

Solent Special Protection Areas

**Gosport Bird Disturbance Mitigation
Protocol**

October 2014

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1. INTRODUCTION

- 1.1 The Solent coastline is internationally important for its wildlife interest. This importance has been recognised by international protective designations including three Special Protection Areas (SPAs) – the Portsmouth Harbour SPA, the Solent and Southampton Water SPA and the Chichester and Langstone Harbours SPA. These SPAs have been designated predominantly for the protection of the large numbers of waders and wildfowl which spend the winter on the Solent.
- 1.2. A substantial amount of housebuilding is planned around the Solent and this new housing can have potential impacts on the SPAs. One of these potential impacts is increased recreational activity at the coast resulting from population increases associated with the new homes. Extensive research has quantified this impact and recommended measures - known as 'mitigation measures' - to ensure that the additional recreational activity would not result in harm to the SPAs.
- 1.3. The protection afforded by the SPA designations has particular consequences. Under the Habitats Regulations¹ any plan or project can only lawfully go ahead if it can be shown that the development, either on its own or in combination with other plans or projects, will have no adverse effect on the integrity of the SPAs.
- 1.4 The need to look at the overall impact of planned development around the Solent has led to thirteen local authorities together with Natural England, the RSPB, Hampshire & Isle of Wight Wildlife Trust, and Chichester Harbour Conservancy to form the Solent Recreation Mitigation Partnership (SRMP) to address this matter collaboratively. The issues involved are complex and the formulation of a definitive strategy for implementing the mitigation measures will take some time. However, in order not to hold up necessary development, the SRMP have agreed a way forward in the short term. This protocol sets out the rationale for the need for mitigation and the mechanism for implementing the mitigation.

2. THE SPECIAL PROTECTION AREAS

The Solent shoreline stretches from Hurst Castle (near Lymington) in the west to West Wittering in the east and includes the northern shore of the Isle of Wight from Warden Point (near Colwell) to Whitecliffe Bay (near Bembridge). This 250 kilometres shoreline includes the tidal sections of the rivers which flow into the Solent as well as Chichester, Langstone and Portsmouth Harbours. The Solent is internationally important for its wildlife interest and there are various protective designations including three Special Protection Areas (SPAs).

- 2.2. The three SPAs on the Solent are: Chichester & Langstone Harbours SPA; Portsmouth Harbour SPA; and Solent & Southampton Water SPA. The SPAs were designated principally for the protection of internationally significant numbers of over-wintering waterfowl (different at each) that include geese, ducks and wading birds. The Solent supports over 90,000 waders and over 10 per cent of the global population of Brent Geese. Many of these birds travel thousands of miles to over-winter on the Solent. The intertidal habitats, particularly the mudflats, shingle and saltmarshes, provide essential winter feeding and roosting grounds for these species.
- 2.3. The Solent coast, including the coastline within the SPAs, is popular with local people and enjoyed for a wide range of recreational activities. The wildlife interest is part of the specific draw for many people, and some travel quite long distances to access the coast. However,

¹ The Conservation of Habitats and Species Regulations 2010 (and subsequent amendments)

recreation and the presence of people in and around the SPAs can result in disturbance to the birds, albeit often unintentional.

- 2.4. Human disturbance of the birds can have several impacts. Birds may be more alert, resulting in a reduction in the amount of food eaten, or they may fly away from the disturbance. A bird which flies away forgoes valuable feeding time whilst in the air and also uses energy in flying - a double impact on the bird's energy reserves. If the disturbance is substantial, then food-rich areas may be little used by the birds or avoided altogether, leading to other areas hosting a higher density of birds and intensifying the competition for the available food. Ultimately, the consequence of human disturbance can be increased bird mortality or a reduction in the amount of energy which the individual bird has available at the end of the winter period to fly back to its breeding grounds. If as a consequence the birds are unable to complete their migratory journey or are not in sufficiently good condition to breed when they arrive, then this would lead to a reduction in the bird population.

