrity Test. If it is determined there are no alternative solutions to the proposals, the project cannot be agreed to, and it will either need to be changed or refused.
 - Stage Four: The final stage may allow a plan or project to proceed if after failing stage three, if it is for Imperative Reasons of Overriding Public Interest, and only if suitable compensatory measures are secured.
- 1.9 This HRA has been conducted in the knowledge of two recent influential cases: the People Over Wind Judgement (12th April 2018) and recent Holohan Judgement (7th November 2018); a summary of which is provided in *Appendix A*. *Appendix A* also provides some background and case law examples in relation to “*Likely Significant Effect*” and “*Functionally Linked Land*”, both of which are concepts discussed within this sHRA.
- 1.10 This sHRA identifies and considers each of the likely ecological pathways, in turn, between the Site and all Natura 2000 sites within a justified Zone-of-Influence (Zoi). Each was screened through a Stage 1: TOLSE for alone or in-combination effects, and any ecological pathways that could not be screened-out, or where specific mitigation was required to address a likely significant effect, were taken to a Stage 2: Appropriate Assessment.

Zone of Influence and the Natura 2000 Sites Considered

- 1.11 The following Natura 2000 sites have been screened-in to this HRA as they fall within 10km of the Site and cannot be ruled out through the application of a policy defined Zone of Influence, which in this case is a 6km buffer zone for the The Swale SPA and Bird Wise North Kent Strategic Access Management and Monitoring Scheme (SAMMS), and 7.2km for the Thanet Coast & Sandwich Bay SPA¹:
- Blean Complex SAC – 0.1km West (at Church Woods SSSI)
 - The Swale SPA/Ramsar – 3.6km Northwest
 - Tankerton Slopes & Swalecliffe SAC – 5.8km North (at Tankerton Slopes SSSI); and
 - Stodmarsh SPA/Ramsar/SAC (and Stodmarsh SSSI) – 6.1km East (outside the 6km SAMMS buffer **but** within the Stour Valley River Catchment Zone and subject to assessment for hydrological impacts)
 - Thanet Coast & Sandwich Bay SPA/Ramsar, 6.1km north of the Site boundaries – outside 6km SAMMS buffer **but** within larger site-specific risk zone.

Consultation Responses

- 1.12 The decision to submit this sHRA to Canterbury City Council, was based on the following consultation responses to the planning application.
- 1.13 In consultation with Canterbury City Council (June 2016), Kent County Council's Biodiversity Officer wrote in relation to designated sites:

¹ Canterbury City Council Planning Constraints GIS mapping portal
https://mapping.canterbury.gov.uk/webapps/Planning_information/ [accessed 10.08.22]

“With regards to European sites, in particular The Swale SPA/Ramsar site and Thanet Coast and Sandwich Bay SPA/Ramsar site, the proposed development site is in the area within which the potential for impacts cannot be ruled out and is therefore eligible to contribute to the strategic mitigation approaches for both of these SPA/Ramsar sites to avoid the need for a Habitats Regulations Assessment. We note the statement in the Planning & Affordable Housing Statement that the developer is “happy to enter into discussions regarding the payment of a proportionate financial contribution per household towards the mitigation of any additional impact on these sites” and advise that to progress this, details of the current status of the strategic mitigation approaches must be sought from the relevant officer within Canterbury CC.”

- 1.14 In consultation with Canterbury City Council’s Ecologist, Natural England wrote 01 July 2016, regarding the proposals:

“FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES

In considering the European site interest, Natural England advises that you, as a competent authority under the provisions of the Habitats Regulations, should have regard for any potential impacts that a plan or project may have. The Conservation objectives for each European site explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts a plan or project may have.

The consultation documents provided by your authority do not include information to demonstrate that the requirements of Regulations 61 and 62 of the Habitats Regulations have been considered by your authority, i.e., the consultation does not include a Habitats Regulations Assessment.

In advising your authority on the requirements relating to Habitats Regulations Assessment, it is Natural England’s advice that the proposal is not necessary for the management of the European site. Your authority should therefore determine whether the proposal is likely to have a significant effect on any European site, proceeding to the Appropriate Assessment stage where significant effects cannot be ruled out. Natural England advises that there is currently not enough information on certain impacts (see below) to determine whether the likelihood of significant effects can be ruled out.”

- 1.15 The new local plan devised by Canterbury County Council highlighted:

“As we develop the new Local Plan we will complete a Habitats Regulations Assessment (HRA) which will look at whether the plan might affect the protected features of a designated habitat site.

The HRA in the current Local Plan identified that more new development could potentially impact wintering birds because of a potential increase in recreational disturbance. The Thanet Coast and Sandwich Bay SPA and Thames, Medway and Swale SPA strategic access management and monitoring strategies were written to help stop this.

Along with potential impacts to wintering birds, we are aware that there are water quality concerns at the Stodmarsh protected site, and that more development could cause air quality impacts in the Blean complex (woods) conservation area.

The HRA will look at these potential impacts and identify any others, which will then be part of future Local Plan work. HRA options are not proposed at this stage.”

- 1.16 This sHRA will be completed in lieu of Canterbury City Council’s HRA, which is still in progress.

2.0 STAGE 1 SCREENING: BLEAN COMPLEX SAC

Designations

Blean Complex Special Area of Conservation²

Annex I Habitat – Primary Reason for Site Selection:

- 2.1 The SAC is classified under article 4(4) of the Habitats Directive as it supports an Annex I listed habitat type. The presence of Sub-Atlantic and medio-European oak, or oak-hornbeam, forest habitat forms the primary reason for the selection of the site as a SAC. At Blean, hornbeam *Carpinus betulus* coppice occurs, interspersed with stands of pedunculate oak *Quercus robur* and introduced sweet chestnut *Castanea sativa*. The sweet chestnut stands have also been managed historically as coppice.
- 2.2 Great wood-rush *Luzula sylvatica* is locally dominant throughout the woodland ground flora, with greater stitchwort *Stellaria holostea* found in more open glades.

Qualifying Species

- 2.3 The woodland that comprises Blean Complex forms important supporting habitat, and one of a few key British strongholds, for the heath fritillary butterfly *Mellicta athalea*; however, the species is not a primary reason for site selection.

Site of Special Scientific Interest

- 2.4 The boundaries of Church Woods (Blean) SSSI, East Blean Woods SSSI, and Ellenden Wood SSSI are each coincident with the boundaries of the SAC.
- 2.5 Church Woods SSSI comprises one of the most extensive areas of broadleaved woodland remaining in the Forest of Blean. The woodland supports a population of heath fritillary, a nationally rare species of butterfly. An outstanding assemblage of invertebrate species has also been recorded, along with a wide range of woodland birds, including three woodpecker species, eight warblers, and six tits. Several species which regularly breed here are elsewhere rather scarce in East Kent; these include woodcock *Scolopax rusticola*, nightjar *Caprimulgus europaeus*, redstart *Phoenicurus phoenicurus*, and wood warbler *Phylloscopus sibilatrix*. The area has especially good numbers of nightingales *Luscinia megarhynchos*.
- 2.6 Blean Woods is owned and managed by several partner organisations including the RSPB and is home to a variety of wildlife, including heath fritillary butterfly and various woodland birds, such as nightjars, woodpeckers, tawny owl *Strix aluco* and 35 pairs of nightingales.
- 2.7 Ellenden Woods comprises an ancient woodland site composed of several uncommon woodland types, including sessile oak-beech, hornbeam with pedunculate and sessile oak, and small plantations of sweet chestnut coppice. The wood supports a diverse flora with over 250 higher plants and 300 fungi present. Large numbers of insects, including three nationally rare species have been recorded.

² JNCC (2015), Natura 2000 Standard Data Form, Blean Complex, viewed 30th June 2022
<www.publications.naturalengland.org.uk/publication/5635542465729600>

- 2.8 The area also supports a diverse breeding bird community including wren *Troglodytes troglodytes*, blackcap *Sylvia atricapilla*, nightingale, and several common woodland species. Invertebrate species recorded here include brindled white spot moth *Ectropis extersaria*, two nationally rare flies (*Lophosia fasciata* and *Syntemna nitidula*), and a rare beetle *Cicindela hybrid*. Hazel dormouse *Muscardinus avellanarius* have also been recorded here.
- 2.9 While the SSSI designation of each separate woodland compartment are National designations, not European statutory designations, the elements of each SSSI do form component parts of the larger Blean Complex SAC and have therefore been referred to within this document, where relevant.

Conservation Objectives³

- 2.10 Regarding the SAC and the natural habitats and/or species for which the site has been designated (i.e., the qualifying features, Sub-Atlantic and medio-European oak, or oak-hornbeam forest, as detailed above), and subject to natural change:

“...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”*

Threats and Pressures

- 2.11 The following section details the main threats and pressures that have been identified through existing documentation and evidence related to the SAC itself.
- 2.12 The Site Improvement Plan (SIP) for the Blean Complex⁴, identified one key threat and/or pressure relevant for this HRA (*Table 1*).

Table 1: Relevant Threats and Pressures – Blean Complex SAC

Priority & Issue	Threat or Pressure	Measure
Air Pollution: risk of atmospheric nitrogen deposition	Threat	Investigate potential atmospheric nitrogen impacts

- 2.13 Blean Complex comprises several interconnected SSSI units, the nearest of which includes Church Woods, comprising 526ha of lowland broadleaved, mixed and yew woodland. All 16 SSSI units that form Church Woods were found to be in ‘favourable’ condition, except one (assessed as ‘unfavourable – recovering’) in the last assessment of each unit, conducted between 2009 and 2021⁵.

³ Natural England (2019), European Site Conservation Objectives for Blean Complex Special Area of Conservation Site Code: UK0013697 Publication date: 27 November 2018 (Version 3)

⁴ Site Improvement Plan: Blean Complex (SIP018). Natural England (01/09/2015 version 1) <http://publications.naturalengland.org.uk/publication/6295825890148358>

⁵ Natural England (2011) Church Woods Condition Assessment, <<https://designatedsites.naturalengland.org.uk/ReportUnitCondition.aspx?SiteCode=S1004055&ReportTitle=Church%20Woods.%20Blean%20SSSI>> [accessed: 09.08.22]

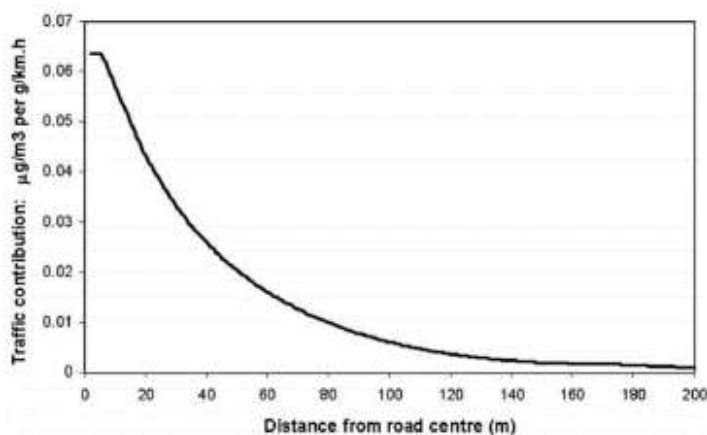
- 2.14 An area of semi-natural ancient woodland, Butler's Court Wood, lies directly adjacent to the northern site boundary. The ancient woodland, while not included in the Blean Complex SAC designation, has connectivity north and east to the neighbouring West Blean & Thornden Woods SSSI, much of which is noted to be in 'favourable condition'. Two units of West Blean & Thornden Woods, 2.2km east of application site were assessed as in 'unfavourable condition', related to deer browsing and lack of appropriate management. KCC commented in 2016 that:

"The site is immediately adjacent to an area of ancient woodland. A 30m buffer to the ancient woodland is proposed, in excess of the 15m minimum recommended in Natural England's Standing Advice for Ancient Woodland. While the details of the buffer zone are not yet available, alongside the provision of additional open space for recreational activities, the potential for increased recreational access to affect the ancient woodland should be minimised."

- 2.15 No further consideration will be given to impacts on the ancient woodland, given the extensive greenspace provision along the northern boundary of the site, which will provide a wide buffer separating the development from the woodland habitat, and an equipped play area that will offer alternative recreational opportunities.

