Statement of the Local Planning Authority

Prepared by Robert Hermitage, Principal Planning Officer

PLANNING INSPECTORATE REFERENCE	APP/Z3825/W/24/3344901
LOCAL PLANNING AUTHORITY REFERENCE	DC/24/0414

Town and Country Planning Act 1990

Planning appeal by **Mr P Orpwood** at:

Land Parcel East of Furzedown, Kithurst Lane, Storrington, West Sussex (AKA Priory Field)

Appeal to be determined by an Inspector appointed by the Secretary of State by way of **Written Representations**

August 2024

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1.0 The Appeal Site and Relevant Planning History

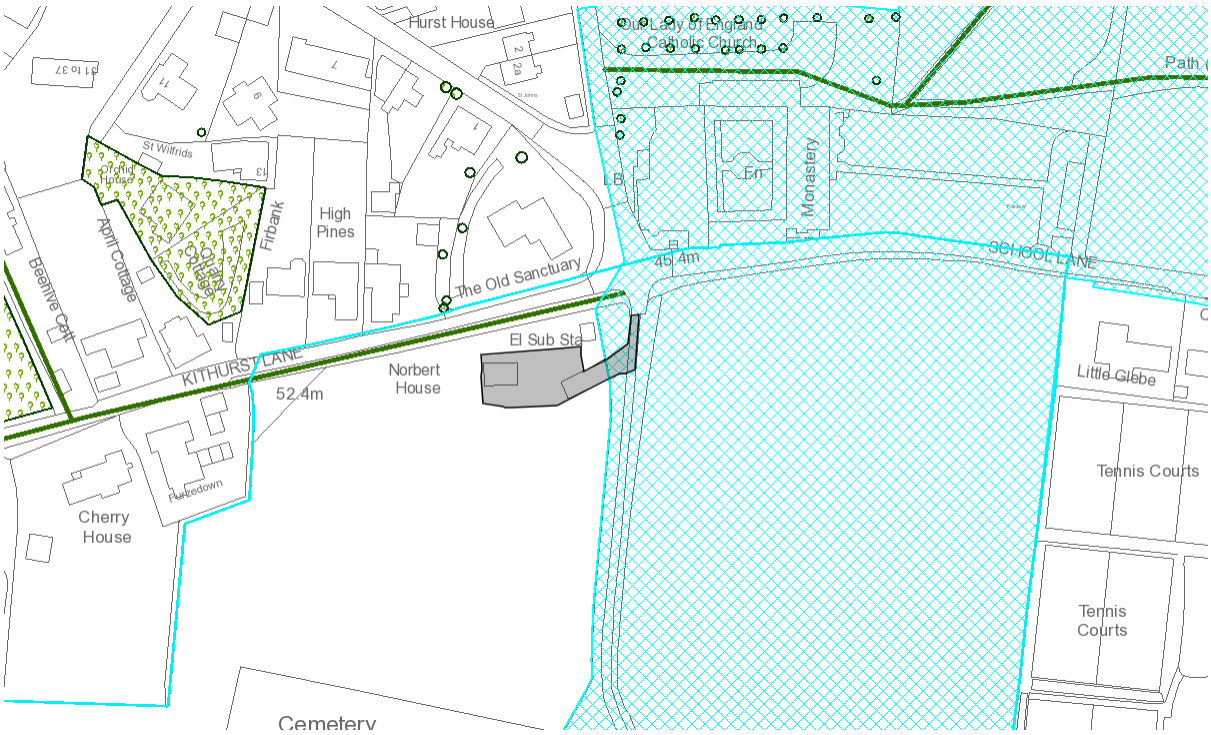

Figure 1: The Appeal Site

1.1 The appeal site is located outside the built-up area boundary and to the south of Kithurst Lane. The site is accessed via a private access track between the junction of Kithurst Lane and School Lane which leads to the Cemetery to the south of the application site. The site has a gated access with hardstanding which leads to a timber barn which was permitted for the storage of associated tools/equipment and the temporary shelter of volunteers in conjunction with the maintenance of the adjacent land.

1.2 The topography of the land rises up towards the cemetery and then falls towards the South Downs. A hedgerow forms the boundary line to Kithurst Lane to the north.

1.3 To the east of the site is an area of community woodland known as Matt's Meadow which is designated within the Storrington, Sullington and Washington Neighbourhood Plan as a Local Green Space and is within the Storrington Conservation Area. To the rear of the site is a row of leylandii trees which form the boundary to the cemetery. To the west of the site is Furzedown a detached single storey bungalow, whilst to the north of the site are detached two storey properties.

Relevant Planning History

SR/34/99	Erection of 3 houses Site: Kithurst Lane Storrington	Application Refused on 26.04.1999 *APPEAL DISMISSED T/APP/Z3825/A/99/1029046/P5*

DC/07/2230	Erection of 8 dwellings for the elderly (Outline) (Land North of Catholic Cemetery)	Application Refused on 26.11.2007 *APPEAL DISMISSED APP/Z3825/A/08/2075649*
DC/17/1989	Erection of a four bedroom detached chalet bungalow featuring 3x dormers to southern elevation, 1x dormer to northern elevation, conservatory to southern elevation, open-sided integral double garage and log stores with the creation of a new access and associated hardstanding/parking areas.	Application Refused on 22.02.2018 *APPEAL DISMISSED APP/Z3825/W/18/3208463*
DC/14/0675	Erection of 4 dwelling houses	Application Refused on 19.08.2014
DC/14/2139	The erection of 4 dwelling houses	Application Refused on 04.12.2014 *APPEAL DISMISSED APP/Z3825/W/15/3121528*
DC/17/1990	Erection of a four bedroom detached chalet bungalow featuring 3x dormers to southern elevation, 1x dormer to northern elevation, conservatory to southern elevation, open-sided integral double garage and log stores with associated hardstanding and parking.	Application Refused on 21.02.2018 *APPEAL DISMISSED APP/Z3825/W/18/3208461*
DC/18/1695	Construction of storage barn and retention of access.	Application Permitted on 23.11.2018
DC/19/1638	Variation of Condition 1 of previously approved application DC/18/1695 (Construction of storage barn and retention of access). Part-retrospective alterations to amend the roof form and include two gable end windows and three rooflights. Proposed addition of barn doors and a temporary log store.	Application Refused on 04.10.2019 *APPEAL DISMISSED APP/Z3825/W/19/3241971*
DC/19/2119	Variation of Condition 5 of previously approved application DC/18/1695 (Construction of storage barn and retention of access) Relating to use of existing barn for volunteers	Application Permitted on 10.08.2020
DC/20/1710	Construction of a cottage and garage.	Application Refused on 31.12.2020 *APPEAL DISMISSED APP/Z3825/W/21/3267327*
DC/20/2250	Retrospective application for the erection of a barn for storage of agricultural equipment and shelter by volunteers.	Application Refused on 14.01.2021 *APPEAL DISMISSED APP/Z3825/W/21/3268550*
DC/21/0177	Construction of a single storey dwelling and garage.	Application Refused on 18.03.2021

		APPEAL DISMISSED APP/Z3825/W/21/3281884
DC/22/0676	Outline Application for the construction of a single dwellinghouse and garage with all matters reserved.	Application Refused on 19.10.2023
		APPEAL LODGED APP/Z3825/W/24/3339798
DC/23/1720	Outline Application for redevelopment of the site to provide up to 6no. affordable dwellings, ancillary parking and landscaping, with all matters reserved.	Application Refused on 13.11.2023
		APPEAL LODGED APP/Z3825/W/24/3337382
DC/23/1097	Outline Application for redevelopment of the site to provide up to 8 dwellings, ancillary parking and landscaping with all matters reserved	Application Refused on 30.08.2023
		APPEAL LODGED APP/Z3825/W/24/3344901

2.0 The Appeal Proposal

2.1 Outline planning consent was sought for the conversion of an existing barn into a one bedroom dwelling. The proposal incorporates the infilling of the open frontages, including associated fenestration, in addition to the erection of a mono-pitched sloped roof shelter to the eastern elevation. The dwelling would comprise one bedroom and bathroom to the first floor, with a living room, dining room, kitchen and bathroom to the ground floor. Materials are proposed to match.