3. RESEARCH

- 3.1. Housebuilding around the SPAs will result in an increase in the number of local residents and thus the number of people visiting the coast for recreation, with a consequential risk of increased disturbance to the birds. Extensive research into this matter was undertaken during 2009-2013 through the Solent Disturbance & Mitigation Project² which preceded the SRMP. It included:
- a desktop review of existing national and local research;
 - a survey of visitors at the Solent SPAs asking them about their visit;
 - a survey of households living close to the Solent SPAs about their use of the coast;
 - bird disturbance fieldwork at the SPAs to assess how birds respond to potential disturbance events;
 - computer modelling to establish whether the patterns of activity which were observed at the Solent SPAs could lead to increased bird disturbance;
 - recommendations on the mitigation measures that could be used to prevent housing development affecting the integrity of the SPAs.
- 3.2. Based on the research, it is estimated that around 52 million visits are made by households to the Solent coast each year, of which just over half are made by car. The majority of visitors make trips to the coast specifically to see the sea and enjoy the coastal scenery.
- 3.3. Dog walking was the most frequently observed activity, with walking, cycling and jogging being other common recreational activities. Most activities involved people staying on the shore/sea wall rather than being on the intertidal areas or in the water. Human activity that took place on the intertidal areas was more likely to result in bird disturbance; on those areas dog walking was particularly common and resulted in a disproportionate amount of the observed bird disturbance. The research found that disturbance tended to occur when the human activity was relatively close to the birds i.e. within 50 metres, and that birds tended to respond less the further the human activity was from them.
- 3.4. The Solent area is heavily populated and it is estimated that over 1.4 million people live within a ten minute drive of a car park on the Solent shoreline. Substantial additional housing is planned and much of this will be within a short distance of the coast. Based on studies elsewhere in the country, it considered new development would have an impact if it was built

² The research can be seen at:
http://www.solentforum.org/forum/sub_groups/Natural_Environment_Group/Disturbance_and_Mitigation_Project/

within a zone of 5.6km from the SPAs. This zone would include the whole of Gosport Borough.

- 3.5. The research predicted that while some birds will be able to compensate for increased disturbance by altering their feeding habits, a number of species will suffer increased mortality as a consequence of the additional recreational visits generated by housing development. The number of current visitors to each section of coast varies widely, as does the predicted future increase. These variations reflect differences in the attractiveness and accessibility of different parts of the coast; the variations in the predicted increase also reflect the geographical pattern of housing development foreseen by the planning authorities.
- 3.6. A key finding of the research is that the level of disturbance is determined more by how people behave and where they go, rather than purely by the number of people. Consequently, mitigation measures should focus on visitor management rather than simply curtailing access to the coast.
- 3.7. The research undertaken for the Solent considered a range of potential mitigation measures, from initiatives which will influence visitor behaviour (publicity, signage, rangers etc.) to access management and enforcement measures. The creation of new greenspace - Suitable Alternative Natural Greenspace (SANGs) - in less environmentally-sensitive locations was also seen as having the potential to deflect recreational pressure away from the SPAs. Although most people visit the coast specifically to see the sea and enjoy the coastal scenery, having a short travel time from home is also important to them and for dog walkers it is of equal importance. So the research concluded that some people may be persuaded to visit a SANG instead of going to a section of coast within the SPAs, provided that the SANG is attractive and close to their homes.
- 3.8. Overall, the research concluded that there is likely to be a significant effect on the Solent SPAs from the additional recreation which will result from new housing development. Natural England - the Government's advisor on wildlife matters - has advised that the research *"represents the best available evidence, and therefore avoidance measures are required in order to ensure a significant effect, in combination, arising from new housing development around the Solent, is avoided"*³

4. INTERIM MITIGATION MEASURES

- 4.1. Based on the research and the principles above, the SRMP are proposing an interim package of mitigation measures as follows:
 - a team of rangers who will work on the ground to reduce disturbance by influencing the behaviour of visitors;
 - initiatives to encourage responsible dog walking and encourage dog owners to go to less sensitive parts of the coast;
 - a monitoring scheme to track the implementation of mitigation measures and to assess their effectiveness;
 - a project officer who will coordinate and help implement the mitigation measures in this document, undertake monitoring and prepare the definitive mitigation strategy;
 - A pilot project to test the effectiveness of providing alternative recreation opportunities.