Air Quality

- 2.16 Since the SIP was produced, there is new published guidance from Natural England (2018)⁶ on air quality with a four-step process for HRAs. Where a road is within 200m of European site is the distance criteria, which is based on the often-quoted evidence⁷ that shows pollutant concentrations fall away steeply with distance from the road.






Potential Ecological Pathways

- 2.17 This section (*Table 2*) identifies the possible ecological pathways between the site and the SAC that should be considered, applying assessment criteria based on best available scientific knowledge, and concludes whether there is a risk, or uncertainty, of a likely significant effect (LSE). Where risk or uncertainty is identified, those ecological pathways are then considered further in an Appropriate Assessment. The test does not require an assessment of every conceivable pathway, and the Precautionary Principle is applied only where there is *reasonable* scientific doubt that a pathway may have a LSE.




⁶ Natural England (2018) Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations

⁷ Design Manual for Roads and Bridges Volume 11 Environmental Assessment Section 3 Environmental Assessment Techniques Part 1 Air Quality

Table 2: Ecological Pathways and HRA Screening Conclusions – Blean Complex SAC

Ecological Pathway	Assessment applied	Likely Significant Effect
Habitat Loss (Site 0.1km from SAC site)	Will there be any direct loss, damage, or fragmentation of habitat within the SAC itself? - No	No LSE - Screened Out
Air Quality - Traffic	Will there be a likely significant effect from nitrogen deposition on the SAC from increased traffic as a result of the proposals? Assessment: Natural England 4 step Guidance ⁸ on traffic emissions. Step 1: Does the proposal give rise to emissions which are likely to reach a European site? Yes Step 2: Are the qualifying features of sites within 200m of a road sensitive to air pollution? Yes , the following SAC features are within 200m of roads in a 3km radius of the Site, and which provide likely routes of travel to/from it. 1. New internal roads within in the development will be within 200m of the SAC. 2. 0.1km west Blean Common Road (A290) – 615m section.  3. 1.2km south Blean Common Road (A290) – 165m section.  4. 1.7km south New Rd. – 1.4km section. 	No LSE - Screened Out

⁸ Natural England Internal Guidance – Approach to Advising Competent Authorities on Road Traffic Emissions and HRAsV1.4 Final - June 2018

Ecological Pathway	Assessment applied	Likely Significant Effect
	<p>5. 2.1km west Denstroude Ln. - 690m section</p>  <p>6. 1.3km northwest Denstroude Ln. – 275m section</p>  <p>7. 1.1km northwest Fox’s Cross Rd. and Pean Hill – 600m section</p>  <p>Step 3: Could the sensitive qualifying features of the site be exposed to emissions? Yes</p> <p>Step 4: Application of screening thresholds. Use of the 1000 Annual Average Daily Traffic. An AADT figure has not been calculated for each location, but we can confidently conclude that an 85 dwelling housing development will not reach the 1000 AADT threshold.</p> <p>Advice sought from Natural England concerning the application, dated 2nd August, agreed with the above assessment, concluding that <i>“increased traffic flow from a development of this size is unlikely to have significant effect with regards to air quality in relation to the Blean Complex SAC”</i>⁹.</p>	

⁹ Moore, S. (2022) Advice Note: Planning Consultation for Land at Blean Common

Ecological Pathway	Assessment applied	Likely Significant Effect
Air Quality - Dust from construction	<p>Will there be a likely significant effect on the SAC from temporary dust generated during construction near the SAC? Assessment:</p> <ol style="list-style-type: none"> The distance dust particles are likely to travel is between 350-400m^{10,11} with the negative effects of dust on habitats and flora greater in magnitude the closer to the source of release (mostly within 100m from source). <p>The SAC is 100m from the Site at its nearest point and thus lies within this zone of dust dispersal. A Likely Significant Effect is anticipated in the absence of mitigation.</p>	LSE without appropriate mitigation Appropriate Assessment Required
Operational pathway - Cat Disturbance or Predation	<p>Will there be a likely significant effect from disturbance generated from cat disturbance or predation on the SAC? Assessment:</p> <ol style="list-style-type: none"> Michael Woods <i>et al.</i> (2003)¹² showed most cat activity within 100m from homes. Hanmer <i>et al.</i> (2017)¹³ showed the median distance cats ranged from their home was 99m, but this varied from 79 to 148m in urban and per-urban contexts respectively, with a maximum distance of 278m reached from home. <p>The nearest houses to the SAC (Church Woods) will be ~110m away, though separated by a busy through road (A290 Blean Common Road) that will form a barrier to ease of movement for cats potentially travelling south from the new development.</p> <p>Based on the studies listed, significant cat activity generated from the proposals on the SAC (Church Woods) is not likely, with the SAC situated at the upper limit of distances that a cat would generally be expected to roam. Ellenden Woods and Thornden & West Blean Woods are also components of the larger Blean Complex SAC, and/or separate SSSIs; however, these are located >1km from the application site, and well beyond cat roaming distance.</p> <p>The Blean Complex SAC is designated primarily for its habitats and not qualifying species and therefore usage of the SAC by cats would not be expected to damage qualifying habitats.</p> <p>Similarly, the ancient woodland habitat immediately adjacent to the Site (not included in the SAC/SSSI boundaries) is between 900m and 1.6km from the boundaries of Ellenden Woods and Thornden Woods SSSIs, well outside cat roaming ranges. Cats entering the ancient woodland would therefore not be expected to encounter/disturb any of the notable bird species highlighted in the SAC or SSSI designations.</p>	No LSE Screened Out
Water Quality - No	<p>Is the Site hydrologically linked to the SAC?</p> <p>- No</p>	No LSE - Screened Out

¹⁰ Guidance on the assessment of dust from demolition and construction (2014) Institute of Air Quality Management

¹¹ Guidance on the Assessment of Mineral Dust Impacts for Planning (2016). Institute of Air Quality Management

¹² Michael Woods, Robbie A. McDonald & Stephen Harris 2003. Predation of wildlife by domestic cats *Felis catus* in Great Britain. Mammal Review, Volume 22 Issue 2p. 174-188.

¹³ Hugh J Hanmer, Rebecca L Thomas, Mark D E Fellowes; Urbanisation influences range size of the domestic cat (*Felis catus*): consequences for conservation, Journal of Urban Ecology, Volume 3, Issue 1, 1 January 2017, <https://doi.org/10.1093/jue/jux014>

3.0 STAGE 1 SCREENING: THE SWALE SPA/RAMSAR

Designation

The Swale Special Protection Area

- 3.1 The Swale SPA comprises an interconnected collection of intertidal mudflats, shell beaches, saltmarshes, and grazing marshes, which form an extensive area of internationally important wetland habitats.

Qualifying Species:

- 3.2 The SPA is classified under Article 4(1) of the Habitats Directive as it supports nationally important wintering populations (1% or more of the Great British population) of the following non-breeding species: dark-bellied brent goose *Branta bernicla bernicla* (1.6% of the world population, 3.1% of British wintering population) and dunlin *Calidris alpina alpina* (3% of the British wintering population).

Qualifying Assemblages:

- 3.3 Non-breeding: The SPA qualifies under Article 4(2) of the Habitats Directive as it is used regularly by over 20,000 waterbirds (as defined by the Ramsar Convention) in any season. In the non-breeding season, the area regularly supports 57,600 waterfowl (5-year peak mean 1986/87-1990/91). This total comprises internationally or nationally important populations of seventeen species of migratory waterfowl, including dark-bellied brent goose, dunlin, oystercatcher *Haematopus ostralegus*, ringed plover *Charadrius hiaticula*, grey plover *Pluvialis squatarola*, curlew *Numenius arquata*, and redshank *Tringa totanus*.
- 3.4 The Swale also qualifies under Article 4(2) by regularly supporting diverse assemblages of wintering and breeding waterfowl. Wintering waterfowl present in internationally or nationally important numbers include shelduck *Tadorna tadorna*, teal *Anas crecca*, wigeon *A. penelope*, and curlew. Short-eared owl *Asio flammeus*, an Annex I listed species, is also regularly present overwinter, and occasionally as a breeding species. The grazing marshes also support a typical assemblage of breeding species; shelduck, mallard *Anas platyrhynchos*, moorhen *Gallinula chloropus*, coot *Fulica atra*, lapwing *Vanellus vanellus*, redshank, reed warbler *Acrocephalus scirpaceus* and reed bunting *Emberiza schoeniclus*

The Swale Ramsar

- 3.5 The Ramsar site qualifies under Criterion 2 for the supporting several species of nationally scarce plants, including saltmarsh goosefoot *Chenopodium chenopodioides*, hog's fennel *Peucedanum officinale*, slender hare's-ear *Bupleurum tenuissimum*, small cordgrass *Spartina maritima*, golden samphire *Inula crithmoides*, divided sedge *Carex divisa*, sea clover *Trifolium squamosum*, and sea barley *Hordeum marinum*, as well as at least seven British Red Data Book listed wetland invertebrate species.
- 3.6 The Swale also qualifies as a Ramsar site under Criteria 5 and 6; for featuring an internationally important waterfowl assemblage and supporting internationally important species, respectively. The features are captured by the SPA designation above.

Conservation Objectives¹⁴

- 3.7 Regarding the SPA/Ramsar and the individual species and/or assemblage of species for which the site has been classified (the ‘Qualifying Features’), and subject to natural change:

“...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 habitats rely
- The population of each of the qualifying features; and
- The distribution of the qualifying features within the site.

Threats and Pressures

- 3.8 The Site Improvement Plan (SIP) for The Greater Thames Complex, which includes Benfleet & Southend Marshes, Medway Estuary & Marshes, Thames Estuary & Marshes, and The Swale SPA/Ramsar sites¹⁵, identified the following threats and/or pressures relevant to the development proposals (Table 3).

Table 3: Relevant Threats and Pressures – Greater Thames Complex SPAs (including The Swale)

Priority & Issue	Threat or Pressure	Measure
Public Access/Disturbance	Pressure/Threat	Investigation into sources of disturbance within the SPAs to inform management.
Changes in Species Distributions	Pressure/Threat	Investigation into identify cause of the decline in SPA birds
Air Pollution: risk of atmospheric nitrogen deposition	Threat	Control, reduce and ameliorate atmospheric nitrogen impacts.

Public Access/Disturbance

- 3.9 The Bird Wise North Kent SAMMS, based upon work undertaken by Footprint Ecology (2013)¹⁶, concluded that residential developments within 6km of the Medway SPAs, have the potential to result in disturbance that may have a likely significant effect on the SPA in-combination with other plans or projects in the absence of mitigation. The Bird Wise North Kent Mitigation Strategy (2018)¹⁷ provides further details, and states “*some larger developments, or those closer to the SPA may require additional mitigation*”.

¹⁴ European Site Conservation Objectives for The Swale Special Protection Area Site Code: UK9012011 Publication date: 21 February 2019 (Version 3)

¹⁵ Site Improvement Plan: Greater Thames Complex (SIP134). Natural England (10/09/2014 version 1) <<http://publications.naturalengland.org.uk/publication/6270737467834368>>

¹⁶ Liley, D. and Underhill-Day, J. (2013) Thames, Medway, and Swale Estuaries – Strategic Access Management and Monitoring Strategy, Footprint Ecology

¹⁷ Bird Wise (2018) Bird Wise North Kent Mitigation Strategy <<https://northkent.birdwise.org.uk/wp-content/uploads/2018/02/Mitigation-Strategy.pdf>>

- 3.10 The SIP notes that public access (specifically dog walking and recreational boating) was identified as a medium risk during the 2009 EMS review. However, moderate levels of disturbance near less sensitive locations may have no significant impact upon the numbers of birds using the SPA, though the types, levels and locations of potentially disturbing activities are in flux. Mechanisms of disturbance require further assessment.

