

Date: 15 August 2025
Our ref: UDS-A018728, 522955
Your ref: Stodmarsh Temporary Fallowing Scheme



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BY EMAIL ONLY

Dear Gabriel Connor-Streich,

Discretionary Advice Service (Charged Advice)

UDS - A018728

Development proposal and location: Stodmarsh Temporary Fallowing Scheme (various locations in East Stour region)

Thank you for your consultation on the above dated 21 March 2025, which was received on the same date.

This advice is being provided as part of Natural England's Discretionary Advice Service. Greenshank Environmental Limited has asked Natural England to provide advice upon:

- The proposed temporary fallowing nutrient mitigation scheme on land within the East Stour region

This advice is provided in accordance with the Quotation and Agreement dated 08 March 2025.

The following advice is based upon the information within the following documents:

1. Greenshank_ODG_temp fallow land management scheme, Version 1, 07 July 2025
2. Greenshank_ODG_temp fallow land management scheme, Version 2, 07 August 2025

Summary Advice

Having reviewed the updated assessment on the proposed temporary fallowing nutrient mitigation scheme, I am satisfied that;

- Greenshank Environmental Limited have provided calculations and evidence to support a reduction in Total Nitrogen of 3700.52 kg TN/yr and 180.07 kg TP/yr from the proposed temporary fallowing of 216.32ha located on agricultural land in the East Stour region.
- The land proposed for temporary fallowing all connect to the River Stour upstream of the Stodmarsh Special Area of Conservation, Special Protection Area and Ramsar site. The implementation of the temporary fallowing proposal will provide appropriate temporary nutrient mitigation for new development proposals that are required to demonstrate nutrient neutrality in the Stodmarsh catchment
- A Conservation Covenant is an acceptable mechanism to secure the required management, monitoring and enforcement for the proposed nutrient mitigation scheme, and that the Responsible Body will take on the legal responsibility for ensuring these are adhered to.

Additional Advice

Provision of Information to Competent Authorities

I recommend that Greenshank Environmental provides Competent Authorities with a clear overview of how the proposed nutrient mitigation scheme meets the requirements of a Habitats Regulations Assessment, including the requirement for the appropriate management, monitoring and enforcement to be secured. Thought should also be given to how the scheme will be transparent and accountable to Competent Authorities, who may wish to confirm that mitigation has only been allocated to one development.

I advise that the following points are considered when drawing up the agreement with the Responsible Body of the Conservation Covenant (these should also be shared with the Competent Authority):

- How the land will be managed so that the specified following nutrient leaching rate for total nitrogen (3kg/yr) and/or total phosphorus (0.02kg/yr) is maintained until 1 April 2030.
- The extent of the monitoring effort/regime required to demonstrate that the mitigation land is functioning as intended (e.g. that there are no additional inputs, and the management is appropriate).
- Provisions for any necessary enforcement. For example, how enforcement would be effective in addressing and deterring potential breaches, and how monitoring can support potential enforcement action.

The Competent Authority should be confident that measures will be in place to address the above, with assurance that they can be appropriately secured, and that the legal agreement addresses how such measures will be funded. I note that these credits could be relied on by a number of different Competent Authorities, and advise that consideration is given to the mechanism by which each would ensure the above.

I advise that an appropriately detailed method of tracking/recording the created mitigation is kept by yourselves. Securing mitigation against individual planning applications will require appropriate record keeping by the Competent Authority to ensure there is no double counting/over prescription of credits and that credits are only used to mitigate where they are upstream of the impact (as required by principle 3 in TIN186 above). I would recommend a precautionary buffer of credits is kept as a reserve, in the event planning applications require additional credits than they originally anticipated.

Nutrient Mitigation Principles

All mitigation schemes should demonstrate how they meet the [Mitigation principles \(TIN186\)](#) issued as part of our advice to LPAs on 16 March 2022.

You should ensure your proposal is in accordance with the following advice: [Combining environmental payments: biodiversity net gain \(BNG\) and nutrient mitigation - GOV.UK \(www.gov.uk\)](#)

For mitigation proposal to be compliant with the Habitats Regulations, the appropriate assessment should be able to demonstrate that such measures are known to be effective, reliable, timely, guaranteed and of sufficient duration. Such measures should be supported by evidence and confidence that they will be effective and that they can be legally enforced to ensure they are strictly implemented. The above considerations will need to be included with the Competent Authorities appropriate assessment when reviewing the proposed mitigation scheme.