³ This advice letter can be seen at:
http://www.solentforum.org/forum/sub_groups/Natural_Environment_Group/Disturbance_and_Mitigation_Project/Advice_to_PU_SH_and_Solent_Forum%20310513.pdf

- 4.2. The pilot project is the creation of the Alver Valley Country Park in Gosport. It will include picnic areas, trails, footpaths, cycleways, bridleways and interpretative facilities together with visitor facilities. These facilities and the Country Park's location in close proximity to the coast and proposed residential development sites means it has the potential to act as a Suitable Alternative Natural Greenspace and lessen pressure on the SPAs.
- 4.3 The additional coastal recreational activity generated from new housing development will be a permanent feature, so the measures to prevent that increased activity having an impact on the birds must also be in place for the lifetime of the new homes. The funding contributions as set out below must therefore provide for the mitigation measures to be continued in perpetuity. This will be achieved by investing some of the funding contribution: by 2028/9 there should be sufficient money invested to generate sufficient annual income to cover the annual cost of the interim mitigation package.

5. IMPLEMENTATION

- 5.1 Local Plans in the SRMP area make provision for around 2,400 new homes per annum from 2014 onwards within the 5.6 kilometre zone. A contribution of £172 per dwelling is required to fund the necessary mitigation measures in perpetuity. The rationale for this figure is set out in Appendix 1 The authorities will pool these contributions and implement the mitigation measures through SRMP. At regular intervals Gosport Borough Council (GBC) will transfer monies collected from developments that have commenced to the SRMP so that the mitigation measures can be implemented.
- 5.2. The cost of implementing the mitigation measures will rise in line with inflation, so the £172 per dwelling contribution figure will be updated on 1 April each year in line with the Retail Price Index.

Planning Applications

- 5.3 GBC will require a contribution for every net additional dwelling unless the developer can demonstrate to the satisfaction of the local planning authority and Natural England that it will provide alternative measures which fully mitigate the impact of the development on the SPAs.
- 5.5 GBC has prepared a Planning Obligations and Developer Contributions Strategy which was approved by the Council's Economic Development Board on 9th September 2014. This strategy indicates that SRMP payment is required in accordance with the Habitats Regulations and to meet the requirements of policy LP42 in Gosport Borough Local Plan 2011-2029 (Publication version) in order to demonstrate appropriate mitigation and that a proposal will not cause significant 'in combination effects' on internationally important habitats in terms of recreational disturbance. The developer will pay the contribution directly to GBC in its role as the 'competent authority' as defined by the Habitats Regulations. Without this contribution, the planning application would be unacceptable. It should be noted that some residential developments may have to mitigate significant 'alone' effects on internationally important habitats in terms of recreational disturbance. In addition to these 'in combination' impacts, certain developments may be required to mitigate impacts directly associated with the development.

Permitted Changes to Class 3 Dwellinghouses

- 5.6 Amendments to the General Permitted Development Order 1995 (GPDO) permit certain changes to Class C3 Dwellinghouses, subject to the submission of a Prior Notification to the Local Planning Authority.