2.2 The application was refused by the Council on 14 May 2024 under delegated powers for the following reasons:

1 *The development would enable a residential use within a countryside location outside of the built-up area boundary of any settlement, on a site which has not been allocated for development within the Horsham District Planning Framework or an adopted Neighbourhood Plan. The development would be contrary to the overarching strategy and hierarchical approach of concentrating development within the main settlements and is not essential to its countryside location. There are no material considerations which outweigh this harm, and the proposal represents unsustainable development contrary to Policies 1, 2, 3, 4, and 26 of the Horsham District Planning Framework (2015), Policy 1 of made the Storrington, Sullington & Washington Neighbourhood Plan, and the National Planning Policy Framework.*

2 *Insufficient information has been submitted to establish the protection of the ecological and biodiversity interests of the site and whether suitable mitigations or enhancements are necessary and achievable, contrary to Policy 31 of the Horsham District Planning Framework (2015).*

3 *Notwithstanding information submitted, the applicant has not demonstrated with a sufficient degree of certainty that the proposed development would not contribute to an existing adverse effect upon the integrity of the internationally designated Arun Valley Special Area of Conservation, Special Protection Area and Ramsar sites by way of increased water abstraction, contrary to Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 185 and 186 of the National Planning Policy Framework (2023), thus the Local Planning Authority are unable to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority habitats & species).*

3.0 The Case for the Local Planning Authority

3.1 This statement, together with the previously submitted questionnaire and accompanying documents, including the Officer's delegated report, forms the Local Planning Authority's statement of case. The purpose of this Statement is to respond to the appellant's appeal submission.

3.2 The Council has determined the application against the relevant policies of the Horsham District Planning Framework (HDPF) (2015), in addition to the relevant requirements within the Conservation of Species and Habitats Regulations 2017. The crux of the appeal relates to:

1. Whether the principle of the development is acceptable in this location;
2. The level of information submitted with regards to ecological matters, and;
3. Whether the development would be water neutral.

3.3 The appellant's statement of case raises no new or compelling evidence in support of their case or in rebuttal to the Council's reasons to refuse the application. The Council does, however, have the following points to make in response to what has been raised in the appellant's statement:

3.4 The appellant alleges that the site is not in the countryside. This statement is fundamentally incorrect: whilst the site may neighbour existing development and accommodates an existing building (the application building), it remains outside of the built-up area boundary (as shown in Figure 1 by the light blue outline). Policy 26 of the HDPF is clear in that development outside of the built-up area is considered to be located within a countryside location, and the rural character of these areas will be protected.

3.5 The appellant states that as consultees have not objected to the proposal, the development should therefore be granted. The Council accepts that *some* consultees raised no objection, this is not reason alone to warrant approval. Consultees provide comments on their area of expertise ***only***, and it is the duty of the Local Planning Authority (comprised of experienced and qualified Officers) to interpret their responses in the round when determining applications, assessing each proposal on its own merits against local and national planning policy. Ultimately, a positive response from a consultees is not indicative of the outcome of an application as a whole, but rather the matter in which the consultee is commenting on.

3.6 With regards to ecological matters: the Council accepts that an ecological report was submitted in support of the application. However, as per the Officers report, the survey was not bespoke to this site and was outdated at the point of submission (according to The Chartered Institute of Ecology and Environmental Management guidance – Appendix 1). As such, some or all of the other ecological surveys may need to be updated. As such, for the purpose of this appeal, the ecological report should be considered entirely out of date.

3.7 The application was also refused as the appellant failed to demonstrate how the development would be water neutral. This reason for refusal has been overlooked in the appellant's statement, despite it forming a fundamental reason informing the recommendation. The Local Planning Authority are satisfied that the Officer's report adequately sets out the case in relation to water neutrality in respect of this appeal.

3.8 In order to assist the Inspector with this matter, Natural England's position statement (Appendix 2) the Council's FAQs (Appendix 3) and the Appropriate Assessment

prepared by the Council and considered by Natural England (Appendix 4) are appended to this statement.

Other Matters

3.9 The appellant has made a comment relating to the Council's conduct of the application(s) on the site noting 'dishonesty and incompetence' and 'abuse of power'. Separate formal complaints have been raised by the appellant and have been responded to by the Council.

3.10 As noted in their statement, the appellant references an enforcement notice that was served on the appellant to remove unlawful works undertaken to the barn (the application building). A notice was served on 11 May 2021 and the appeal against the notice was dismissed by the Inspectorate 10 August 2022 (APP/Z3825/C/21/3276563+4). The matter is on-going, and the compliance period for the Enforcement Notice expired on 30 June 2024.

3.11 As the present appeal is yet to be determined by the Inspectorate, the Council has paused its pursual of the works to be reversed until it is determined. In the event that the appeal is allowed, the Council will withdraw its notice. Conversely, if the appeal is dismissed further action will be pursued by the Council. As this matter is subject of another appeal and Enforcement Notice, which is contingent on the outcome of the present appeal, the matter need not be addressed by the Inspector in the determination of the present appeal.

3.12 As such, these are not material planning matters that the Inspector needs to address as part of this appeal.

4.0 Conclusion

4.1 The Council considers it to have been correct in refusing planning permission for the proposed development. The Council remain of the view that approving the scheme would conflict with core local and national planning policy, and note that the appeal submission does not attempt to provide any further commentary on the assessment made by the Council.

4.2 Accordingly the inspector is invited to agree with the Council that the proposal fails to accord with the relevant policies of the Horsham District Planning Framework (2015), in addition to the relevant regulations within the Conservation of Habitats and Species Regulations (2017) and dismiss this appeal.

5.0 Suggested Conditions

5.1 Should the Inspector be minded to allow the appeal, then the following conditions are suggested on a without prejudice basis:

1 **A List of the Approved Plans**

2 **Regulatory (Time) Condition:** The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

3 **Pre-Commencement Condition**: No development shall commence until the following components of a scheme to deal with the risks associated with contamination, (including asbestos contamination), of the site be submitted to and approved, in writing, by the local planning authority:

(a) A preliminary risk assessment which has identified:
- all previous uses
- potential contaminants associated with those uses
- a conceptual model of the site indicating sources, pathways and receptors
- Potentially unacceptable risks arising from contamination at the site.

The following aspects (b) - (d) shall be dependent on the outcome of the above preliminary risk assessment (a) and may not necessarily be required.

(b) An intrusive site investigation scheme, based on (a) to provide information for a detailed risk assessment to the degree and nature of the risk posed by any contamination to all receptors that may be affected, including those off site.

(c) The intrusive site investigation results following (b) and, based on these, a detailed method statement, giving full details of the remediation measures required and how they are to be undertaken.

(d) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (c) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action where required.

The development shall thereafter be carried out in accordance with the approved details. Any changes to these components require the consent of the local planning authority.

Reason: As this matter is fundamental to ensure that no unacceptable risks are caused to humans, controlled waters or the wider environment during and following the development works and to ensure that any pollution is dealt with in accordance with Policies 24 and 33 of the Horsham District Planning Framework (2015).

4 **Pre-Commencement Condition**: No development shall commence until a drainage strategy detailing the proposed means of foul and surface water disposal has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme.

Reason: As this matter is fundamental to ensure that the development is properly drained and to comply with Policy 38 of the Horsham District Planning Framework (2015).

5 **Pre-Commencement (Slab Level) Condition**: Prior to the commencement of the development above slab level, a Biodiversity Enhancement Strategy for Protected and Priority species shall be submitted to and approved in writing by the local planning authority.

The content of the Biodiversity Enhancement Strategy shall include the following:

a. Purpose and conservation objectives for the proposed enhancement measures;
b. detailed designs to achieve stated objectives;
c. locations of proposed enhancement measures by appropriate maps and plans;
d. persons responsible for implementing the enhancement measures;
e. details of initial aftercare and long-term maintenance (where relevant).

The works shall be implemented in accordance with the approved details and shall be retained in that manner thereafter.

Reason: To enhance protected and Priority species & habitats and allow the Local Planning Authority to discharge its duties under the s40 of the NERC Act 2006 (Priority habitats & species).

6 **Pre-Occupation Condition**: The dwelling hereby permitted shall not be first occupied until evidence has been submitted to and been approved in writing by the Local Planning Authority that the approved water neutrality strategy for proposal has been implemented in full. The evidence shall include the specification of fittings and appliances used, evidence of their installation, and completion of the as built Part G water calculator or equivalent. The installed measures shall be retained as such thereafter.