When considering the overall certainty of measures needed to mitigate impacts of designated sites, Natural England are best placed to give direct advice concerning scientific certainty (i.e. functionality and effectiveness of nutrient mitigation); securing practical certainty (i.e. deliverability of mitigation measures through the planning process) generally requires a consideration of multiple stakeholder concerns and legislative considerations to which the competent authority is generally best placed to make decisions about, compared to Natural England. As such, we acknowledge that we are not best placed to provide detailed advice on how mitigation measures should be secured.

Nutrients from current and future land use

The Competent Authority should be confident that the appropriate land use has been selected; please see the [Nutrient Budget Calculator Guidance Document](#) for a detailed description of the land use types. Natural England advises that the applicant should provide evidence of the land use for the last 10 years. Examples of evidence could include land sale agreements, aerial photographs, basic farm payment information etc. The Competent Authority should be assured and satisfied that the site areas used in the nutrient budget calculation are correct and that the existing and proposed land uses are appropriately precautionary. The current/prior land use is an evidential matter for the Competent Authority.

Further advice on the proposed nutrient mitigation scheme

Initial DAS meeting – 29 July 2025

In our initial DAS call on the 29 July 2025, we reviewed key aspects of the proposed temporary fallowing nutrient mitigation scheme, including the methodology for calculating nutrient reductions and the associated land management practices. I was satisfied with the approach used to estimate reductions from fallowing agricultural land. However, I emphasised the importance of applying the temporal principles outlined in the [Stodmarsh Nutrient Neutrality Methodology \(November 2020\)](#), particularly for land situated on freely draining soils.

It was noted that the majority of the land lies over impeded drainage soils, making a significant time lag for nutrient reduction benefits to reach Stodmarsh unlikely (time from implementation of mitigation measures to the nutrient reduction benefits reaching the River East Stour/Stodmarsh). As such, I advised that a hydrogeological assessment would not be necessary for these parcels. A portion of the land was classified as 'freely draining' in the [LandIS Soils](#) viewer, but we discussed that evidence could be provided to reclassify it as 'slightly impeded drainage'. I recommended that this evidence be incorporated into an updated version of the assessment.

We discussed the option for one 40ha field to be replanted as winter wheat for the 1st year of fallowing (with no fertilisers being applied for that year). I advised that this was not an approach that I was familiar with, and advised that this type of management would be very difficult to manage, monitor and enforce, to have practical certainty that no fertiliser has been applied to this field. I committed to consulting internally with colleagues to determine whether similar proposals had been encountered previously.

We briefly discussed conservation grazing as a potential management option for the fallowed land. While typically used for long-term conservation, I agreed that it could serve as a suitable temporary measure, provided that stocking densities do not exceed 0.25 livestock units per hectare, and that no supplementary feeding or application of organic or inorganic fertilisers occurs. I noted that this type of management may be challenging to monitor and enforce in practice – details of this will need to be submitted to the Responsible Body for consideration prior to entering into a conservation covenant. Additionally, this information must be presented to the Competent Authority as part of the appropriate assessment, to demonstrate that the temporary mitigation offers practical certainty—i.e., that it will be both effective and legally enforceable.

Follow-up DAS meeting – 05 August 2025

During our follow-up call on the 05 August 2025, we discussed the updated assessment, which provided evidence to support the reclassification of previously identified 'freely draining' land as 'slightly impeded drainage'.

We also discussed the proposal to replant a single 40ha field with winter wheat during the first year of fallowing. I raised concerns that continued arable activity could disturb the soil and increase the risk of silt and phosphorus runoff, undermining the intent of fallowing as a mitigation measure. To address this, we agreed that establishing a 15m grass buffer strip around the field could help prevent runoff, subject to evidence demonstrating its effectiveness.

Given the novelty of this approach, I advised that detailed management and monitoring proposals must be submitted to the Responsible Body for review prior to entering into a conservation

covenant. This information must also be provided to the Competent Authority as part of the appropriate assessment, to demonstrate that the proposed temporary mitigation offers practical certainty—i.e., that it will be both effective and legally enforceable.