- 5.7 Article 3(1) of the GPDO requires compliance with regulations 73 to 77 of the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) in addition to the other specific provisions. The Habitats Regulations state that, where a development which is likely to have a significant effect on a relevant site, must not be begun until the Developer has received written notification of the approval of the Local Planning Authority under Regulation 75 of the Habitats Regulations.
- 5.8 It has been confirmed that the 'in combination' impact of additional residential development is likely to have a significant effect on the protected sites. There will, therefore be a significant effect unless evidence can be provided to demonstrate otherwise. A SRMP payment is appropriate mitigation for the significant effect on the protected sites and the £172 per dwelling contribution similarly applies.
- 5.9 In the event that a payment is not made through the consideration of the Notification, applicants will be reminded that, in accordance with Regulation 73 (1) of the Habitats Regulations it is a condition of a permission granted by GPDO that development must not be begun until approval under the Regulations has been granted by the Competent Authority.
- 5.10 Once the harm has been mitigated, by the payment of the SRMP payment GBC as the Competent Authority will confirm in writing, on receipt of the application under Habitats Regulations and payment of the required fee (currently £30) that the development may begin.

6. HOW DO I MAKE A HABITATS REGULATIONS CONTRIBUTION

6.1 The developer will make a payment directly to Gosport Borough Council. This should be paid at the same time as a planning application/notification is submitted. The form set out below should be completed indicating how many dwellings are proposed to be created and the total contribution towards mitigation measures (currently based on £172 per dwelling). It should be noted that:

1. The funds will be cashed immediately on receipt by Gosport Borough Council.
2. A refund will only be made if the application does not result in an approval:-
 - a. The total amount refunded will be the same as that paid to Gosport Borough Council.
 - b. No interest accrual will be refunded
 - c. The money will only be refunded on withdrawal/refusal and not until the time period for appeal has passed or an appeal has been dismissed
 - d. If an appeal is made and the appeal is allowed the money will not be refunded.

HABITATS REGULATIONS MITIGATION CONTRIBUTION FORM

Application Reference Number (office use) _____

Form to accompany payment at the time a planning application /notification is submitted.
This form is only appropriate for residential dwelling developments,

Development consists of _____ (Number of) Dwellings

Address of Development _____

Please find attached a cheque for £ _____ as a contribution towards measures to mitigate the impacts of the Development on the Solent Special Protection Areas.

I understand that:-

1. This cheque will be cashed immediately on receipt by Gosport Borough Council.
2. A refund will only be made if the application/notification does not result in an approval:-
 - a. The total amount refunded will be the same as that paid to Gosport Borough Council
 - b. No interest accrual will be refunded
 - c. The money will only be refunded on withdrawal/refusal and not until the time period for appeal has passed or an appeal has been dismissed
 - d. If an appeal is made and the appeal is allowed the money will not be refunded.

Full Name of Applicant _____

Signature of Applicant _____

Date _____

Appendix 1 showing the calculation of the developer contribution

A1. This Appendix explains the methodology for calculating the £172 per dwelling developer contribution as determined by the Solent Recreation Mitigation Partnership.

A2. Table 1 below lists the nature and cost of the measures which will be needed to mitigate the impacts on the Solent SPAs of the additional visitors which will be generated by the envisaged housebuilding. Precise costs cannot be estimated at this stage so there is an allowance for contingencies.

A3. The additional coastal recreational activity will be a permanent feature, so the measures to prevent the increased activity having an impact on the SPAs must also be in place for the lifetime of the new homes. The funding contributions must therefore provide for the mitigation measures to be continued in perpetuity. The exception is the Alver Valley Country Park which will be maintained in perpetuity by Gosport Borough Council. Table 1 includes a contribution to a fund to maintain the other mitigation measures in perpetuity. Paragraph A5 and table 2 below explain that fund in more detail.