Changes in Species Abundance

- 3.11 Loss of land functionally linked to the SPA, but not within the SPA boundaries, is one (of many) potential causes of changes in species abundance. Loss of TLL is, as a matter of routine, assessed as part of the HRA process for development sites near to SPAs. FLL was not specifically mentioned in the SIP, but does form a policy requirement in the Local Plan allocations, for the neighbouring Swale Borough, with the following text:

“The applicant will be required to provide evidence that the development will not result in a Likely Significant Effect. To achieve this, surveys will be required to determine habitats and current use of the site and surrounding land parcels to determine if it does support a significant population (A significant population is classified as a site that regularly used by more than 1% of the population of qualifying bird species) of qualifying species. Where habitats are suitable, nonbreeding bird surveys will be required to determine if the site and neighbouring land constitute a significant area of supporting habitat. Surveys should be required to be undertaken during autumn, winter, and spring and at more than 1 year of surveys may be needed (to be agreed in consultation with the local planning authority and Natural England). If habitat within or adjacent to the site is identified to support significant populations of designated bird features avoidance measures and mitigation will be required, such as the creation of replacement habitat nearby, and the planning application will likely need to be supported by a project specific Habitats Regulations Assessment to ensure that the development does not result in adverse effects on integrity.”

Air Quality

- 3.12 Four-step process for air quality assessment, as devised by Natural England (2018)¹⁸, also applies here, an overview of which is provided in Stage 1 Screening: Blean Complex SAC Section 2.14. Pollutant concentrations fall away steeply with distance from the road, reaching almost zero at 200m. Roads passing within 200m of a European site are therefore likely to have some impact on the air quality of the European site.

Water Quality

- 3.13 Water quality did not form part of the SIP in 2014. Natural England’s condition assessment for the The Swale SSSI identifies that each of the four SSSI Units closest to the application site; units 31, 47, 64, and 65 (of which unit 65 is nearest at 3.5km), were each in “Favourable” condition. The units form a combined 185ha of neutral lowland grassland, to which no eminent threats were noted in the assessment. Units 32, 33, and 79, which include parts of the Seasalter Levels and Graveney Marshes, located further to the north and west (4.8km from site), were assessed as being in “unfavourable – no change” condition, though issues related to water quality were not cited among the adverse conditions reasons¹⁹.

¹⁸ Natural England (2018) Natural England’s approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations

¹⁹ Natural England, Condition of SSSI Units for Site: The Swale SSSI [Accessed 03.08.2022]

<https://designatedsites.naturalengland.org.uk/ReportUnitCondition.aspx?SiteCode=S1003678&ReportTitle=The%20Swale%20SSSI>

- 3.14 The Swale Borough Council Local Plan Habitats Regulations Assessment (2021)²⁰ states the following for the emerging Swale Local Plan:

“In estuaries like The Swale and Medway where the sediment loading is higher (reducing light penetration and thus restricting rates of growth) in addition to temperatures being cooler and wave action stronger (leading to winter break up of mats and considerable annual variation in algal cover) the sediments are able to remain well oxidised, despite high nutrient loadings, and hence the benthic invertebrate community is unaffected by macroalgal mats. If the benthic invertebrate community is unaffected then the site would continue to maintain its prey productivity for birds.

Previous discussions with the Environment Agency and the Review of Consent reports for the various marine/intertidal Special Protection Areas and Ramsar sites around the greater Thames Estuary have confirmed that while nutrient levels are high within the various estuaries around the greater Thames Estuary, this does not result in the smothering macro-algal growth that is having an adverse effect upon other European marine sites (such as The Solent). The prevailing expert opinion is that the dominant control on phytoplankton growth in these estuaries is not nutrient availability but light availability which is controlled by the high loading of suspended sediment.”

- 3.15 Geographically, there are no clear hydrological links between the site and the SPA; and the topography of the site and local area are such that run-off from the development would be unlikely to reach a watercourse that links to the SPA. Given water quality is not an identified threat to the nearest SSSI units of the Swale SPA (within 5km of the site), and the lack of hydrological and topographical linkage, impacts to water quality within The Swale SPA, as a result of the development, can be scoped out.



Ecological Pathways

- 3.16 This section (*Table 4*) identifies the possible ecological pathways between the Site and the SPA/Ramsar that should be considered, applying assessment criteria based on best available scientific knowledge, and concludes whether there is a risk, or uncertainty, of a likely significant effect (LSE). Where risk or uncertainty is identified, those ecological pathways are then considered further in an Appropriate Assessment. The test does not require an assessment of every conceivable pathway, and the Precautionary Principle is applied only where there is *reasonable* scientific doubt that a pathway may have a LSE.


Table 4: Ecological Pathways and HRA Screening Conclusions – The Swale SPA

Ecological Pathway	Assessment applied	Likely Significant Effect
Habitat Loss Site 3.7km from SPA	Will there be any direct loss, damage, or fragmentation of habitat within the SPA itself? - No SPA habitat will be lost.	No LSE Screened Out
Habitat Loss - Functionally Linked Land	Is land on the Site functionally linked to the SPA? Assessed by: 1. Phase 1 Habitat Assessment	No LSE Screened Out

²⁰ AECOM (2021) Swale Borough Council Local Plan Habitats Regulations Assessment

Ecological Pathway	Assessment applied	Likely Significant Effect
	<p>Current arable land use, a commercial broad bean <i>Vicia faba</i> crop, does not form suitable habitat of a type that may support wintering or breeding bird species for which the SPA is designated. The field is relatively small and enclosed on all sides by urbanisation or tall woody vegetation, limiting sightlines for birds. Similarly, the crop grows too tall and too dense for waterfowl or waders in summer, and when harvested would leave exposed bare ground.</p>	
<p>Air Quality Traffic (Alone)</p>	<p>Will there be a likely significant effect from nitrogen deposition on the SPA from increased traffic as a result of the proposals? Assessment:</p> <ol style="list-style-type: none"> Natural England 4 step Guidance²¹ on traffic emissions. <p>Step 1: Does the proposal give rise to emissions which are likely to reach a European site? Yes</p> <p>Step 2: Are the qualifying features of sites within 200m of a road sensitive to air pollution? Yes. The following features are within 200m of roads in a 5km radius of the Site, and which provide likely routes of travel to/from it.</p> <ol style="list-style-type: none"> New internal roads within in the development will be more than 3km from the SPA; however several roads (2-4 below) that provide linkage to the site are within 200m of the SPA. 3.6km northwest Thanet Way (A299) – 325m section.  3.6km north Seasalter Ln. and Faversham Rd. – 1.4km section.  4.5km north Preston Parade – 1.3km section. 	<p>No LSE Screened Out</p>

²¹ Natural England Internal Guidance – Approach to Advising Competent Authorities on Road Traffic Emissions and HRAsV1.4 Final - June 2018

Ecological Pathway	Assessment applied	Likely Significant Effect
	 <p>Step 3: Could the sensitive qualifying features of the site be exposed to emissions? Yes.</p> <p>Step 4: Application of screening thresholds. Use of the 1000 Annual Average Daily Traffic. An AADT figure has not been calculated for each location, but we can confidently conclude that an 85 dwelling housing development will not reach the 1000 AADT threshold.</p> <p>The alone effects of changes in air quality from traffic emissions on the SPA, as a result of the development will not lead to a likely significant effect on the features for which the SPA is designated. Advice sought from Natural England concerning the application, dated 2nd August, concurred that the development would not have any adverse effect with regards to air pollution on the nearby statutory sites, which would include The Swale²².</p>	
Air Quality Traffic (In Combination)	Will there be a likely significant effect from nitrogen deposition on the SPA from increased traffic as a result of the proposals in combination with other plans or projects? Assessment: The HRA, prepared by Amec Foster Wheeler, which assesses the most recent amendment to the Canterbury City Council Local Plan (2017) ²³ , does not anticipate any long-term, likely significant effects from traffic emissions on the statutory sites located within Canterbury area (including the Swale).	No LSE Screened Out
Air Quality - Dust from construction	Will there be a likely significant effect on the SPA from temporary dust generated during construction near the SPA? Assessment: 1. The distance dust particles are likely to travel is between 350-400m ^{24,25} with the negative effects of dust on habitats and flora greater in magnitude the closer to the source of release (mostly within 100m from source). The SPA is 3.7km from the Site and therefore lies well outside this zone. No LSE is anticipated.	LSE Screened Out
Noise, Vibration,	Will there be a temporary likely significant effect from noise during construction or operation? Assessment:	No LSE

²² Moore, S. (2022) Advice Note: Planning Consultation for Land at Blean Common

²³ Davis, P. (2017) Canterbury District Draft Local Plan – Habitats regulations assessment. Habitats regulations assessment of the main modifications to the submission draft local plan policies.

²⁴ Guidance on the assessment of dust from demolition and construction (2014) Institute of Air Quality Management

²⁵ Guidance on the Assessment of Mineral Dust Impacts for Planning (2016). Institute of Air Quality Management

Ecological Pathway	Assessment applied	Likely Significant Effect
and Visual Disturbance.	<ol style="list-style-type: none"> 1. Waterbird Disturbance Mitigation Toolkit²⁶. Thresholds: prolonged noise over 72db and sudden 65db at the bird. 2. Code of practice for noise and vibration control on construction and open sites. Typical db values of construction sites²⁷. <p>The works, including access routes, will be more than 500m from the wetland habitat supported by the SPA. For a receptor at 3km (the distance of the SPA from nearest edge of Site), noise levels at source would need to be over 100db for both the 72db and 65db thresholds. Unscreened noise levels from construction, taken at their source, would therefore need to be well over 115db to be heard at the SPA.</p> <p>Given that construction noise generated by plant and machinery is generally considered to measure between 75db and 90db at source, it would thus be insufficient to impact upon birds using the SPA. Additionally, the SPA is also screened by vegetation and buildings. There will be no likely significant effect from noise to the qualifying features of the SPA.</p>	Screened Out
Light	<p>Will there be a temporary likely significant effect from light spill? No, the SPA is far enough from the development footprint to be unaffected by light spill originating from a residential development of this type, which does not include high intensity floodlighting. Instead, street lighting and security lighting would be directional and low-intensity, insufficient to result in light spill over 3.7km and will not therefore result in a Likely Significant Effect on the qualifying features of the SPA.</p>	No LSE Screened Out
Recreational Pressure (Alone)	<p>Will there be a likely significant effect from disturbance generated from recreational pressure on the SPA alone? Assessment:</p> <ol style="list-style-type: none"> 1. The Bird Wise North Kent – Mitigation Strategy (BWNKS) (2018)²⁸ states some larger sites or those closer to the SPA may require additional mitigation for alone effects. 2. The ZoI, within which most visitors would be expected reach the site, by methods other than a car, is 2km, as noted in the AECOM HRA for the Maidstone Borough Local Plan²⁹ 3. Research published by Natural England for the Thames Basin Heaths SPA³⁰ found that the average length of a typical walking route for a local visitor (with a dog) was 2.63km, with 75% of dog walkers covering up to 3.23km. ‘Local visitors’ walking without a dog, on average, covered a slightly longer distance of 2.51km, with 75% covering up to 3.80km. 	No LSE Screened Out

²⁶ N Cutts, K Hemmingway & J Spencer (2013) Waterbird Disturbance Mitigation Toolkit Informing Estuarine and Planning & Construction Projects version 3.2 <<https://www.tide-toolbox.eu/tidetools/>>

²⁷ BS 5228-1:2009+A1:2014 No Code of practice for noise and vibration control on construction and open sites

²⁸ Bird Wise North Kent – Mitigation Strategy (2018). North Kent SAMMS Project Board, Bird Wise

²⁹ Hoffman Heap, I. and Down, G. (2016). Habitats Regulations Assessment for: Maidstone Borough Local Plan – Publication (Regulation 19) February 2016, AECOM

³⁰ Natural England (2014) Results of the 2012/13 visitor survey on the Thames Basin Heaths Special Protection Area (SPA). [Online].