Reason: To ensure the development is water neutral to avoid an adverse impact on the Arun Valley SACSPA and Ramsar sites in accordance with Policy 31 of the Horsham District Planning Framework (2015), Paragraphs 185 and 186 of the National Planning Policy Framework (2023), and to enable the Local Planning Authority to discharge its duties its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), and s40 of the NERC Act 2006 (Priority habitats & species).

7 **Pre-occupation Condition**: Prior to the first occupation of each dwelling, the necessary in-building physical infrastructure and external site-wide infrastructure to enable superfast broadband speeds of 30 megabits per second through full fibre broadband connection shall be provided to the premises.

Reason: To ensure a sustainable development that meets the needs of future occupiers in accordance with Policy 37 of the Horsham District Planning Framework (2015).

8 **Pre-Occupation Condition**: No part of the development hereby permitted shall be occupied until a plan showing the layout of the proposed development and the provision of car parking spaces (including garages where applicable) for vehicles has been submitted to and approved in writing by the Local Planning Authority. The dwelling hereby permitted shall be occupied or use hereby permitted commenced until

the parking spaces associated with it have been provided in accordance with the approved details. The areas of land so provided shall thereafter be retained for the parking of vehicles.

Reason: To ensure that adequate and satisfactory provision is made for the parking of vehicles clear of all highways in accordance with Policy 40 of the Horsham District Planning Framework (2015)

9 **Pre-Occupation Condition**: No part of the development shall be first occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details to be submitted to and approved by the Local Planning Authority.

Reason: To provide alternative travel options to the use of the car in accordance with current sustainable transport policies and Policy 40 of the Horsham District Planning Framework (2015)

10 **Regulatory Condition**: All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal as already submitted with the planning application and agreed in principle with the local planning authority prior to determination.

This may include the appointment of an appropriately competent person e.g. an ecological clerk of works (ECoW) to provide on-site ecological expertise during construction. The appointed person shall undertake all activities, and works shall be carried out, in accordance with the approved details.

Reason: To conserve and enhance protected and Priority species and allow the Local Planning Authority to discharge its duties under the Conservation of Habitats and Species Regulations 2017 (as amended), the Wildlife & Countryside Act 1981 as amended and s40 of the NERC Act 2006 (Priority habitats & species) and Policy 31 of the Horsham Development Framework.

11 **Regulatory Condition**: No works for the implementation of the development hereby approved shall take place outside of 0800 hours to 1800 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays nor at any time on Sundays, Bank or public Holidays

Reason: To safeguard the amenities of neighbouring properties along Hermongers Lane in accordance with Policy 33 of the Horsham District Planning Framework (2015).

12 **Regulatory Condition**: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and/or any Order revoking and/or re-enacting that Order, no development falling within Classes A, AA, B, C, E, or F of Part 1, Class A of Part 2, or Class AD of Part 20 of Schedule 2 of the order shall be erected, constructed or placed within the curtilage of the development hereby permitted without express planning consent from the Local Planning Authority first being obtained.

Reason: In the interest of visual amenity and due to control the development in accordance with Policy 33 of the Horsham District Planning Framework (2015).

6.0 Appendices

6.1 Appendix 1: CIEEM Advisory Note

6.2 Appendix 2: Natural England – Position Statement

6.3 Appendix 3: HDC Water Neutrality FAQs

6.4 Appendix 4: HRA Water Neutrality Appropriate Assessment

6.1 Appendix 1: CIEEM Advisory Note

ADVICE NOTE

ON THE LIFESPAN OF ECOLOGICAL REPORTS & SURVEYS

APRIL 2019



It is important that planning decisions are based on up-to-date ecological reports and survey data. However, it is difficult to set a specific timeframe over which reports or survey data should be considered valid, as this will vary in different circumstances. In some cases there will be specific guidance on this (such as for the age of data which may be used to support an EPS licence application). In circumstances where such advice does not already exist, CIEEM provides the general advice set out below.

For some projects the time taken between commencing the scoping or design and submitting a planning application can be several years, and this can result in the early ecology surveys becoming out-of-date (based on the advice set out below); this can lead to additional costs for developers associated with updating survey data. Nevertheless, there are considerable advantages associated with undertaking surveys early during the scoping or design phases of a project.

Ecological consultants should give careful consideration to which, if any, surveys need to be updated; design their data collection in a way which maximises the benefits of early surveys whilst minimising the costs to developers; and provide clarity on the likely lifespan of surveys in their reports.

AGE OF DATA	REPORT / SURVEY VALIDITY
Less than 12 months	Likely to be valid in most cases.
12-18 months	Likely to be valid in most cases with the following exceptions: • Where a site may offer existing or new features which could be utilised by a mobile species within a short timeframe (see scenario 1 example); • Where a mobile species is present on site or in the wider area, and can create new features of relevance to the assessment (see scenario 2 example); • Where country-specific or species-specific guidance dictates otherwise. Report authors should highlight where they consider it likely to be necessary to update surveys within a timeframe of less than 18 months.
18 months to 3 years	A professional ecologist will need to undertake a site visit and may also need to update desk study information (effectively updating the Preliminary Ecological Appraisal) and then review the validity of the report, based on the factors listed below. Some or all of the other ecological surveys may need to be updated. The professional ecologist will need to issue a clear statement, with appropriate justification, on: • The validity of the report; • Which, if any, of the surveys need to be updated; and • The appropriate scope, timing and methods for the update survey(s). The likelihood of surveys needing to be updated increases with time, and is greater for mobile species or in circumstances where the habitat or its management has changed significantly since the surveys were undertaken. Factors to be considered include (but are not limited to): • Whether the site supports, or may support, a mobile species which could have moved on to site, or changed its distribution within a site (see scenario 1&2 examples); • Whether there have been significant changes to the habitats present (and/or the ecological conditions/functions/ecosystem functioning upon which they are dependent) since the surveys were undertaken, including through changes to site management (see scenario 3 example); • Whether the local distribution of a species in the wider area around a site has changed (or knowledge of it increased), increasing the likelihood of its presence (see scenario 4 example).
More than 3 years	The report is unlikely to still be valid and most, if not all, of the surveys are likely to need to be updated (subject to an assessment by a professional ecologist, as described above).



EXAMPLE SCENARIOS

1

- Trees or buildings on site have been surveyed for evidence of bat roosts and none were found; new roosts may be present, and trees or buildings may have developed new features which were not previously present. An update bat roost survey is likely to be required.
- One or more potential otter resting sites have been identified, although there was no evidence of use at the time of the survey; such features may have been used by otters during the intervening period. An update otter survey is likely to be required.

2

- A badger survey confirmed the presence of badgers on site; new setts may have been excavated within the site. An update badger survey is likely to be required.

3

- An area of grassland was heavily grazed by cattle at the time of the original survey and was considered to be unsuitable for reptiles, although slow-worms were known to be present in the wider area; grazing has since ceased and the grassland has been cut once annually, which has encouraged the development of a tussocky sward which provides suitable habitat for slow-worms. A reptile survey is now likely to be required.

4

- A water vole survey confirmed their absence from the site but identified them as present in the wider area surrounding it; a recovery project is underway in the local area through a mink control programme, which is encouraging the spread of water voles.

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6.2 Appendix 2: Natural England – Position Statement

Natural England's Position Statement for Applications within the Sussex North Water Supply Zone

September 2021 – Interim Approach

Please take the following as Natural England's substantive advice for all applications which fall within Sussex North's Water Supply Zone.

Sussex North Water Supply Zone

Arun Valley SPA, SAC and Ramsar Site- Sussex North Water Supply Zone

The Sussex North Water Supply Zone includes supplies from a groundwater abstraction which cannot, with certainty, conclude no adverse effect on the integrity of;

- Arun Valley Special Area Conservation (SAC)
- Arun Valley Special Protection Area (SPA)
- Arun Valley Ramsar Site.

As it cannot be concluded that the existing abstraction within Sussex North Water Supply Zone is not having an impact on the Arun Valley site, we advise that developments within this zone must not add to this impact. This is required by recent caselaw, Case C-323/17 People over wind and Sweetman. Ruling of CJEU (often referred to as sweetman II) and Coöperatie Mobilisation for the Environment and Vereniging Leefmilieu Case C-293/17 (often referred to as the Dutch Nitrogen cases).

Between them these cases require Plans and Projects affecting sites where an existing adverse effect is known (i.e. the site is failing its conservation objectives), to demonstrate certainty that they will not contribute further to the existing adverse effect or go through to the latter stages of the Regulations (no alternatives IROPI etc).