Following review of the updated temporary following assessment (Greenshank Environmental Ltd, 07 August 2025), I have no other further comments to make aside from the subjects detailed below.

Protected sites

I am currently of the view that, based on the objective information provided on the proposed development, a likely significant effect on the Stodmarsh SAC, SPA and Ramsar cannot be excluded, either individually or in combination with other plans or projects. This likely significant effect relates to the construction phase of the scheme, specifically the associated impacts from soil and sediment mobilisation during the construction phase. In order to mitigate these risks, suitable pollution control measures will be proposed and assessed in the development of the detailed design of the scheme. These additional details and pollution control measures should be included in a shadow appropriate assessment in order to ascertain that the proposed development will not adversely affect the integrity of the Stodmarsh designated sites.

Protected species

The advice on this proposal, and the guidance contained within Natural England's standing advice relates to this case only and does not represent confirmation that a species licence (should one be sought) will be issued. Please find general advice on European Protected Species at Annex 1.

Nationally Designated Landscapes

As the development site is within/adjacent to Kent Downs National Landscape, consideration should be given to the direct and indirect effects upon this designated landscape and in particular the effect upon its purpose for designation, as well as the content of the relevant management plan for Kent Downs National Landscape.

For clarification of any points in this letter, please contact Thomas.scott-heagerty@naturalengland.org.uk

☒ The advice provided in this letter has been through Natural England's Quality Assurance process

The advice provided within the Discretionary Advice Service is the professional advice of the Natural England adviser named below. It is the best advice that can be given based on the information provided so far. Its quality and detail is dependent upon the quality and depth of the information which has been provided. It does not constitute a statutory response or decision, which will be made by Natural England acting corporately in its role as statutory consultee to the competent authority after an application has been submitted. The advice given is therefore not binding in any way and is provided without prejudice to the consideration of any statutory consultation response or decision which may be made by Natural England in due course. The final judgement on any proposals by Natural England is reserved until an application is made and will be made on the information then available, including any modifications to the proposal made after receipt of discretionary advice. All pre-application advice is subject to review and revision in the light of changes in relevant considerations, including changes in relation to the facts, scientific knowledge/evidence, policy, guidance or law. Natural England will not accept any liability for the accuracy, adequacy or completeness of, nor will any express or implied warranty be given for, the advice. This exclusion does not extend to any fraudulent misrepresentation made by or on behalf of Natural England.

Yours sincerely,
Thomas Scott-Heagerty
Sussex & Kent Area Team

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Annex 1

European Protected Species

A licence is required in order to carry out any works that involve certain activities such as capturing the animals, disturbance, or damaging or destroying their resting or breeding places. Note that damage or destruction of a breeding site or resting place is an absolute offence and unless the offences can be avoided (e.g. by timing the works appropriately), it should be licensed. In the first instance it is for the developer to decide whether a species licence will be needed. The developer may need to engage specialist advice in making this decision. A licence may be needed to carry out mitigation work as well as for impacts directly connected with a development. Further information can be found in Natural England's ['How to get a licence'](#) publication.

If the application requires planning permission, it is for the local planning authority to consider whether the permission would offend against Article 12(1) of the Habitats Directive, and if so, whether the application would be likely to receive a licence. This should be based on the advice Natural England provides at formal consultation on the likely impacts on favourable conservation status and Natural England's [guidance](#) on how the three tests (no alternative solutions, imperative reasons of overriding public interest and maintenance of favourable conservation status) are applied when considering licence applications.

Natural England's pre-submission Screening Service can screen application drafts prior to formal submission, whether or not the relevant planning permission is already in place. Screening will help applicants by making an assessment of whether the draft application is likely to meet licensing requirements, and, if necessary, provide specific guidance on how to address any shortfalls. The advice should help developers and ecological consultants to better manage the risks or costs they may face in having to wait until the formal submission stage after planning permission is secured, or in responding to requests for further information following an initial formal application.

The service will be available for new applications, resubmissions or modifications – depending on customer requirements. More information can be found on [Natural England's website](#).