Table 1 Estimated annual cost of the mitigation package

<i>Item</i>	<i>Cost</i>	<i>Notes</i>
Full-year ranger (one post)	£40,000	As the mitigation is required to prevent impacts on over-wintering birds, most of the rangers will only be employed during each winter. The figures include salaries plus an allowance for uniform, personal protective equipment, equipment, vehicle rent, maintenance and fuel.
Winter-only rangers (three posts)	£60,000	
Contribution towards creating the Alver Valley Country Park	£17,000	
Project implementation officer	£28,000	Part-time post: 3 days per week
Operating budget	£21,000	Provision for printing, signage, web design etc.
Monitoring	£15,000	
Contingency	£5,000	
Sub-total of mitigation costs:	£186,000	
In perpetuity funding	£231,023	Set at 136.7% of annual mitigation costs excluding the Alver Valley Country Park, which is the level that allows for sufficient interest to be gained by the year 2028/9 to cover the annual mitigation costs.
Total annual costs:	£417,023	

A4. Over the period covered by the strategy, the local authorities anticipate that planning permission will be granted for an average of 2,430 homes per annum⁴ within the 5.6 kilometre zone. Sharing the £417,013 total cost in table 1 above between those anticipated

⁴ The residual housing provision in Local Plans (after deducting completions to date) divided by the remaining number of years of the plan period.

dwellings means a contribution of £171.61 per dwelling. For ease of implementation, this figure has been rounded to £172.

A5. To maintain the mitigation measures in perpetuity, some of the funding contribution will be invested so that by 2028/9 the money invested is sufficiently large to generate enough interest to cover the annual cost of the mitigation measures (excluding the Alver Valley Country Park). Table 2 below shows that accumulation. Row 1 shows the invested sum carried forward from the preceding year. Row 2 shows the assumed interest rate (based on investment analysts' advice that interest rates will return to historic norms over the coming years reaching a figure of 4.25% in 2020/21) and row 3 shows the interest earned. Row 4 shows that year's contribution from developers to the in-perpetuity fund. Row 5 is the total of rows 1, 3 and 4: it then becomes the sum carried forward to the ensuing year (row 1).

Table 2: In-perpetuity funding

Row		2014/15	2015/16	2016/17	2017/18	2018/19
1	Carried forward	-	£231,023	£463,432	£700,943	£947,737
2	Interest rate	0.50%	0.60%	1.40%	2.25%	2.75%
3	Interest earned	£0	£1,386	£6,488	£15,771	£26,063
4	Developer contribution	£231,023	£231,023	£231,023	£231,023	£231,023
5	Total funds	£231,023	£463,432	£700,943	£947,737	£1,204,823

Row		2019/2020	2020/21	2021/22	2022/23	2023/24
1	Carried forward	£1,204,823	£1,481,027	£1,774,994	£2,081,454	£2,400,939
2	Interest rate	3.75%	4.25%	4.25%	4.25%	4.25%
3	Interest earned	£45,181	£62,944	£75,437	£88,462	£102,040
4	Developer contribution	£231,023	£231,023	£231,023	£231,023	£231,023
5	Total funds	£1,481,027	£1,774,994	£2,081,454	£2,400,939	£2,734,002

Row		2024/25	2025/26	2026/27	2027/28	2028/29
1	Carried forward	£2,734,002	£3,081,220	£3,443,195	£3,820,553	£4,213,950
2	Interest rate	4.25%	4.25%	4.25%	4.25%	4.25%
3	Interest earned	£116,195	£130,952	£146,336	£162,374	£179,093
4	Developer contribution	£231,023	£231,023	£231,023	£231,023	£231,023
5	Total funds	£3,081,220	£3,443,195	£3,820,554	£4,213,950	£4,624,066

A6. The table shows that the £179,093 interest earned in 2028/29 and each year thereafter (row 3) is sufficient to cover the £171,000 annual cost of the mitigation measures (excluding the Alver Valley Country Park), such that they are then funded in-perpetuity.

A7. The calculations above are based on an average figure of homes planned to built during future years. In reality, the number of homes built will vary each year and thus the need for mitigation will also vary from year to year. Moreover, many homes which are started during the next few years will have been granted planning permission before the introduction of the mitigation strategy and its requirement for a developer contribution towards mitigation. These factors will mean a phased implementation of the mitigation measures and thus the actual expenditure on mitigation each year will vary, potentially quite significantly in some years, from the figures in table 1 above.