Developments within Sussex North must therefore must not add to this impact and one way of achieving this is to demonstrate water neutrality.

In addition, the Gatwick Sub regional Water Cycle Study concluded that water neutrality is required for Sussex North to enable sufficient water to be available to the region.

The definition of water neutrality is the use of water in the supply area before the development is the same or lower after the development is in place.

Strategic approach

Natural England has advised that this matter should be resolved in partnership through Local Plans across the affected authorities, where policy and assessment can be agreed and secured to ensure water use is offset for all new developments within Sussex North. To achieve this Natural England is working in partnership with all the relevant authorities to secure water neutrality collectively through a water neutrality strategy.

Whilst the strategy is evolving, Natural England advises that decisions on planning applications should await its completion. However, if there are applications which a planning authority deems critical to proceed in the absence of the strategy, then Natural England advises that any application needs to demonstrate water neutrality. We have provided the following agreed interim approach for demonstrating water neutrality;

Minimising water use of new builds.

- Complete a water budget (based on occupancy)
- All new builds to demonstrate that they can achieve strict water targets (e.g., 85L/pp/day*)

  This can be achieved by measures such as:

- Grey water recycling (advantage of being reliable in hot dry weather);
- Rainwater harvesting;
- Water efficient fixings (such as shower aerators) to demonstrably reduce demand-this would need to be suitably certain.

In addition, water offsetting is required

- One way to achieve this is retrofitting of council owned properties/commercial buildings-located within Sussex North. Examples include:

- Grey water recycling- (for example there are clear opportunities for commercial properties).
- Rainwater harvesting of commercial settings;
- Installation of water reduction fittings in Council-owned buildings.

These measures need to be implemented until such time as a more sustainable water supply has been secured.

It will also need to be ensured that measures are not already proposed (for example in Southern Water's Management Plan) to avoid double-counting.

Any mitigation must be suitably certain in order to comply with the Habitats Regulations and Caselaw.

If the application cannot demonstrate, through an appropriate assessment, the required water neutrality, we advise that it is either revised to achieve this in line with the above or awaits completion of the strategic approach.

The securing of water neutrality is a matter which needs to be resolved at a strategic level and Natural England is working with the relevant authorities and the water company to achieve this. In light of this, Natural England will not be engaging with individual planning applications whilst the strategy is evolving.

***This this is the reasonably achievable figure with the above measures based on the early data from the strategic solution and may be subject to change as the strategic solution evolves.**

6.3 Appendix 3: HDC Water Neutrality FAQs

Water neutrality and planning applications

Last updated: 13 July 2023 (click the blue box below to see updated sections)

Content updates December 2023

This page is for anyone considering applying for development in the Horsham District.

On this page you'll find FAQs from Natural England for development within the Sussex North Water Zone and an explanation of Horsham District Council's proposed method of dealing with the issue.

These FAQs are specific to information needed to support a planning application. They should be read alongside our Water neutrality and Planning Policy page.

Natural England FAQs

On **2 March 2022** Natural England has updated the answers to to frequently asked questions (FAQs) for developers in considering their Position Statement when applying for development in Sussex North.

Read Natural England's Frequently Asked Questions

Horsham District Council FAQs

The following questions outline are directed towards anyone considering applying for development in the Horsham District, and explain Horsham

District Council's proposed method of dealing with the issue. This page will be updated periodically as matters evolve and change.

This document should be read in conjunction with the accompanying Local Plan Water Neutrality FAQs, the Natural England (NE) Position Statement (September 2021), and the Natural England FAQ's (December 2021) for development within the Sussex North Water Supply Zone.

What types of application are impacted by the Natural England Position Statement?

All development proposals that consume mains water are potentially impacted by the Natural England Position Statement. Horsham District Council has though screened out all householder planning applications (with the exception of those proposals for annex accommodation and swimming pools), and all development granted under Schedule 2 Parts 1 and 2 of the General Permitted Development Order from having a likely significant impact on the Arun Valley, as there is no evidence that extensions or minor alterations to dwellings will directly result in an increase in water consumption.

All other development proposals that consume mains water are now required to demonstrate water neutrality. This includes all development other than that mentioned above granted under the General Permitted Development Order- see below for further details on this. All applications for Reserved Matters must also now demonstrate water neutrality.

Applications made under s.96a of the Town and Country Planning Act for non-material amendments do not need to demonstrate water neutrality (unless the amendment would increase water consumption, at which point it will be considered a material amendment).

Applications made under s.73 of the Town and Country Planning Act for minor material amendments (including the variation or removal of conditions) will in many cases need to demonstrate water neutrality. Further specific guidance on when water neutrality applies for s.73 applications is set out separately below.

What about applications to discharge planning conditions?

The consequence of the CG Fry v SoS and Somerset Council High Court decision is that it now means that a Habitats Regulations Assessment is required at discharge of condition stage, even if the planning permission itself pre-dates the Natural England Position Statement (Sept 2021). We will therefore be unable to approve applications for matters reserved by condition unless:

1. The condition relates to a development that has previously been screened out from requiring water neutrality (such as most householder development)
2. The condition relates to a development that has already demonstrated water neutrality.
3. The condition relates to matters required to be agreed at pre-occupation stage only; or
4. The condition does not run to the heart of the permission (ie it is not a conditions precedent*)

There is considerable case law on what constitutes a conditions precedent, but broadly speaking we would consider this to be conditions relating to matters such as land contamination, underground services, finished floor levels, drainage, materials, biodiversity mitigation. As always there will be exceptions as well as other conditions that constitute a conditions precedent on a case-by-case basis.

For those developments which now must demonstrate water neutrality, the simplest way to achieve this is to make an application under s.73 of the Town and Country Planning Act to vary the original planning permission. The s.73 application would need to be accompanied by a Water Neutrality Statement and would allow conditions to be applied to secure any onsite mitigation, alongside a s106 agreement to secure any offsite mitigation. As part of the s.73 application submission you may also wish to submit the details necessary to satisfy any outstanding conditions.

Please note that we will not be able to issue a s.73 consent if the commencement date of the original planning permission has lapsed with no commencement work having taken place. In such cases a fresh application for planning permission will be required.

If your development has commenced and you are in breach of a condition, you may alternatively apply for retrospective planning permission under s.73a of the Town and Country Planning Act.

It is not possible to make an application under Regulation 77 of the Habitats Regulations (see below for further detail) to demonstrate water neutrality in these cases as Regulation 77 only applies to development granted by way of a Development Control Order (such as the General Permitted Development Order).

Will the Council require demonstration of water neutrality where it can be shown that the application site abstracts its water from a different source to Hardham?

If development is not supplied by the abstractions in Sussex North Water Supply Zone, then there would be no need to demonstrate water neutrality. The applicant will however, need to evidence where the supply to their site comes from and obtain Southern Water's agreement that the supply is sourced from outside the supply zone.

What is the process Horsham District Council needs to follow?

S.63 of the Conservation of Habitats and Species Regulations 2017 sets out the process the competent authority (in this case HDC) must follow. The Planning Practice Guidance sets out further detail in it's dedicated Appropriate Assessment chapter.

For those applications that will create demand (regardless of any existing use of the site) for mains water from the Sussex North Supply Zone, the applicant must submit a Water Neutrality Statement setting out the existing and proposed water consumption figures and a scheme for how water neutrality will then be achieved. The requirement for a Water Neutrality Statement is now a local validation requirement.

The Council will first screen the proposals to assess whether a significant effect on the Arun Valley is likely either alone or in combination with other plans/projects. Mitigation cannot be taken into account at this stage. For instance, if your proposal seeks to reduce water consumption below 110 litres per person per day (the maximum volume required by our current development plan), and/or offset proposed water consumption on another site, then this forms mitigation that cannot be considered at screening stage.

Where proposals have been screened in (ie they are determined to have a likely significant effect), the Council is required to consider the proposed mitigation as part of an Appropriate Assessment. The Planning Practice Guidance states that '*an appropriate assessment must contain complete, precise and definitive findings and conclusions to ensure that there is no reasonable scientific doubt as to the effects of the proposed plan or project'* (PPG para 003). The success of the Appropriate Assessment process is therefore highly reliant on the robustness of the evidence presented by applicants. Vague, incomplete or ambiguous data will not be sufficient to enable a proposal to successfully pass through Appropriate Assessment.