Ecological Pathway	Assessment applied	Likely Significant Effect
	<p>The Site is located 3.7km from the SPA, outside the usual expected distances a visitor would typically walk, as per Natural England and AECOM research detailed above. Accordingly, any visitor to the SPA thus would need to drive to access the SPA. Parking at The Swale is limited, with the nearest likely parking site comprised of residential streets in Seasalter, located 3.5miles (10 mins) drive from Blean.</p> <p>The predicted number of residents based on the 2011 census is crudely estimated to be 204 (85 dwellings x 2.4 average per household). For a development of this small size, the increase in residents would be proportionally very small when compared with nearby populated areas such as Canterbury and Faversham (population sizes of 66,851 and 19,316, respectively). It is not predicted there will be a likely significant effect from recreational pressure alone based on small scale of the proposed development.</p> <p>Given the small development size and the distance required to drive from the development to reach the SPA, visits to the SPA from the site are likely to be few and sporadic. Any increase in visitor numbers to the SPA is therefore expected to be negligible and thus no LSE are anticipated.</p>	
<p>Recreational Pressure (In-combination)</p>	<p>Will there be a likely significant effect from disturbance generated from recreational pressure on the SPA alone or in combination with other projects? Assessment:</p> <ol style="list-style-type: none"> The Bird Wise North Kent – Mitigation Strategy (BWNKS) (2018)³¹ <p>The Bird Wise project has concluded that residential developments, in the absence of mitigation, located within 6km of an SPA in North Kent, will have a likely significant effect on the SPA in combination. The site is situated within the 6km Zol and thus a Likely Significant Effect from the development, in combination with other local development projects, cannot be ruled out.</p>	<p>LSE without appropriate mitigation</p> <p>Appropriate Assessment Required</p>

³¹ Bird Wise North Kent – Mitigation Strategy (2018). North Kent SAMMS Project Board, Bird Wise

4.0 STAGE 1 SCREENING: TANKERTON SLOPES & SWALECLIFFE SAC

Designations

Tankerton Slopes & Swalecliffe Special Area of Conservation³²

Annex II Species – Primary Reason for Site Selection:

- 4.1 The SAC is classified under article 4(4) of the Habitats Directive as it supports an Annex II listed species. The Fisher's estuarine moth *Gortyna borelii lunata* has a highly localised distribution in the UK, with Tankerton Slopes & Swalecliffe providing habitat for a significant proportion of the north Kent population and 20% of the UK population. The north facing London clay slopes support a tall herb community that includes hog's fennel *Peucedanum officinale*, the species' primary food plant. Neutral grassland also provides plants for egg laying.

Conservation Objectives³³

- 4.2 Regarding the SAC and the natural habitats and/or species for which the site has been designated (i.e., the qualifying features, Fisher's estuarine moth, as detailed above), and subject to natural change:

"...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 qualifying species, and*
- *The distribution of qualifying species within the site"*

Threats and Pressures

- 4.3 The following section details the main threats and pressures that have been identified through existing documentation and evidence related to the SAC itself.
- 4.4 The Site Improvement Plan (SIP) for North East Kent (Thanet) did not identify any threats or pressures specific to Tankerton Slopes & Swalecliffe³⁴; however, one notable attribute was highlighted in the Conservation Objectives Supplementary Advice document³⁵ for the SAC as a potential issue, relevant for this HRA (*Table 5*).

³² JNCC (2015), Natura 2000 Standard Data Form, Tankerton Slopes & Swalecliffe SAC, viewed 9th August 2022
<https://sac.jncc.gov.uk/site/UK0030378>

³³ Natural England (2019), European Site Conservation Objectives for Tankerton Slopes & Swalecliffe SAC Special Area of Conservation Site Code: UK0030378 Publication date: 27 November 2018 (Version 3)

³⁴ Site Improvement Plan: North East Kent (Thanet) (SIP240). Natural England (10/09/2014 version 1)
<http://publications.naturalengland.org.uk/publication/5658609703714816>

³⁵ Natural England (2019) European Site Conservation Objective: Supplementary advice on conserving and restoring site features. Tankerton Slopes & Swalecliffe (SAC) Site Code: UK0030378

Table 5: Relevant Threats and Pressures – Tankerton Slopes & Swalecliffe SAC

Priority & Issue	Threat or Pressure	Measure
Air Pollution: risk of atmospheric nitrogen deposition	Threat	Maintain concentrations and deposition of air pollutants at, or below, the site-relevant Critical Load or Level values given for the features supporting habitat.

Air Quality

- 4.5 According to the Conservation Objectives Supplementary Advice document for Tankerton Slopes & Swalecliffe SAC, the supporting habitat on which Fisher's estuarine moth depends is considered to be sensitive to changes in air quality, with exceedance of critical values for air pollutants likely to result in changes to the chemical composition of the habitat substrate, resulting in detrimental effect on plant growth. This could in turn impact upon the availability of the moth's food plant and reduce supporting habitat.
- 4.6 The four-step process for air quality assessment, as devised by Natural England (2018)³⁶, consequently also applies here, an overview of which is provided in Stage 1 Screening: Blean Complex SAC Section 2.14. Pollutant concentrations fall away steeply with distance from the road, reaching almost zero at 200m. Roads passing within 200m of a European site are therefore likely to have some impact on the air quality of the European site.

Ecological Pathways

- 4.7 This section (*Table 6*) identifies the possible ecological pathways between the Site and the SAC that should be considered, applying assessment criteria based on best available scientific knowledge, and concludes whether there is a risk, or uncertainty, of a likely significant effect (LSE). Where risk or uncertainty is identified, those ecological pathways are then considered further in an Appropriate Assessment. The test does not require an assessment of every conceivable pathway, and the Precautionary Principle is applied only where there is *reasonable* scientific doubt that a pathway may have a LSE.

Table 6: Ecological Pathways and HRA Screening Conclusions - Tankerton Slopes & Swalecliffe SAC

Ecological Pathway	Assessment applied	Likely Significant Effect
Habitat Loss Site 6.1km from SAC	Will there be any direct loss, damage, or fragmentation of habitat within the SPA itself? - No SPA habitat will be lost.	No LSE Screened Out
Habitat Loss - Functionally Linked Land	Is land on the Site functionally linked to the SAC? Assessed by: 1. Phase 1 Habitat Assessment Current arable land use, a commercial broad bean crop, does not form suitable habitat, or provide the appropriate food plant, that may support Fisher's estuarine moth.	No LSE Screened Out

³⁶ Natural England (2018) Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations

Ecological Pathway	Assessment applied	Likely Significant Effect
Air Quality Traffic (Alone)	<p>Will there be a likely significant effect from nitrogen deposition on the SAC from increased traffic as a result of the proposals? Assessment:</p> <ol style="list-style-type: none"> Natural England 4 step Guidance³⁷ on traffic emissions. <p>Step 1: Does the proposal give rise to emissions which are likely to reach a European site? Yes</p> <p>Step 2: Are the qualifying features of sites within 200m of a road sensitive to air pollution? Yes. The following features are within 200m of roads in a 5km radius of the Site, and which provide likely routes of travel to/from it.</p> <ol style="list-style-type: none"> New internal roads within in the development will be more than 6km from the SAC. Roads within 200m of the SAC, within 5km of the site are far from the application site, provide limited linkage to major urban centres, and are therefore unlikely to be used regularly by new residents. Such roads are not expected to receive any significant increase in traffic flow due to the development. <p>Step 3: Could the sensitive qualifying features of the site be exposed to emissions? Yes.</p> <p>Step 4: Application of screening thresholds. Use of the 1000 Annual Average Daily Traffic. An AADT figure has not been calculated for each location, but we can confidently conclude that an 85 dwelling housing development will not reach the 1000 AADT threshold.</p> <p>The alone effects of changes in air quality from traffic emissions on the SAC, as a result of the development will not lead to a likely significant effect on the features for which the SAC is designated.</p> <p>Advice sought from Natural England concerning the application, dated 2nd August, concurred that the development would not have any adverse effect with regards to air pollution on the nearby statutory sites, including Tankerton Slopes³⁸.</p>	No LSE Screened Out
Air Quality Traffic (In Combination)	<p>Will there be a likely significant effect from nitrogen deposition on the SAC from increased traffic as a result of the proposals in combination with other plans or projects? Assessment:</p> <p>The HRA, prepared by Amec Foster Wheeler, which assesses the most recent amendment to the Canterbury City Council Local Plan (2017)³⁹, does not anticipate any long-term likely significant effects from traffic emissions on the statutory sites located within the Canterbury area (including Tankerton Slopes).</p>	No LSE Screened Out
Air Quality - Dust from construction	<p>Will there be a likely significant effect on the SPA from temporary dust generated during construction near the SAC? Assessment:</p>	LSE Screened Out

³⁷ Natural England Internal Guidance – Approach to Advising Competent Authorities on Road Traffic Emissions and HRAs V1.4 Final - June 2018

³⁸ Moore, S. (2022) Advice Note: Planning Consultation for Land at Blean Common

³⁹ Davis, P. (2017) Canterbury District Draft Local Plan – Habitats regulations assessment. Habitats regulations assessment of the main modifications to the submission draft local plan policies.

Ecological Pathway	Assessment applied	Likely Significant Effect
	<p>1. The distance dust particles are likely to travel is between 350-400m^{40,41} with the negative effects of dust on habitats and flora greater in magnitude the closer to the source of release (mostly within 100m from source).</p> <p>The SAC is >6km from the Site and therefore lies well outside this zone. No LSE is anticipated.</p>	

⁴⁰ Guidance on the assessment of dust from demolition and construction (2014) Institute of Air Quality Management

⁴¹ Guidance on the Assessment of Mineral Dust Impacts for Planning (2016). Institute of Air Quality Management

5.0 STAGE 1 SCREENING: STODMARSH SAC/SPA/RAMSAR

Designations

Stodmarsh Special Area of Conservation⁴²

- 5.1 Stodmarsh is a wetland site located in the Stour valley, which contains a diverse array of habitats, including open water, reed beds, scrub, and alder carr that support a rich flora and fauna. The vegetation present forms a good example of southern, nutrient-rich flood plain that supports several rare plants and a varied invertebrate population.

Annex II Species – Primary Reason for Site Selection:

- 5.2 The SAC is classified under article 4(4) of the Habitats Directive as it supports an annex II listed protected species; Desmoulin's whorl snail *Vertigo moulinsiana*. The snail is typically found near ditches along the edges of floodplain pastures associated with the River Stour, wherever reed sweet-grass *Glyceria maxima*, large sedges *Carex sp.*, and common reed *Phragmites australis* dominate.

Stodmarsh Special Protection Area

Qualifying Species:

- 5.3 The SPA is classified under Article 4(1) of the Habitats Directive as it supports nationally important wintering populations (1% or more of the Great British population) of the following non-breeding species: bittern *Botaurus stellaris* (1% of the British wintering population) and hen harrier *Circus cyaneus* (approx. 1% of the British population).
- 5.4 The site qualifies under Article 4(2) by regularly supporting 1% of the British breeding populations of gadwall *Anas strepera* (a regularly occurring migratory species) and approximately 42 pairs of bearded tit *Panurus biarmicus*, which represent 7% of the British breeding population (5-year peak mean between 1987/88 and 1991/92).
- 5.5 Similarly, Stodmarsh also qualifies under Article 4(2) by regularly supporting nationally important wintering population of the following migratory species: gadwall (1.2% of British wintering population) and shoveler *Anas clypeata* (1.8% of British wintering population). An average of 75 bearded tits (peak mean 1987/1988 to 1991/92) have been recorded in winter, representing 1.5-2.5% of the British wintering population.

Qualifying Assemblages:

- 5.6 The Swale also qualifies under Article 4(2) by regularly supporting diverse assemblages of wintering and breeding species. Breeding species, particularly those associated with reedbeds and grazing marsh include great crested grebe *Podiceps cristatus*, lapwing *Vanellus vanellus*, redshank *Tringa tetanus*, snipe *Gallinago gallinago*, grasshopper warbler *Locustella neavia*, Savi's warbler *Luscinia sibilatrix*, sedge warbler *Acrocephalus schoenobaenus*, and reed warbler *A. scirpaceus*. Wintering waterfowl include white-fronted goose *Anser albifrons*, wigeon *A. penelope*, mallard *A. platyrhynchos*, pochard *Aythya ferina*, tufted duck *A. fuligula*, water rail *Rallus aquaticus*, lapwing, and snipe.

⁴² JNCC (2015), Natura 2000 Standard Data Form, Blean Complex, viewed 30th June 2022 <https://sac.jncc.gov.uk/site/UK0030283>

Stodmarsh Ramsar

- 5.7 The Ramsar site qualifies under Criterion 2 for the supporting two species of nationally rare plants and five nationally scarce species, including sharp-leaved pondweed *Potamogeton acutifolius*, water meadow dandelion *Taraxacum hygrophilum*, parrot's-feather *Myriophyllum verticillatum*, rootless duckweed *Wolffia arrhiza*, divided sedge *Carex divisa*, perennial pepper-weed *Lepidium latifolium*, and marsh sowthistle *Sochus palustris*, as well as at least eight British Red Data Book listed wetland invertebrate species.
- 5.8 Stodmarsh also qualifies as a Ramsar site under Criteria 5 and 6; featuring an internationally important waterfowl assemblage and supporting internationally important species, respectively. The features are captured by the SPA designation above.