The Council will assess the water neutrality statement and strategy and if we consider it a sufficiently precise, credible and deliverable means of achieving water neutrality, we will pass the statement to our specialist ecology consultants to undertake the Appropriate Assessment required by s.63 of the Habitats Regulations. Our ecology consultants will be targeted to respond within 14 days.

In the event the strategy passes Appropriate Assessment, the Habitat Regulations require that it is then passed to the appropriate nature conservation body (in this case Natural England) to comment within a 'reasonable time as the authority specifies'. We consider 21 days to be a reasonable time for a response, as per the standard consultation response times.

In the event Natural England do not object, we will be able to then grant planning permission in the event all other matters are acceptable.

As the HRA consultation process takes a number of weeks to complete (at least 5 weeks from the receipt of an acceptable water neutrality strategy), officers will look to agree suitable extensions of time with applicants as necessary and at the appropriate time.

Is development granted by the Town and Country Planning (General Permitted Development) Order impacted by water neutrality?

Development granted under the General Permitted Development Order (GPDO) must still demonstrate water neutrality. S.3 of the GPDO states that planning permission is granted by the GPDO only where the provisions of the Order and s.75-78 of the Habitat Regulations have been complied with. S.75-78 of the Habitats Regulations sets out a strict

process to be followed for development otherwise granted by the GPDO where that development would result in an impact on a habitats site. If development granted by the GPDO will generate water consumption, it will not be lawful permitted development unless and until the process contained within s.75-78 of the Habitat Regulations has concluded no adverse impact on the Arun Valley sites will occur.

In these situations, our current approach is to grant applications for Prior Approval and Prior Notification as normal based on the relevant GPDO criteria, however our decision notices will refer to the need to separately comply with the Habitat Regulations in order to be lawful. Any such development will therefore not benefit from permitted development until an application to the Council under s.77 of the Habitats Regulations has been made and has been determined positively.

Make a Regulation 77 application

Please note that as set out above, development granted under Parts 1 and 2 of Schedule 2 of the GPDO have been screened out from having a significant effect and therefore from being required to demonstrate water neutrality. Therefore, any development granted under Parts 1 and 2 of Schedule 2 does not need to comply with s.75-78 of the Habitat Regulations.

How should Water Neutrality Statements be presented?

As a general guide, we would expect a Water Neutrality Statement to cover the following elements:

Introduction

Explain the purpose of the statement and the reason for its submission.

Background

Outline the background to the statement. This includes details of the site, including its existing or most recent use, any extant permissions, and details of the current proposal.

Baseline Calculations

It is critical that the statement clearly establishes what the baseline water consumption rate is for the existing or most recent use. Where historic water bills for the site are not available, alternative data using the Building Regulations Part G or BREAM water calculators should be used, along with appropriate occupancy rates and consumption data for any industrial processes being undertake at the site. The data should be presented in litres per person per day. Further information is set out separately below. It is critical that existing baseline consumption is fully evidence to give certainty of the actual mains water being use at a site. Metered water bills are the best way to achieve this certainty.

Proposal Demand

This section will calculate what the water demands will be from the proposed development. The data should be presented in litres per person per day and reflect the average occupancy of the development. For business uses, the proposed consumption data must include consumption used for any proposed industrial processes

Water Reduction Measures

Where the proposed water consumption is higher than the baseline consumption, you must first consider reducing water consumption in the proposed development through installing more water efficient fixtures and appliances. Completion of the Part G or BREEAM water calculators will help demonstrate the savings to be made. Where highly efficient appliances are to be installed, details of an appliance that meets that high standard of water consumption should be submitted to demonstrate the efficiencies are achievable.

Once all efficiency opportunities have been exhausted, water re-use through rainwater harvesting and/or greywater/blackwater recycling should be then considered. Further details below.

Offsetting measures

The use of efficiencies and rain/grey water harvesting technologies alone will be unlikely to make some developments water neutral. In most such cases, such as new build on greenfield sites, offsetting measures to reduce water consumption on other land and property will be required in order to achieve water neutrality. Where offsetting on third party land, full details and evidence of the third party landowner's existing water consumption must be submitted, along with the full details of the efficiencies to be implemented and how the efficiencies will be maintained in future (this could be through a maintenance contribution

to the landowner for instance). This can include existing water bills and evidence of the efficiency of the existing fixtures and appliances. Where offsetting is to be carried out on third party land, that landowner will be required to enter into a legal agreement to install and retain the measures in perpetuity.

Offsetting cannot be carried out on third party land that does not take its water from the same North West Sussex Supply Zone.

Conclusion

It is important the conclusion summarises the water figures in a clear manner and sets out clearly the detail of any mitigation strategy necessary to achieve neutrality.

How to evidence existing/baseline water consumption

Residential uses

For residential schemes, we will expect to see water consumption calculations for any existing use of the site, and the proposed use. These must be set out in litres per person per day (l/p/d). Where an existing residential dwelling is to be demolished/replaced, copies of recent metered water bills within the last three years is the best evidence of existing consumption.

Where water bills are not available, a survey of all existing fixtures and fittings that evidences their current water consumption rate should be provided within a Building Regulations Part G water calculator or equivalent. The calculator should be supported with photographs of the fixtures and fittings, and an explanation of the methodology used to calculate the flow rates etc. The resultant per person water consumption figure should then be multiplied by the current number of occupants or, if the dwelling is vacant, the average occupancy rate for that size of dwelling.

Based on extrapolated 2011 census data for Horsham District, average occupancy rates are as follows:

- One-bedroom dwellings: 1.32 occupants
- Two-bedroom dwellings: 1.88 occupants
- Three-bedroom dwellings: 2.47 occupants

- Four-bedroom dwellings: 2.86 occupants
- Five-bedroom dwellings: 3.09 occupants

In order to demonstrate future consumption rates, you are advised to complete a Building Regulations Part G water calculator or equivalent, and use average occupancy rates for the size of dwelling being proposed to calculate the overall site water consumption. The data used to complete the Part G calculator should be realistic based on fixtures and fittings available on the market, and be reflective of the proposed use. It should be noted that achieving water reductions to under 85 l/p/d is understood to be challenging unless rainwater harvesting and/or greywater recycling is included. Please be mindful of applying the standard 5lpd for external consumption if that dwelling does not have outside space. Where no washing machines are proposed in a dwelling, we would expect the standard washing machine consumption rates to be used in the Part G calculator as any occupant would still need to wash their clothes.

Worked example

The proposal is to replace 1x2-bed house with 1x 3-bed house and 1x4-bed house.

Existing baseline consumption:

The 2-bed house is vacant. Based on Census data it would have an average occupancy of 1.88 persons. The existing fixtures and fittings have been surveyed and a Building Regulations Part G water calculator completed. This details water consumption of 127.4 litres per person per day. The existing water consumption would therefore be 1.88 x 127.4 l/p/d = 239.5 litres per day in total.

Proposed consumption

A 3-bed house has an average occupancy of 2.47, and a 4-bed house has an average occupancy of 2.86. Total proposed occupancy would therefore be 2.47 + 2.86 = 5.33 persons

To be water neutral, the 5.33 average occupants must not consume more than 239.5 litres per day in total. This works out at consumption of 44.9 l/p/d (239.5 / 5.33)

Mitigation through improved water efficient fixtures and appliances and/or rainwater harvesting within the new dwellings would be required, and/or offsetting on another property. This mitigation would require the Council to undertake an Appropriate Assessment to pass HRA.

Commercial uses

The best way to evidence existing mains water consumption is via copies of metered water bills from within the last three years. The bills should cover the period before Covid as well as after as the lockdowns will have affected consumption at many sites. Unmetered water bills will not be accepted. Where there are other uses on a site, or the use is shared across multiple other buildings and land, it will be difficult to evidence with certainty the actual water use from a building unless separately metered. This is particularly the case for agricultural buildings. In such scenarios we will likely only be able to consider existing water consumption as nil. In cases where you are evidencing water consumption from agricultural uses, it will need to be clear that the water consumed is coming from the mains supply, and not watercourses or other rain collecting means.

When evidencing proposed consumption, we recommend you complete a BREEAM Wat 1 water calculator or an appropriate equivalent industry standard water calculator to estimate proposed employee water usage. Where necessary OffPAT employment density figures can be used to calculate average employee numbers a site and use could employ

Water consumption data for commercial uses must also include water consumed in any industrial or cooking process carried out on the site.

We will need to assess each case on its merits. We will also need to consider alternative permitted uses within Class E, or industrial occupiers under class B2, for instance, which could vary considerably in their water consumption, when assessing proposed consumption rates. Conditions may be applied to restrict alternative uses if there is concern they may breach the water neutrality strategy.

Please note this advice may evolve in future as we receive and examine more water neutrality strategies.

Can I use the fallback consumption of an existing unbuilt planning consent when calculating the existing baseline consumption rate?

The use of a fallback consent as part of the evidence base for the existing water consumption on a site is capable of being considered. However, as the test of certainty to meet the Habitat Regulations sets a very high bar, it is not sufficient to simply rely on the possibility that a fallback scheme may be implemented in the event permission is refused. Instead, we must consider whether the fallback scheme would be implemented in the event permission is refused. To help demonstrate this, we will require evidence that all relevant pre-commencement and pre-slab level planning conditions on the fallback scheme have been discharged, and written evidence that the applicant intends to then build the fallback scheme if permission is not granted.

Can I use the capacity of an existing site when considering existing water consumption at a site, or must I use only the known water usage at the time of application?

We have encountered many scenarios where water neutrality statements are basing existing consumption rates on the theoretical capacity of a site, rather than its actual last known water consumption rate. An example would be using the estimated water consumption from the full occupation of 20 stables, even though only 3 are currently in use. Another example would be estimating water consumption from a café/restaurant use permitted by Class E when the building is currently in retail use, or the last known use was retail.

In such scenarios we can only consider the actual current water consumption at the site, unless there is clear evidence of a higher consumption rate at the site in the last three years, such as from water bills and occupancy information. This three year test is consistent with the Natural England FAQs where Natural England consider three years an appropriate timescale when considering water use from a building now demolished. We will not consider evidence of higher water consumption beyond this three year period.

Do I need to demonstrate water neutrality when making an application for a minor material amendment under S.73 of the Town and Country Planning Act?

An application made under s.73 of the Town and Country Planning Act creates a new planning permission on a site therefore we must consider water neutrality as a new material planning consideration in all cases.

Where the original planning permission has already demonstrated water neutrality

If the original permission has already demonstrated water neutrality, and the proposed amendment would not alter the water consumption of the approved development, then no further water neutrality measures will be required. Your submission must though explain what the implications for water consumption from the amendments are. If the amendment would increase water consumption, then an updated water neutrality statement will be required.

Where the original permission has not previously demonstrated water neutrality

If the original permission has not previously demonstrated water neutrality, then the Council will take the following approach:

- If the original development has commenced with all relevant pre-commencement and pre-slab level conditions discharged, then water neutrality will not be required.

- If the original development has not commenced but all relevant pre-commencement and pre-slab level conditions have been discharged, then water neutrality will not be required provided there is evidence that the original development will be implemented in the alternative (see advice on the 'fallback' above).

- If the original development has not commenced and there remain relevant pre-commencement and pre-slab level conditions to be discharged, then water neutrality will be required to be demonstrated.

Amending existing outline planning permissions

Where you are seeking to amend an existing outline planning permission granted prior to the Natural England Position Statement, and that permission has been commenced, we would normally seek to apply a condition to require that water neutrality be addressed prior to the grant of any subsequent reserved matters applications, unless water neutrality has otherwise already been addressed. This would be consistent with how water neutrality would be addressed if the original outline permission was pursued instead.

Where an outline planning permission has not been implemented, we will apply the same test as set out above for amending an unimplemented full planning permission.

If you are seeking to amend a reserved matters consent, water neutrality will need to be demonstrated for the area subject to reserved matters consent only.

How will the Council consider residential annexes?

Detached annexes are generally considered capable of self-contained occupancy supplemental to the main dwelling and therefore will be assessed in the same manner as a new dwelling in terms of occupancy rate and water consumption. Annexes that are attached to the main dwelling and clearly share facilities in the main dwelling will be considered as a householder extension and in the majority of cases will not need to demonstrate water neutrality.

Please check the CIL regulations.

What information is required if I want to offset my water consumption on another property?

It is critical that we have certainty that the proposed efficiencies within the offsetting property will provide the necessary savings. To help provide this certainty we will need:

1. Water bills within the last three years showing actual metered readings.
2. Current number of occupants in the dwelling(s)
3. A survey of all existing fixtures and fittings that evidences their current water consumption rate. The evidence should include recordings of the flow rate of each fixture/fitting and photographs of each, and an explanation of the methodology used to calculate the flow rates etc. The results should be placed within a Part G water calculator
4. A completed Part G calculator for the proposed fixtures and fittings, including details of the fixtures and fittings to be used

To secure the mitigation we will normally require a Section 106 legal agreement, unless the offsetting site falls within the red line site boundary of the planning application in which case the mitigation can be

managed by condition. We will not apply conditions if the offsetting site is within the application blue line as the requirement for the mitigation will not then show as a land charge for that property.

What about Water Re-Use Technologies?

Water reuse technologies such as rainwater, grey water and blackwater harvesting have the potential to save significant amounts of water. For example, 24% of water in the home is used for flushing the toilet and 4% externally in the garden, meaning a water reuse system could save at least a quarter of demand if it was installed for these purposes. Such technologies are though unlikely to provide sufficient savings to reach water neutrality without further offsetting.

The following Waterwise link and accompanying downloadable PDF may be of assistance:

Waterwise: Independent review of costs and benefits of RWH and GWR options in the UK

What evidence do you require where rainwater harvesting is being proposed?

We will require details of the rainwater harvesting including the quantum of water capable of being harvested from the site and the means and capacity for storage to cater for drought. Part G of the Building Regulations provides a methodology for calculating the amount of rainwater that can be captured. Drought storage should provide for at least 35 days supply to provide robustness to address climate change, equivalent to the most recent drought periods experienced in the region.

If rainwater harvesting is to be used for drinking water, then evidence of how the system will comply with the Private Water Supplies (England) Regulations 2016 (as amended) will need to be submitted. We will need to see evidence prior to occupation that the water has been independently certified as suitable for consumption alongside a longer term monitoring and maintenance programme.

Rainwater (and greywater) harvesting schemes can be highly contaminated, therefore in all cases where such systems are to be used within dwellings, even for non-potable uses such as toilets and washing machines, we will require details on (but not limited to) the likely

contaminants, type of treatment that will be installed, the proposed sampling and testing regime, detail on the maintenance, servicing and cleaning of the tanks, water treatment equipment, pumps, all pipework etc for the lifetime of the development, and measures to ensure continuity of supply.

Will the Council accept boreholes as a means of achieving water neutrality?

Technical Advice

Private boreholes are capable of providing a suitable source of water (potable and non-potable) to achieve water neutrality, however a significant level of survey work will be required to support any proposal, both before any planning permission is granted and before first occupation of any property. This is because any measures proposed to achieve water neutrality must be certain and secure to avoid any risk of impact on the designated sites. The following guidance has been prepared in consultation with the Environment Agency and Natural England:

- For applications proposing a borehole to abstract more than 20m3 per day to serve a development, an abstraction licence from the EA will be required (Apply for a water abstraction or impounding licence - GOV.UK (www.gov.uk)). Before an application for an abstraction licence is made, any developer must apply to the EA for a Groundwater Investigation Consent (Apply for consent to investigate a groundwater source - GOV.UK (www.gov.uk))
- Evidence of an approved abstraction licence, or a valid licence application, must be provided with the planning application. It can take up to a year to go through the Groundwater Investigation Consent and Abstraction Licensing process and so early interaction with EA for large developments proposing to use a borehole is important.
- For applications proposing a borehole that would abstract less than 20m3 per day, an abstraction licence is not needed from the EA. In such cases the information below must be submitted with the planning application.