Conservation Objectives⁴³

- 5.9 Regarding the SAC/SPA/Ramsar and the natural habitats, individual species and/or assemblage of species, for which the site has been classified (the 'Qualifying Features'), and subject to natural change:

"...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 and maintains Favourable Conservation Status of its qualifying features, 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 populations of each of the qualifying features; and*
- *The distribution of the qualifying features within the site.*

Threats and Pressures

- 5.10 The Site Improvement Plan (SIP) for Stodmarsh, which is designated as a SPA, SAC, and Ramsar wetland⁴⁴, identified the following threats and/or pressures relevant to the development proposals (Table 7).

Table 7: Relevant Threats and Pressures – Stodmarsh SPA/SAC/Ramsar

Priority & Issue	Threat or Pressure	Measure
Water Pollution	Pressure	Investigation into nutrient levels. Sluice and river wall repairs.
Air Pollution: impact of atmospheric nitrogen deposition	Pressure	Control, reduce and ameliorate atmospheric nitrogen impacts.

⁴³ European Site Conservation Objectives for Stodmarsh Special Protection Area (Site Code: UK9012121) and Special Area of Conservation (Site Code: UK0030283) Publication date: 30 October 2014 (Version 1)

⁴⁴ Site Improvement Plan: Stodmarsh (SIP231). Natural England (31/10/2014 version 1)
<<http://publications.naturalengland.org.uk/publication/5749196032311296>>

Air Quality

- 5.11 Since the SIP was produced, there is new published guidance from Natural England (2018)⁴⁵ on air quality with a four-step process for HRAs. Where a road is with 200m of European site is the distance criteria, which is based on the often-quoted evidence⁴⁶ that shows pollutant concentrations fall away steeply with distance from the road.

Water Quality

- 5.12 Natural England have previously raised concerns regarding the nutrient neutrality of the proposed development and consider that any developments within the Stour Valley River catchment could adversely impact upon Stodmarsh. Several of the lakes at Stodmarsh are undergoing the process of eutrophication, caused by excess nitrogen and phosphorus, a decline reflected in Natural England's condition assessment for Stodmarsh SSSI, which identified that two of the 20 SSSI Units that comprise the Stodmarsh site, are in "unfavourable" condition due freshwater pollution from waste water discharge and agricultural run-off, both of which have resulted in significant algal bloom events⁴⁷. Smothering macro-algae, if they form persistent matts, result in a decline in abundance within the benthic invertebrate communities, which reduces prey abundance for waterfowl and can negatively affect populations and distributions.
- 5.13 Sources of wastewater nutrient inputs into European Sites from residential developments are predominantly effluent wastewater discharged into the receptor via sewage treatment and surface water runoff discharged into a receptor. A Natural England Advice Note⁴⁸ requires the competent authority to justify how further nutrient input from new proposals, either alone or in combination, will not adversely affect the integrity of the designated site.
- 5.14 Geographically, there are no clear hydrological links between the site and the SAC/SPA/Ramsar; and the topography of the site and local area are such that run-off from the development would be unlikely to reach a watercourse that links to Stodmarsh. Given the lack of hydrological and topographical linkage, any significant effect to water quality within Stodmarsh SAC/SPA/Ramsar can be ruled out, in relation to surface water run-off from the development.
- 5.15 Wastewater effluent will be drained into a purpose built WwTW on-site that will discharge into a small, pre-existing watercourse on the eastern site boundary. The WwTW, as designed by ARM Ltd.⁴⁹ will comprise a septic tank, to remove solids from the effluent, and an aerated reedbed. The small, isolated watercourse into which the system will discharge, as discussed above, is not linked hydrologically to Stodmarsh and consequently it is considered that any significant effect to water quality within Stodmarsh, can also be ruled out, in relation to wastewater discharge from the development.

⁴⁵ Natural England (2018) Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations

⁴⁶ Design Manual for Roads and Bridges Volume 11 Environmental Assessment Section 3 Environmental Assessment Techniques Part 1 Air Quality

⁴⁷ Natural England, Condition of SSSI Units for Site: Stodmarsh SSSI [Accessed 03.08.2022]

<https://designatedsites.naturalengland.org.uk/ReportUnitCondition.aspx?SiteCode=S1003639&ReportTitle=Stodmarsh%20SSSI>

⁴⁸ Natural England (2020) Advice on Nutrient Neutrality for New Development in the Stour Valley Catchment in Relation to Stodmarsh

⁴⁹ Heath, M. (2022) Reed Bed Treatment Solution at Blean Development, Canterbury

Potential Ecological Pathways

- 5.16 This section (*Table 8*) identifies the possible ecological pathways between the Site and the SAC/SPA that should be considered, applying assessment criteria based on best available scientific knowledge, and concludes whether there is a risk, or uncertainty, of a likely significant effect (LSE). Where risk or uncertainty is identified, those ecological pathways are then considered further in an Appropriate Assessment. The test does not require an assessment of every conceivable pathway, and the Precautionary Principle is applied only where there is *reasonable* scientific doubt that a pathway may have a LSE.

Table 8: Ecological Pathways and HRA Screening Conclusions – Stodmarsh SAC/SPA/Ramsar

Ecological Pathway	Assessment applied	Likely Significant Effect
Habitat Loss (Site 5.6km from SPA site)	Will there be any direct loss, damage, or fragmentation of habitat within the SAC/SPA/Ramsar itself? - No	No LSE - Screened Out
Air Quality Traffic	Will there be a likely significant effect from nitrogen deposition on the SAC/SPA/Ramsar from increased traffic as a result of the proposals? Assessment: Natural England 4 step Guidance ⁵⁰ on traffic emissions. Step 1: Does the proposal give rise to emissions which are likely to reach a European site? Yes Step 2: Are the qualifying features of sites within 200m of a road sensitive to air pollution? Yes, however these roads are far from the application site, provide limited linkage to major urban centres, and therefore unlikely to be used regularly by new residents. Such roads are not expected to receive any significant increase in traffic flow due to the development. Step 3: Could the sensitive qualifying features of the site be exposed to emissions? Yes Step 4: Application of screening thresholds. Use of the 1000 Annual Average Daily Traffic. As with assessment for Blean Complex and The Swale, an AADT figure has not been calculated, but we can conclude that an 85 dwelling housing development will not reach the 1000 AADT threshold. Advice sought from Natural England concerning the application, dated 2 nd August, concluded that the development would not have any adverse effect with regards to air pollution on the nearby statutory sites, including Stodmarsh ⁵¹ .	No LSE - Screened Out
Noise, Vibration and Light	Will there be a temporary likely significant effect during construction or operation? - No, SAC/SPA/Ramsar is too distant from the application site	No LSE - Screened Out

⁵⁰ Natural England Internal Guidance – Approach to Advising Competent Authorities on Road Traffic Emissions and HRAsV1.4 Final - June 2018

⁵¹ Moore, S. (2022) Advice Note: Planning Consultation for Land at Blean Common

Ecological Pathway	Assessment applied	Likely Significant Effect
Recreational Pressure	<p>Will there be a likely significant effect from disturbance generated from recreational pressure on the SAC/SPA/Ramsar?</p> <p>Recreational disturbance was not considered a threat to Stodmarsh SAC/SPA/Ramsar in the SIP.</p> <p>Site is for 85 new dwellings and therefore relatively small in overall scale and is situated more than 5km from the SAC/SPA/Ramsar and therefore outside easy walking distance, as per Natural England and AECOM research detailed in Section 3: Stage 1 Screening the Swale SPA/Ramsar. There is limited parking available for potential visitors in and around Stodmarsh (nearest parking at Fordwich, requiring parking in residential areas/allotments), which in turn limits the numbers of visitors that can travel there by car.</p> <p>The SAC/SPA/Ramsar is not likely to be well known by new residents to the area and has few public paths passing through it. Given the intervening distances between the site and Stodmarsh, a requirement to travel some distance (at least 6.3km by car), and limited availability of parking, it is more likely that visitors from the application site will travel to nearer, alternative greenspaces in preference. Use of the SAC/SPA/Ramsar is therefore likely to be rare and sporadic.</p> <p>Recreational activity is currently managed through the National Nature Reserve, with the current levels of people accessing the site well managed and controlled. An education program is in place.</p>	<p>No LSE</p> <p>- Screened Out</p>
<p>Water Quality</p> <ul style="list-style-type: none"> - Surface water runoff 	<p>Is the Site hydrologically linked to the SAC/SPA/Ramsar via surface water runoff?</p> <p>New developments would be expected to impact upon Stodmarsh SAC/SPA/Ramsar if runoff from the development discharges into a watercourse that links to Stodmarsh. Nutrient levels, including nitrogen and phosphorous, can increase due to changes in nutrient leaching rates in runoff from developments, where the land use is changed to hardstanding associated with urban environs.</p> <p>Assessment by Water Environment Ltd. identified that the Site is <u>not</u> hydrologically linked with the SAC/SPA/Ramsar, falling within the Swalecliffe Brook catchment, which is not one of the operational catchment areas connected to Stodmarsh (Lower Stour, Upper Stour, Little Stour & Wingham, Kent East Coast, Oyster Coast Brooks, and Stour Marshes)⁵².</p>	<p>No LSE</p> <p>Screened Out</p>
<p>Water Quality</p> <ul style="list-style-type: none"> - Wastewater discharge 	<p>Is the Site hydrologically linked to the SAC/SPA/Ramsar via wastewater discharge?</p>	<p>No LSE</p> <p>Screened Out</p>

⁵² Bennett, N. (2022) Technical Note - Nutrient Neutrality Assessment: Land at Blean Common, Blean. Water | Environment Ltd., London

Ecological Pathway	Assessment applied	Likely Significant Effect
	<p>New developments would also be expected to impact upon Stodmarsh SAC/SPA/Ramsar if treated effluent from the development discharges into a watercourse that links to Stodmarsh. Wastewater from residential developments usually discharge into a WwTW for treatment and subsequently discharge back into a watercourse.</p> <p>The proposed development will discharge wastewater into a privately managed on-site WwTW, that will comprise a septic tank, to remove solids from the effluent, and an aerated reedbed. Discharge will be into a small watercourse on the eastern site boundary. This watercourse, as assessed by Water Environment Ltd. has <u>no</u> hydrological connection to Stodmarsh. Therefore, no LSE, in relation to nutrients contained in wastewater drainage, are anticipated on Stodmarsh.</p>	

6.0 STAGE 1 SCREENING: THANET COAST & SANDWICH BAY SPA/RAMSAR**Designation****Thanet Coast & Sandwich Bay Special Protection Area**

- 6.1 The Thanet Coast SPA comprises a wide variety of coastal habitats, including chalk cliffs, rocky shore, shingle, sand dunes, mudflats, and saltmarsh, which form an extensive area of internationally important wetland.

Qualifying Species:

- 6.2 The SPA is classified under Article 4(1) of the Habitats Directive as it supports a nationally important wintering population (1% or more of the Great British population) of golden plover *Pluvialis apricaria* (1% of the British wintering population).
- 6.3 It also qualifies under Article 4(1) by supporting a nationally important breeding population of little tern *Sterna albifrons* (more than 1% of British breeding population).

Qualifying Assemblages:

- 6.4 Non-breeding: The SPA qualifies under Article 4(2) of the Habitats Directive as it is used regularly by an internationally important wintering population of turnstone *Arenaria interpres* (2% of East Atlantic Flyway population, 3% of British wintering population). Thanet Coast & Sandwich Bay further qualifies under Article 4(2) by supporting nationally important overwintering populations of four additional species: ringed plover *Charadrius hiaticula* (more than 1% of British population), grey plover *Pluvialis squatarola* (more than 2% of British population), sanderling *Calidris alba* (more than 5% of British population), and Lapland bunting *Calcarius lapponicus* (approximately 11% of British population).