In all cases, planning applications that propose a borehole will need to provide a Hydrogeology Report (or equivalent) prepared by a suitably

qualified professional (eg a qualified Hydrogeologist (M.SC level)). The Report will need to clearly cover the following matters:

Groundwater Resources

1. The location of the proposed borehole and the aquifer into which it is to be sunk. NB EA advice presumes against abstraction within the Hardham Basin (Folkstone Beds) and Chichester and Worthing Chalk, and where a borehole into the Lower Greensand Arun and Western Streams could reduce flows in the River Rother (click here to see map or view the EA's Arun and Western Streams abstraction licensing strategy (ALS) on GOV.UK
2. Whether any geological links exists from the borehole location and the Arun Valley basin, ie confirm that the abstraction of water from the borehole will not also take water from the Arun Valley habitat sites, or otherwise impact on their integrity, even very indirectly, including from any river catchment that serves the Arun Valley basin
3. Whether the borehole location will impact on any nearby SSSI's and their impact zones, or any other ecological features
4. A hydrogeological assessment of water yield from the borehole is necessary in all cases, commenting on risk of dry periods to ensure continuous year-round supply. Given locational variations in yield supply even in productive aquifers, evidence must be from a test borehole sunk onsite to demonstrate that the site can yield sufficient water in the driest months of the year (June to September), and that this yield will be reliable year-on-year. EA advice is that there is limited evidence that Weald Clay is capable of providing reliable yields, albeit some limestone and sandstone bands may be capable of supplying sufficient water for smaller schemes. Boreholes sunk into the Weald Clay will likely therefore not be supported unless there is clear evidence of a reliable year-on-year yield sufficient to serve the development proposal.

Groundwater quality

The quality and safety of private water supplies is controlled by in England by the Private Water Supplies (England) Regulations 2016 (as amended), and is regulated by the Council's Environmental Health team.

The risks of pollution to a drinking water supply vary with the properties of the underlying soils and rock. The Environment Agency use source

protection zones (SPZs) to identify areas close to drinking water sources to apply controls on some activities which could cause pollution. For large supplies, such as water company abstractions, these SPZs are created on a bespoke basis using groundwater modelling. However, all groundwater sources used for human consumption without a bespoke SPZ have at least a 50m radius SPZ centred on the borehole.

When considering the potential creation of a new SPZ it is important to understand the implications for existing activities which may fall within the zone. Further information on SPZs and relevant activities is available in The Environment Agency's approach to groundwater protection.

To support your planning application you will need to provide:

1. A water quality assessment from the test borehole detailing the quality of the water abstracted and the measures to ensure potable water quality will be secured, including:
2. Detail on what type of treatment will be installed on the supply with information clearly indicating that it is appropriate for the amount of water being used and the contaminants found.
3. Detail on the proposed sampling and testing regime, undertaken in accordance with Private Water Supplies (England) Regulations 2016 (as amended) (or subsequent superseding equivalent), and taking into account the likely contaminants, as detailed above, along with detail on how any failure of any samples will be investigated and managed.
4. Detail on the maintenance, servicing and cleaning of the tanks, water treatment equipment, pumps, all pipework etc for the lifetime of the development along with regularity of servicing/maintenance and clarification what steps will be taken in the event of equipment failure to ensure continuity of supply.
5. Arrangements for keeping written records of all sampling, results of analysis, inspection, cleaning, and maintenance.
6. A list of all properties, including their land uses and activities, that fall within 50m of your borehole(s) and which could have the potential to cause pollution, a list of all the activities that would need to be restricted within the zone, and how occupiers will be notified of these restrictions in the event permission is granted. Please annotate the affected properties on a map of the local area alongside the location of your new borehole(s) and the extent of the SPZ.

Please be aware that conditions to secure long-term management, maintenance and monitoring of the private water supply will be required if planning permission is granted.

Non-Technical Summary

Sinking a borehole to provide a private fresh water supply to a development can be a way to overcome water neutrality requirements through the planning system. This is because a borehole can, in certain circumstances, provide fresh drinking water to a development without the need for that development to rely on mains water supplies, and without impacting on the sensitive Arun Valley designated sites. Boreholes are sunk deep into the ground into water-bearing layers of rock (aquifers), which are naturally replenished from rainfall that falls on the surface above the aquifer. Aquifers can cover very extensive areas or can be very limited in their horizontal and vertical extent. Water companies, including Southern Water, also use boreholes to provide a substantial proportion of public water supplies, although these boreholes are on a much larger scale than private supply boreholes.

Several developments in Southern Water's Sussex North Water Resource Zone (WRZ) have already sunk their own private water supply boreholes, are exploring options to do so, or are considering this option for their development. Any boreholes that are sunk for this purpose must be carried out by qualified, competent companies to ensure that all of the relevant legislation is followed, ensuring that any drinking water supplied by the borehole is safe for human consumption; does not introduce risks to the Arun Valley site, other protected sites, or the aquifer itself; and will provide any development with enough water for long enough to ensure that there is no reliance on mains water supply (i.e. certainty of supply).

Natural England's water neutrality position statement sets out that new development cannot add to the abstraction pressures at Southern Water's Pulborough abstraction boreholes. Therefore, as long as any proposed private borehole for a development can demonstrate that it is not going to add to the abstraction at Pulborough, or otherwise affect the Arun Valley designated sites and provides sufficient certainty of supply, it may be a suitable solution for some sites to demonstrate that new development is water neutral.

The geology in Sussex North is complicated. It is possible that private boreholes sunk close to the Arun Valley sites may be acceptable because they are taking water from a different aquifer than those under the Arun Valley sites. Conversely, there can be situations where private boreholes

sunk relatively far away from the Arun Valley sites may not be acceptable because there is a link between the aquifers, which could therefore impact on the protected sites. Environment Agency advice presumes against abstraction within the Hardham Basin (Folkstone Beds) and Chichester and Worthing Chalk, and where a borehole into the Lower Greensand Arun and Western Streams could reduce flows in the River Rother. This is why the Sussex North local planning authorities may accept boreholes in some locations close to Pulborough but reject others further away – distance to Pulborough is not necessarily a good indicator of acceptability.

Private supply boreholes can create other issues, including poor water quality and impacting on the availability of water in certain aquifers. For these reasons, the local planning authorities in the Sussex North WRZ will only accept boreholes as a means of supplying drinking water to a development if strict criteria are met.

The Environment Agency require that larger private boreholes – those seeking to provide more than 20 cubic metres (20,000 litres) of water per day – must obtain an Abstraction Licence from them, which will set specific requirements on the volume of water that can be abstracted, the aquifer the water is to be taken from and any other requirements such as monitoring and metering how much is abstracted. Before an application for an Abstraction Licence is made, any developer must apply to the Environment Agency for a Groundwater Investigation Consent. It can take up to a year to go through the Groundwater Investigation Consent and Abstraction Licensing process. Evidence of an abstraction licence or a valid licence application will be required to be submitted with any planning application. Any boreholes seeking to provide less than $20m^3$ per day are exempt from Environment Agency licencing requirements, and the assessment of details sits with the local planning authority, in conjunction with local authority Environmental Health teams. The local planning authority is also responsible for considering whether certainty of supply is sufficiently demonstrated.

Ultimately, it is for a developer to provide sufficient information to the local planning authority to confirm that any proposed borehole is an acceptable form of mitigation. Please contact your local planning authority to obtain an understanding of what information is required. The requirements may change periodically depending on changes to environmental risk or evidence and/or planning policy.

Our opinion is based on the information available to us at the time of the enquiry. When the formal planning application is submitted, our position may change if there have been changes to relevant policy or guidance.

Will Horsham District Council be using their own consultants to assess Water Neutrality Statements for you?

We will look to ask water consultants to provide us with comments on strategies on a case by case basis. Where we require independent assessment from a consultant, we will contact you in advance and request confirmation first that the applicant will be reimbursing us for that consultation.

How will Horsham District Council seek to secure water neutrality strategies in any planning permission?

To secure the water neutrality strategy, we will apply a condition requiring that development be carried out in accordance with the strategy, with evidence to be submitted to us for approval prior to first occupation or use confirming that the strategy has been implemented in full. Evidence to meet this condition would include photographs of the installed features, their specification, and the completion of the Part G 'as built' table or equivalent. In some cases, depending on the type of mitigation being proposed (such as rainwater harvesting schemes), we will need to understand the longer term monitoring and maintenance programme for the mitigation.

Where offsetting on third party land is required to achieve neutrality, we will require the third party landowner to enter into a legal agreement to ensure the offsetting measures are evidenced as having been installed prior to first occupation or use of the approved development and are retained in perpetuity thereafter.

When will Horsham District Council negotiate amendments to a submitted water neutrality strategy?

It is important that decisions are made in a timely manner where possible and for us to appropriately manage the volume of work in the department to avoid undue delays for our customers. These FAQs contain detailed information to assist in the preparation of water neutrality statements and help ensure decisions are made without significant delay.

With this being the case if a statement has significant shortfalls in its methodology and/or its calculations then we will proceed to determine

the application without further negotiation. If however it is considered that minor changes may make an impact on our determination to enable the grant of permission then we will look to seek those amendments wherever possible before a decision is made.