Thanet Coast & Sandwich Bay Ramsar

- 6.5 The Ramsar site qualifies under Criterion 2 for the supporting several species of nationally scarce invertebrates, including various bees, wasps and moths, a number of which are British Red Data Book listed. The site also hosts a population of sand lizard *Lacerta agilis*, reintroduced to the Sandwich Bay & Pegwell Bay NNR.
- 6.6 The Swale also qualifies as a Ramsar site under Criterion 6; for supporting species or populations that occur at internationally important levels. The primary qualifying feature, overwintering populations of turnstone, is captured by the SPA designation above.

Conservation Objectives⁵³

- 6.7 Regarding the SPA/Ramsar and the individual species and/or assemblage of species for which the site has been classified (the 'Qualifying Features'), and subject to natural change:

"...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;

⁵³ European Site Conservation Objectives for Thanet Coast & Sandwich Bay Special Protection Area Site Code: UK9012071
Publication date: 21 February 2019 (Version 3)

- 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 habitats rely
- The population of each of the qualifying features; and
- The distribution of the qualifying features within the site.

Threats and Pressures

- 6.8 The Site Improvement Plan (SIP) for North East Kent (Thanet), which includes Sandwich Bay and Thanet Coast SACs, as well as the Thanet Coast & Sandwich Bay SPA/Ramsar⁵⁴, identified the following threats and/or pressures to these statutory sites, relevant to the development proposals (Table 9).

Table 9: Relevant Threats and Pressures – North East Kent (Thanet) SPAs (including Thanet Coast & Sandwich Bay)

Priority & Issue	Threat or Pressure	Measure
Public Access/Disturbance	Pressure	Investigation into disturbance to sand dunes, and wider education and awareness raising.
Changes in Species Distributions	Pressure	Investigation into causes of the decline in SPA birds
Air Pollution: risk of atmospheric nitrogen deposition	Pressure	Control, reduce and ameliorate atmospheric nitrogen impacts.
Water Pollution	Threat	Collate and review existing water quality information.

Public Access/Disturbance

- 6.9 As per work conducted by Footprint Ecology (2013)⁵⁵, as outlined in relation to The Swale SPA and Ramsar, residential developments within 6km of the Medway SPAs, have the potential to result in disturbance that may have a likely significant effect on the SPA in-combination with other plans or projects in the absence of mitigation. The Bird Wise North Kent SAMMS was devised to set-out strategic measures for resolving additional disturbance issues to wintering birds.
- 6.10 Several of the SSSI units, including Birchington Foreshore, Epple Bay, Westbrook Promenade Rocks, and Ledge Point, that comprise the larger Thanet Coast SSSI, and SPA were assessed by Natural England as 'unfavourable - recovering' due to the effects of disturbance from dog walkers on feeding/roosting birds.

⁵⁴ Site Improvement Plan: North East Coast (Thanet) (SIP240). Natural England (10/09/2014 version 1) <<http://publications.naturalengland.org.uk/publication/6259686785417216>>

⁵⁵ Liley, D. and Underhill-Day, J. (2013) Thames, Medway, and Swale Estuaries – Strategic Access Management and Monitoring Strategy, Footprint Ecology

Air Quality

- 6.11 Since the SIP was produced, there is new published guidance from Natural England (2018)⁵⁶ on air quality with a four-step process for HRAs. Where a road is with 200m of European site is the distance criteria, which is based on the often-quoted evidence⁵⁷ that shows pollutant concentrations fall away steeply with distance from the road.
- 6.12 Nitrogen deposition currently exceeds site-specific critical loads, contributing to a change in grassland habitat composition to floral species typical of MG (neutral/mesotrophic) type grassland, at the expense of sand dune specialist species, though this is acknowledged to also potentially be the result of over-stabilisation of the sand dunes.

Water Quality

- 6.13 Water quality in water courses at the Thanet Coast has declined due to insufficiently treated sewage treatment works discharges, potentially affecting food availability for SPA birds. Phosphate stripping work was carried out in 2006 to improve the quality of water in the SPA; however, no further monitoring in relation to this work has been carried out.
- 6.14 Natural England's condition assessment for the Thanet Coast SSSI identified that each of the nearest SSSI Units were in "favourable" condition, with several further afield recorded as 'unfavourable - recovering' due to the aforementioned impact of disturbance from dog walkers. No reference to issues related to water pollution negatively impacting upon the SPA, were featured in the SSSI unit condition assessments.
- 6.15 Geographically, there are no clear hydrological links between the site and the SPA/Ramsar; and the topography of the site and local area are such that run-off from the development would be unlikely to reach a watercourse that links to the Thanet Coast. Given the lack of hydrological and topographical linkage, any significant effect to water quality at the SPA from surface water run-off can be ruled out.
- 6.16 Similarly, the purpose built on-site WwTW system will drain wastewater effluent into a small, pre-existing watercourse on the eastern site boundary that is isolated from other local watercourses, and thus not linked hydrologically to the Thanet Coast. Consequently, it is considered that any significant effect on SPA in relation to wastewater discharge from the development can also be ruled out.

Potential Ecological Pathways

- 6.17 This section (*Table 10*) identifies the possible ecological pathways between the Site and the SPA that should be considered, applying assessment criteria based on best available scientific knowledge, and concludes whether there is a risk, or uncertainty, of a likely significant effect (LSE). Where risk or uncertainty is identified, those ecological pathways are then considered further in an Appropriate Assessment. The test does not require an assessment of every conceivable pathway, and the Precautionary Principle is applied only where there is *reasonable* scientific doubt that a pathway may have a LSE.

⁵⁶ Natural England (2018) Natural England's approach to advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations

⁵⁷ Design Manual for Roads and Bridges Volume 11 Environmental Assessment Section 3 Environmental Assessment Techniques Part 1 Air Quality

Table 10: Ecological Pathways and HRA Screening Conclusions – Thanet Coast & Sandwich Bay SPA/Ramsar

Ecological Pathway	Assessment applied	Likely Significant Effect
Habitat Loss (Site 6.1km from SPA site)	Will there be any direct loss, damage, or fragmentation of habitat within the SPA/Ramsar itself? - No	No LSE - Screened Out
Air Quality Traffic	Will there be a likely significant effect from nitrogen deposition on the SPA/Ramsar from increased traffic as a result of the proposals? Assessment: Natural England 4 step Guidance ⁵⁸ on traffic emissions. Step 1: Does the proposal give rise to emissions which are likely to reach a European site? Yes Step 2: Are the qualifying features of sites within 200m of a road sensitive to air pollution? Yes , however these roads are far from the application site, provide limited linkage to major urban centres, and therefore unlikely to be used regularly by new residents. Such roads are not expected to receive any significant increase in traffic flow due to the development. Step 3: Could the sensitive qualifying features of the site be exposed to emissions? Yes Step 4: Application of screening thresholds. Use of the 1000 Annual Average Daily Traffic. As with assessment for Blean Complex and The Swale, an AADT figure has not been calculated, but we can conclude that an 85 dwelling housing development will not reach the 1000 AADT threshold. Advice sought from Natural England concerning the application, dated 2 nd August, concluded that the development would not have any adverse effect with regards to air pollution on the nearby statutory sites, including Thanet Coast ⁵⁹ .	No LSE - Screened Out
Noise, Vibration and Light	Will there be a temporary likely significant effect during construction or operation? - No, SPA/Ramsar is too distant from the application site	No LSE - Screened Out
Recreational Pressure	Will there be a likely significant effect from disturbance generated from recreational pressure on the SAC/SPA/Ramsar? Site is for 85 new dwellings and therefore relatively small in overall scale and is situated more than 5km from the SPA/Ramsar and therefore outside easy walking distance, as per Natural England and AECOM research detailed in Section 3: Stage 1 Screening the Swale SPA/Ramsar. Unlike Stodmarsh, there is parking available for potential visitors in and around Thanet Coast. However, like the other statutory sites discussed in this HRA, Thanet Coast is not necessarily likely to be well known by new residents to the area.	No LSE - Screened Out

⁵⁸ Natural England Internal Guidance – Approach to Advising Competent Authorities on Road Traffic Emissions and HRAsV1.4 Final - June 2018

⁵⁹ Moore, S. (2022) Advice Note: Planning Consultation for Land at Blean Common

Ecological Pathway	Assessment applied	Likely Significant Effect
	<p>Given the intervening distances between the site and Thanet Coast and a requirement to travel some distance (at least 6.3km by car), it is more likely that visitors from the application site will travel to nearer, alternative greenspaces in preference. Use of the SPA/Ramsar is therefore likely to be rare and sporadic, particularly in view of the small size of the development.</p>	
<p>Recreational Pressure (In-combination)</p>	<p>Will there be a likely significant effect from disturbance generated from recreational pressure on the SPA alone or in combination with other projects? Assessment:</p> <ol style="list-style-type: none"> V Hyland and Blackwood Bayne – Strategic Access Management and Monitoring Plan Thanet Coast (2016)⁶⁰ <p>V Hyland and Blackwood Bayne concluded that residential developments in the Thanet District, which falls within 6km of the SPA, should be included in the likely zone of influence and note that 75% of visitors come from further afield. Given the site, while part of Canterbury District, not Thanet, is situated just beyond 6km of Thanet Coast, it is reasonable that in the absence of mitigation, the proposals will have a likely significant effect on the SPA in combination with other planned developments in North Kent.</p>	<p>LSE without appropriate mitigation</p> <p>Appropriate Assessment Required</p>
<p>Water Quality - Surface water runoff</p>	<p>Is the Site hydrologically linked to the SPA/Ramsar via surface water runoff?</p> <p>New developments would be expected to impact upon the Thanet Coast SPA/Ramsar if runoff from the development discharges into a watercourse that links to it. Nutrient levels, including nitrogen and phosphorous, can increase due to changes in nutrient leaching rates in runoff from developments, where the land use is changed to hardstanding associated with urban environs.</p> <p>Assessment by Water Environment Ltd. identified that the Site is <u>not</u> hydrologically linked with Stodmarsh, falling within the Swalecliffe Brook catchment, it did not assess the hydrological linkage to Thanet Coast⁶¹. However, in view of the similar issues of distance from the application site, and the intervening topography and habitat, it is clear there is no surface-water linkage between the site and the Thanet Coast.</p>	<p>No LSE</p> <p>Screened Out</p>
<p>Water Quality - Wastewater discharge</p>	<p>Is the Site hydrologically linked to the SPA/Ramsar via wastewater discharge?</p> <p>New developments would also be expected to impact upon Thanet Coast SPA/Ramsar if treated effluent from the development discharges into a watercourse that links to it. Wastewater from residential developments usually discharge into a WwTW for treatment and subsequently discharge back into a watercourse.</p>	<p>No LSE</p> <p>Screened Out</p>

⁶⁰ Bayne, S. and Hyland, V. (2016) Strategic Access Management and Monitoring Plan – In respect of the Thanet section of the Thanet Coast and Sadwich Bay SPA (version 1.0). V Hyland Associates Ltd. and Blackwood Bayne Ltd.

⁶¹ Bennett, N. (2022) Technical Note - Nutrient Neutrality Assessment: Land at Blean Common, Blean. Water | Environment Ltd., London

Ecological Pathway	Assessment applied	Likely Significant Effect
	<p>The proposed development will discharge wastewater into a privately managed on-site WwTW, that will comprise a septic tank, to remove solids from the effluent, and an aerated reedbed. Discharge will be into a small watercourse on the eastern site boundary. This watercourse, as assessed by Water Environment Ltd. has <u>no</u> hydrological connection to sensitive off-site habitats. As such, the site is <u>not</u> considered hydrologically linked to the Thanet Coast. Therefore, no LSE, in relation to nutrients contained in wastewater drainage, are anticipated.</p>	

7.0 STAGE 2 APPROPRIATE ASSESSMENT: BLEAN COMPLEX SAC

7.1 The results of the Stage 1 screening put the following ecological pathways, in the absence of mitigation, to the SAC through to Appropriate Assessment:

1. Air Quality (Dust Emitted during Construction)

1. Air Quality (Dust Emitted during Construction)

7.2 A Construction and Environmental Management Plan (CEMP) will form a standard pre-commencement condition at outline, for submission and approval prior to the commencement of works. The CEMP will feature a strategy for minimising dust particle release from construction works. This will include:

- Use of clean water for dust suppression, to avoid re-circulating fine material
- High standards of housekeeping that will help minimise tracked-out and wind-blown dust
- A preventative maintenance programme, including readily available spares, to ensure efficient operation of plant and equipment; and
- Effective staff training in respect of the causes and prevention of dust.

7.3 As an additional overriding consideration, during dry or windy weather, if any operations are identified as causing, or likely to cause, visible emissions across the site boundaries, or if abnormal emissions are observed within the site, then the Site Manager will immediately modify, reduce, or suspend those operations, until effective remedial actions can be taken, or the weather conditions giving rise to emissions have moderated.

Appropriate Assessment Conclusion

7.4 With the mitigation measures identified above both implemented, and appropriately conditioned, as part of the outline application, there will be no adverse effect on the integrity of Blean Complex SAC as a result of the proposed development.

8.0 STAGE 2 APPROPRIATE ASSESSMENT: THE SWALE SPA

8.1 The results of the Stage 1 screening put the following ecological pathways, in the absence of mitigation, to the SPA through to Appropriate Assessment:

1. Recreational Pressure In-combination

1. Recreational Pressure (In Combination)

8.2 1.78ha of multi-purpose, semi-natural green space is proposed in the north, east and southwest of the Site. The green space will comprise landscape planting and broader habitat creation that will include scrub, wildflower meadow, wetland, and tree lines. New footpaths will be designed specifically to provide a circular route around the development area, passing through the on-site greenspace provision. This new footpath route will offer new residents alternative local walking routes and will divert footfall away from The Swale SPA/Ramsar. These provisions will be especially important in providing nearby routes for shorter distance dog walking, which typically takes place before and after work.

8.3 To ensure the green space is designed appropriately and so residents are aware of the SPA, the following mitigation is recommended:

- It is recommended that a Green Space Access Management Plan is conditioned as part of this outline application and submitted to and approved by SBC at Reserved Matters. The plan will show the circular footpath routes and surfacing, clearly identify areas for exercising dogs off leads and show locations of facilities such as dog bins.
- It is recommended a Homeowner Information Leaflet is conditioned as part of this outline application, to be submitted and approved by SBC and ready by first occupation. The leaflet will detail the importance of the habitats within the surrounding area, with focus on the designated sites, detailing their sensitivity, impacts, importance, and measures that can be taken to avoid disturbance. Information about alternative recreational areas, with public facilities, located within the wider area will also be provided to encourage residents to use other sites instead of the SPA/Ramsar.

8.4 Recreational pressure will be mitigated for by a financial contribution to the SAMMS as part of the Bird Wise North Kent Mitigation Strategy (2018)⁶². The tariff was calculated using housing projections from Canterbury, Gravesham, Medway, and Swale to provide a total number of new dwellings that will require mitigation until 2031. The total cost of providing this mitigation, allowing for this to continue in perpetuity, as suggested in the 2014 Footprint Ecology Report, provided an initial tariff of **£223.58 per** new dwelling. Bird Wise state that the tariff will be reviewed annually, and index linked in line with inflation, using the following formula:

$$\text{Indexed Sum} = \text{Initial Sum} \times \frac{\text{Inflation Index at Due Date}}{\text{Inflation Index at Base Date}}$$

8.5 A current tariff per dwelling has been given as part of Canterbury City Council's planning obligations, based on the number of bedrooms and is as follows⁶³:

⁶² Bird Wise (2018) Bird Wise North Kent Mitigation Strategy

<<https://northkent.birdwise.org.uk/wp-content/uploads/2018/02/Mitigation-Strategy.pdf>>

⁶³ Canterbury City Council - Community Infrastructure Levy and Planning Obligations <https://www.canterbury.gov.uk/planning-and-building/community-infrastructure-levy-and-planning-obligations/planning-obligations-for-development-affecting-special-protection-areas/> [accessed 10.08.22]

Number of Extra Bedrooms	Developer Contribution
1 bedroom (per home)	£156.45
2 bedrooms (per home)	£219.97
3 bedrooms (per home)	£296.43
4 or more bedrooms (per home)	£375.24

- 8.6 The final tariff will be secured through a S106 agreement and will mitigate for alone and in-combination effects of the proposed development.

Appropriate Assessment Conclusion

- 8.7 With the mitigation measures identified above both implemented, and appropriately conditioned, as part of the outline application, there will be no adverse effect on the integrity of The Swale SPA as a result of the proposed development.

9.0 STAGE 2 APPROPRIATE ASSESSMENT: THANET COAST & SANDWICH BAY SPA

9.1 The results of the Stage 1 screening put the following ecological pathways, in the absence of mitigation, to the SPA through to Appropriate Assessment:

1. Recreational Pressure In-combination

1. Recreational Pressure (In Combination)

9.2 The greenspace provision outlined in relation to compensatory measures for the Swale SPA, comprising 1.78ha of landscape planting and broader habitat creation, within which new footpaths will be incorporated, will also divert footfall away from Thanet Coast SPA/Ramsar. New footpath routes will offer new residents alternative local walking routes nearby, for shorter distance morning and evening dog walking.

9.3 To ensure the green space is designed appropriately and so residents are aware of the SPA, the following mitigation is recommended:

- It is recommended that a Green Space Access Management Plan is conditioned as part of this outline application and submitted to and approved by SBC at Reserved Matters. The plan will show the circular footpath routes and surfacing, clearly identify areas for exercising dogs off leads and show locations of facilities such as dog bins.
- It is recommended a Homeowner Information Leaflet is conditioned as part of this outline application, to be submitted and approved by SBC and ready by first occupation. The leaflet will detail the importance of the habitats within the surrounding area, with focus on the designated sites, detailing their sensitivity, impacts, importance, and measures that can be taken to avoid disturbance. Information about alternative recreational areas, with public facilities, located within the wider area will also be provided to encourage residents to use other sites instead of the SPA/Ramsar.

9.4 Recreational pressure will be mitigated for by an additional financial contribution to the SAMMS for the Thanet Coast, separate to the SAMMS for The Swale SPA. Given the development falls within the impact risk zones for both SPA sites, a financial contribution must be paid to both schemes. The tariff per dwelling is based on the number of bedrooms and is as follows, as provided within Canterbury City Council's planning obligations⁶⁴:

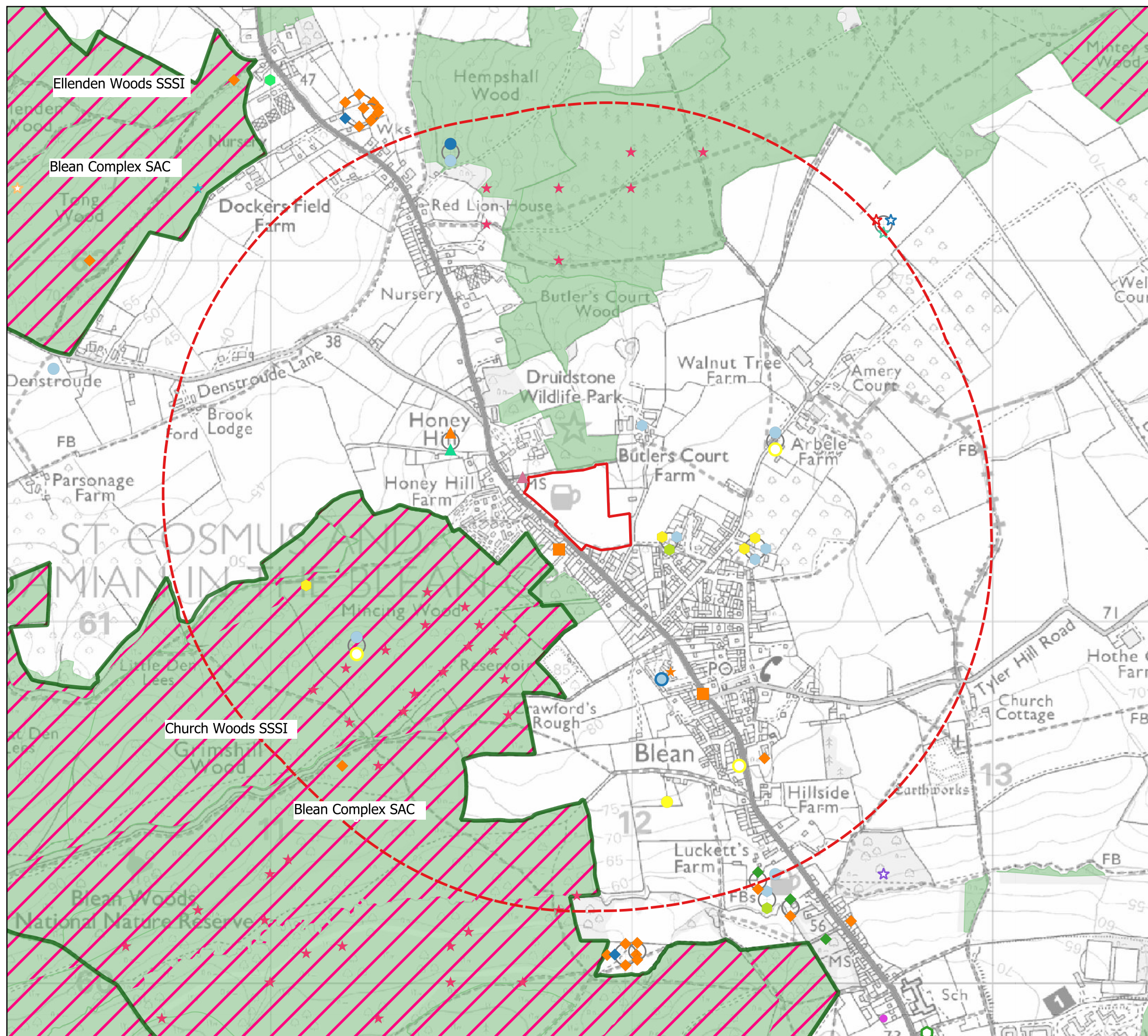
Number of Extra Bedrooms	Developer Contribution
1 bedroom (per home)	£355
2 bedrooms (per home)	£498
3 bedrooms (per home)	£670
4 or more bedrooms (per home)	£848

⁶⁴ Canterbury City Council - Community Infrastructure Levy and Planning Obligations <https://www.canterbury.gov.uk/planning-and-building/community-infrastructure-levy-and-planning-obligations/planning-obligations-for-development-affecting-special-protection-areas/> [accessed 10.08.22]

- 9.5 The final tariff will be secured through a S106 agreement and will mitigate for alone and in-combination effects of the proposed development.

Appropriate Assessment Conclusion

- 9.6 With the mitigation measures identified above both implemented, and appropriately conditioned, as part of the outline application, there will be no adverse effect on the integrity of the Thanet Coast SPA as a result of the proposed development.



Key

- Site Boundary
- 1km Search Area
- Designated sites
- Special Area of Conservation (SAC)
- Site of Special Scientific Interest (SSSI)
- Ancient Woodland Inventory Sites
- Common Frog
- ◆ Common Lizard
- ◆ Grass Snake
- Great Crested Newt
- ★ Heath Fritillary
- ★ Norfolk Hawker
- Palmate Newt
- ◆ Slow-worm
- Smooth Newt
- West European Hedgehog
- Bat Records**
- Brown Long-Eared Bat
- Long-Eared species
- Common Pipistrelle
- Soprano Pipistrelle
- Bird Records**
- ▲ Grasshopper Warbler
- ▲ Tawny Owl
- ▲ Woodcock
- Invasive Non-native Species**
- Alpine Newt
- ★ Bluebell
- ★ Heath Star Moss
- ★ New Zealand Pigmyweed
- ★ Nuttall's Waterweed
- ★ Rhododendron ponticum

Gladman Developments Ltd.

Land at Blean Common, Blean

CONSULTATION PLAN



scale 1:11,000

drawn PJP

issue 07/2022



drawing / figure number **Figure 1**

rev **6581-E-01**

APPENDIX A. THE HABITATS REGULATIONS ASSESSMENT PROCESS AND LEGISLATION

Legislative Background

- A1.1. The Conservation of Habitats and Species Regulations 2017 consolidate the Conservation of Habitats and Species Regulations 2010 with subsequent amendments. The Regulations transpose Council Directive (the Habitats Directive) 92/43/EEC, and EC Directive on Wild Birds (the Birds Directive) (Council Directive) 2009/147/EEC, into national UK law. The Regulations require the compilation and maintenance of a register of European sites that includes Special Areas of Conservation, as well as Special Protection Areas designated for birds and sites designated as internationally important wetlands under the Ramsar Convention known as “Ramsar Sites”. These three designations form a collective Europe wide network of internationally protected sites known as Natura 2000.

The Habitats Directive

- A1.2. Article 6(3) of the Habitats Directive requires an Appropriate Assessment of any plans that could affect a Natura 2000 site:

“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of Paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.”

- A1.3. Article 6(4) of the Habitats Directive discusses alternative solutions, the test of “imperative reasons of overriding public interest” (IROPI) and compensatory measures (transposed to Regulation 60):

“If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.”

- A1.4. A “likely significant effect” is defined as: “any effect that may reasonably be predicted...that may affect the conservation objectives of the features for which the site was designated, but excluding trivial or inconsequential effects.”

- A1.5. The “integrity of a site” is defined as: “the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and / or the level of populations of the species for which it was classified.”

The Habitats Regulations

A1.6. In relation to undertaking and consenting plans or projects, the due consideration of Natura 2000 sites is outlined in regulation 61 of the Habitats Regulations, which has led to the HRA process, as follows.

“61. 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 for that site in view of that site’s conservation objectives.

(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 them to determine whether an appropriate assessment is required.

(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 specify.

(4) They must also, if they consider it appropriate, take the opinion of the general public, and if they do so, they must take such steps for that purpose as they consider appropriate.

(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent 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).

(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 they propose that the consent, permission or other authorisation should be given.”

Habitats Regulations Assessment Process

A1.7. The HRA process has developed into a four-stage process as follows:

- Stage One: Screening - also known as the Test of Likely Significant Effect (TOLSE). If the Competent Authority cannot screen out a *likely significant effect*, an Appropriate Assessment is required.
- Stage Two: Appropriate Assessment - the Competent Authority will only agree to plans or projects that will not affect the *integrity* of a European site also known as the “Integrity Test”.
- Stage Three: Alternative Solutions - assesses any alternative solutions of a potentially damaging plan or project that failed the Integrity Test, and if it is determined there are no alternative solutions, the project cannot be agreed to and it will either need to be changed or refused.

- Stage Four: The final stage may allow a plan or project to proceed if after failing stage three if it is for Imperative Reasons of Overriding Public Interest, and only if suitable compensatory measures are secured.

Key Case Law in Relation to Test of Likely Significant Effect

A1.8. The following are some relevant case law judgement quotes in relation to “likely Significant Effect” which are of relevance for a Stage 1 screening.

A1.9. EC Case C-127/02 - Waddenvereniging and Vogelsbeschermingvereniging – the “Waddenzee Judgement” (paras 45, 47 and 48) – 7th September 2004:

“...any plan or project ... is to be subject to an appropriate assessment ... 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.”

“Where plan or project has an effect on that site but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on that site.”

“In assessing the potential effects of a plan or project, the significance must be established in the light, inter alia, of the characteristics and specific environmental conditions of the site concerned by that plan or project”

A1.10. R (Hart District Council) v Secretary of State for the Communities and Local Government [2008] EWHC 1204 (Para 55 and 76) – 1st May 2008:

“If the competent authority does not agree with the proponents’ view as to the likely efficacy of the proposed mitigation measures, or is left in some doubt as to the efficacy, then it will require an appropriate assessment because it will not have been able to exclude the risk of a significant effect on the basis of objective information ...”

“The competent authority is not considering the likely effect of some hypothetical project in the abstract. The exercise is a practical one which requires the competent authority to consider the likely effect of the particular project for which permission is being sought. If certain features ...have been incorporated into that project, there is no sensible reason why those features should be ignored at the initial, screening, stage merely because they have been incorporated into the project in order to avoid, or mitigate, any likely effect....”

A1.11. Boggis v Natural England [2009] EWCA Civ 1061 20th October 2009 (para 36 and 37)

“Notwithstanding the word “likely” ...is not that significant effects are probable, a risk is sufficient.”

“...a claimant who alleges that there was a risk which should have been considered by the authorising authority so that it could decide whether that risk could be “excluded on the basis of objective information”, must produce credible evidence that there was a real, rather than a hypothetical, risk which should have been considered.”

A1.12. EC Case C-258-11 Reference for a preliminary Ruling, Opinion of Advocate General Sharpston ‘Sweetman’ (Para 48) – 22nd November 2012:

“The requirement that the effect in question be “significant” lays down a de minimis threshold. Plans or projects that have no appreciable effect on the site are thereby excluded. If all plans

or projects capable of having any effect whatsoever on the site were to be caught by article 6(1), activities on or near the site would risk being impossible by reason of legislative overkill.”

A1.13. Bagmoor Wind Ltd v Scottish Ministers [2012] CSIH 93 7th December 2012 (para 45):

“The requirement for objective information at the preliminary examination is not to be equated with a need for scientific knowledge. The Court only refers to “the best scientific knowledge” in the context of the appropriate assessment (para [61]). “Objective”, in this context, means information based on clear verifiable fact rather than subjective opinion.”

A1.14. R (on application of An Taisce) v SoS [2014] EWCA Civ 1111 1st August 2014 (paras 38 and 39)

“The word “likely” ...implies at least some degree of flexibility. There comes a point when the probability...of a significant effect is so remote that it ceases to be “likely”, however broad the concept of likelihood.”

“The competent authority does not have to be satisfied that there is no risk, however remote...”

Note on Functionally Linked Land

A1.15. “Functionally Linked Land” (FLL) is a term that refers to the potential for habitat away from the designation boundaries of a Natura 2000 site, that is considered to have a “role” or “function” for a qualifying feature “beyond the boundary”. There is no strict legal definition but is mentioned in the Guidance document on the strict protection of animal species of Community interest under Habitats Directive 92/43/EEC 2007. Paragraph 7 states:

“Assessing and evaluating the conservation status of habitats and species within the Natura 2000 network is therefore not always enough, especially when the occurrences of habitats or species are only partly covered by the network, maybe even in some cases only to a relatively small extent.”

A1.16. A case law example of where the concept of Functionally Linked Land (FLL) has been applied was RSPB and others v SoS and London Ashford Airport Ltd [2014] EWHC 1523 16th May 2014 (para 27):

“There is no authority on the significance of the non-statutory status of the FLL. However, the fact that the FLL was not within a protected site does not mean that the effect which a deterioration in its quality or function could have on a protected site is to be ignored. The indirect effect was still protected. Although the question of its legal status was mooted, I am satisfied, as was the case at the Inquiry, that while no particular legal status attaches to FLL, the fact that land is functionally linked to protected land means that the indirectly adverse effects on a protected site, produced by effects on FLL, are scrutinised in the same legal framework just as are the direct effects of acts carried out on the protected site itself. That is the only sensible and purposive approach where a species or effect is not confined by a line on a map or boundary fence. This is particularly important where the boundaries of designated sites are drawn tightly as may be the UK practice.”

1.1 Paragraph 40 of The Holohan and others versus An Bord Pleanála C-461/17 [7th November 2018] judgement states “an ‘appropriate assessment’ must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site,

and for which that site has not been listed, and the implications for habitat types and species to be found **outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.**” i.e. the boundary for the AA may extend beyond the Natura 2000 site boundary.

- 1.2 FLL referred to as the role or function that land beyond the boundary of the SPA might fulfil in terms of supporting the population for which the SPA is designated, is the basis for the definition in Functional linkage: How areas that are functionally linked to European sites have been considered when they may be affected by plans and projects - a review of authoritative decisions (Natural England NECR207, 2016). For example:

“Sometimes, the mobility of qualifying species is considerable and may extend so far from the key habitat that forms the SAC or SPA that it would be entirely impractical to attempt to designate or classify all of the land or sea that may conceivably be used by the species.”

“In practice, therefore...supporting habitat in areas beyond the boundary of a SAC or SPA which are connected with or “functionally linked” to the life and reproduction of a population for which a site has been designated or classified should be taken into account in a Habitats Regulations Assessment (HRA).”

Note on the Sweetman Ruling “People over Wind” and Definition of “Mitigation” in Relation to HRA

- A1.17. The *People Over Wind* judgement (Peter Sweetman v Coillte Teoranta (C-323/17)), in April 2018, changed the way mitigation is viewed during the HRA Stage One screening i.e. the Test of Likely Significant Effect. The ruling was based on the view that allowing mitigation measures to be considered at the screening stage allows projects to avoid an Appropriate Assessment (Stage Two). The ruling stated:

“Taking account of such measures at the screening stage would be liable to compromise the practical effect of the Habitats Directive in general, and the assessment stage in particular, as the latter stage would be deprived of its purpose and there would be a risk of circumvention of that stage, which constitutes, however, an essential safeguard provided for by the directive.” (paragraph 37 of the judgment)”

- A1.18. This has made what constitutes “mitigation” directly in relation to the European site, and what is considered “integrated” into the scheme for other reasons, a question that carries some uncertainty. The PINS Note 05/2018 *Consideration of avoidance and reduction measures in Habitats Regulations Assessment: People over Wind, Peter Sweetman v Coillte Teoranta* provides some clarification as follows:

“The implication of the CJEU judgment is that competent authorities cannot take account of any integrated or additional avoidance or reduction measures when considering at the HRA screening stage whether the plan or project is likely to have an adverse effect on a European Site.

The screening stage must be undertaken on a precautionary basis without regard to any proposed integrated or additional avoidance or reduction measures. Where the likelihood of significant effects cannot be excluded, on the basis of objective information the competent authority must proceed to carry out an AA to establish whether the plan or project will affect the

integrity of the European site, which can include at that stage consideration of the effectiveness of the proposed avoidance or reduction measures.”

A1.19. PINS Note 05/2018 goes on to further explain:

“It should be noted that there is no authoritative definition of what constitutes an integrated or additional avoidance or reduction measure and this should be considered on a case by case basis. If a measure is being introduced to avoid or reduce an effect on a European site then it can be viewed as mitigation. It may be helpful to consider whether a proposal could be considered integral to a plan or whether it is a measure to avoid harm. For instance, the HRA report could identify European sites whose designated features are vulnerable to disturbance caused by people visiting the site. If evidence presented in the HRA report and during the examination demonstrates that the housing allocation is too far from the European site to lead to increased visitor numbers then it could be concluded that there is no pathway for likely significant effects to occur. However if the HRA report determines that the housing allocation would be likely to increase visitor use of the European site and relies on measures which reduce visitor pressure (such as securing land to provide a buffer to the European site or ensuring footpaths and car parks are located away from the site) to avoid or reduce likely significant effects an AA will be required to assess whether the plan will affect the integrity of the European site.”

The interpretation of the above being taken by legal professionals appears to be that if it can be argued that mitigation, whether integrated or additional, is an “avoidance or reduction” measure directly due to an ecological pathway to a Natura 2000 site, then an Appropriate Assessment is required. If it is truly integrated into the proposals for other reasons, for example green space due to an unrelated protected species mitigation licence, as was the case with UK High Court ruling in August 2018 (R (on the application of Langton) v Secretary of State for Environment, Food and Rural Affairs, Natural England [2018] EWHC 2190 Admin) in relation to mitigation within a badger cull licence, then the mitigation is fully integrated and would not automatically trigger the requirement for an Appropriate Assessment. However, in many cases, such a judgement would carry the risk of conflicting views within the planning process, and often it may be simpler to take a precautionary approach by progressing to Appropriate Assessment where there is room for doubt.

National Planning Policy Framework (July, 2021)

A1.20. The National Planning Policy Framework (NPPF) makes clear the strict legal protection of Natura 2000 sites for decision makers:

181. The following should be given the same protection as habitats sites: a) potential Special Protection Areas and possible Special Areas of Conservation; b) listed or proposed Ramsar sites⁶⁴; and c) sites identified, or required, as compensatory measures for adverse effects on habitats sites, potential Special Protection Areas, possible Special Areas of Conservation, and listed or proposed Ramsar sites.

182. The presumption in favour of sustainable development 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.