Is it possible to provide a water neutrality strategy on a site that is not in Horsham District?

Provided the mitigation is provided within the Sussex North Water Supply Zone it may be possible to provide mitigation outside of Horsham District, but it can be complex to negotiate and secure. The local planning authority for the chosen mitigation site will need to agree to enter into a legal agreement with Horsham District Council and all other parties to secure the mitigation and monitoring in perpetuity.

Will Horsham District Council accept a condition requiring no development take place until a water neutrality strategy has been submitted and approved?

Several applicants have suggested that we should secure a water neutrality strategy by condition, rather than requiring a strategy be agreed prior to the grant of planning permission. This is not an acceptable approach, as it does not provide for the necessary certainty that the impacts of the development on the Arun Valley sites can and will be mitigated to pass Appropriate Assessment. Any grant of planning permission absent of the up-front certainty that the impact on the Arun Valley can be mitigated would therefore be contrary to the Habitat Regulations.

Furthermore, it is established practice that 'Grampian' conditions should only be used where there is a reasonable certainty that the condition can be discharged within the lifetime of the permission. Given that some schemes will likely require offsetting on third party land to be considered water neutral, the absence of a known third party willing to undertake the necessary works means that there is no certainty that an appropriate strategy will be found within the lifetime of any permission.

Will Horsham District Council accept offsetting on its own property?

The Council is undertaking an assessment of its property holdings to ascertain how much offsetting it is capable of providing. This will take several months and at this stage any offsetting potential would likely be directed first at enabling Horsham District Homes affordable housing schemes to come forward. Given the likely ratio is in the region of 7:1 for the number of existing homes required to offset one new home, it is unlikely that there will be any spare capacity on Council owned property to offset private development.

West Sussex County Council have advised that they are also undertaking an assessment of their property holdings to ascertain how much offsetting they are capable of providing. This will also take several months and at this stage any offsetting potential would again be likely be directed first to deliver County Council projects such as expansions of schools. It is unlikely that there will be any spare capacity on Council owned property to offset private development but this will not be known until the assessment work is complete.

Can I just pay an offsetting charge instead?

Until the strategic solution has been identified and costed, it is unclear whether an offsetting charge will be necessary, when it will come into effect, and how much it would require applicants to pay to proportionately offset their development. At this stage there is no ability therefore to pay an offsetting charge.

Can I simply commit to meeting my water supply needs by importing water to my site by tanker from outside the supply zone?

In order to meet the test of certainty that no adverse impact will take place, we must be able to enforce any approved water neutrality strategy. A strategy such as importing all daily water needs will not be enforceable and is therefore not a strategy we will be able to support. Further advice is though being sought from Natural England and this question may be updated.

What about water consumed during the construction process for my development, will this need to demonstrate water neutrality throughout?

At this stage we consider that most construction timeframes are relatively short therefore we will not be actively seeking water neutrality for the construction phase. We will though include a requirement for Construction Environment Management Plans to include meaningful measures to reduce water consumption, which could include rainwater harvesting for wheel washing or wc use.

Will Horsham District Council grant planning permission for development that is not water neutral, but instead shows significant reductions in water consumption?

No, as such development would not be water neutral and therefore would have an adverse impact on the Arun Valley sites contrary to the legal requirements of the Habitat Regulations.

The Natural England Position Statement is a material consideration, and therefore capable of being outweighed by other matters. In light of the Council's lack of five year housing supply, should you not be granting housing development even if it is not fully water neutral?

The Position Statement is a material planning consideration, however any impact on a habitats site contrary to the Habitat Regulations must necessarily carry great weight in decision making. Paragraph 180 of the NPPF is clear that planning permission should be refused for development that would result in significant harm to biodiversity and/or result in the loss or deterioration of irreplaceable habitats.

Furthermore, where an adverse impact on a habitats site is identified and constitutes a clear reason to refuse permission, the 'tilted' balance of NPPF 11d is not engaged (see footnote 7 to NPPF 11d, and NPPF 182). The absence of a five year housing land supply is not therefore reason to

grant planning permission where water neutrality has not been demonstrated.

Has water neutrality been addressed in any appeal decision?

At this stage we are aware of two linked appeal decisions (ref: 3277840 and 3274485) in the South Downs National Park where an inspector refused two schemes on the same site, one for a single dwelling and an alternative scheme for two dwellings. Both appeals were dismissed owing to water neutrality having not been demonstrated, with this reasoning forming the only reason the appeal for the single dwelling was dismissed.

Related pages

Water neutrality

Water neutrality and Planning Policy

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6.4 Appendix 4: HRA Water Neutrality Appropriate Assessment

Horsham District Council
Habitats Regulations Assessment (HRA) Screening Matrix and Appropriate Assessment

PLEASE NOTE: This screening relates only for potential impacts from water resources on the Arun Valley SAC/ SPA/Ramsar sites and does not consider impacts on any other designated habitat sites. A separate HRA screening will be required for development affecting other SPAs, SACs, or Ramsar sites.

It is the responsibility of the Competent Authority (in this case Horsham District Council) to prepare a HRA report and it is the responsibility of the applicant to provide information to support this process.

This HRA Appropriate Assessment template is for use where a planning application will result in additional demand for mains water being created in the Sussex North Water Supply Zone that is predicted to adversely impact the Arun Valley SAC/ SPA/Ramsar sites.

The purpose of this HRA screening record is to assess the need for appropriate assessment in relation to the project detailed below.

The Conservation of Habitats and Species Regulations 2017 (as amended) requires that a Habitats Regulations Assessment screening is carried out in relation to any plan or project which is likely to have a significant effect on Habitats (European) sites, either alone or in combination with other plans or projects. Habitats sites are Special Protection Areas and Special Areas of Conservation. Ramsar sites should also be given the same level of protection, as stated within the National Planning Policy Framework.

In line with the Court judgement (CJEU *People Over Wind v Coillte Teoranta* C-323/17), mitigation measures cannot be taken into account when carrying out a screening assessment to decide whether a development is likely to result in significant effects on a Habitats site.

Where an Appropriate Assessment is carried out a project may only be authorised after having ascertained that it will not adversely affect the integrity of the site(s) concerned.

Table 1: HRA Screening matrix for water neutrality

Stage 1 HRA screening	
Brief description of the development project	Application: DC/24/0414 Planning Application: Conversion of existing barn into 1No dwelling Location: Priory Fields, Monastery Lane, Storrington, West Sussex, RH20 4LN Type of application: Full Planning
Details of the development project If yes to C, then the applicant should have provided evidence and justification - no further HRA work is required	**Proximity to Arun Valley SAC / SPA / Ramsar**: Is the application site: A) Within the Sussex North Water Supply Zone (WSZ) **YES** B) Arun Valley SAC / SPA / Ramsar potentially impacted by the planning application: **YES there is credible evidence of a real risk that the proposal will, without measures to minimise water use and water offsetting, result in an increase in water demand.** C) Is the planning application directly connected with or necessary to the management of the Arun Valley SAC/SPA/Ramsar site? **NO**

Brief description of the Habitats sites within scope of this assessment	Arun Valley SAC, SPA and Ramsar site supports rare and diverse plant, invertebrate and bird assemblages as qualifying features. It consists of low-lying grazing marsh, largely on alluvial soils, but with an area of peat derived from a relict raised bog. Variation in soils and water supply lead to a wide range of ecological conditions and hence a rich flora and fauna. Further details are provided in Appendix 1.
Key vulnerabilities / factors affecting site integrity	For applications where increased demand for water resources is the only pathway for impacts, Natural England's substantive advice (Position Statement Interim Approach, September 2021) is that such applications - without mitigation - will result in a likely significant effect on the Arun Valley SAC/SPA/Ramsar site either alone or in combination with other developments in the Sussex North WSZ. As it cannot be concluded that the existing abstraction within Sussex North Water Supply Zone is not having an impact on the Arun Valley sites, developments within this zone must not add to this impact. Therefore, such applications, even where mitigation is proposed, must progress to Appropriate Assessment (AA). Natural England's Position Statement (September 2021) is that the Sussex North Water Supply Zone includes supplies from a groundwater abstraction which cannot, with certainty, conclude no adverse effect on the integrity of; • Arun Valley Special Area Conservation (SAC) • Arun Valley Special Protection Area (SPA) • Arun Valley Ramsar Site
HRA Screening Assessment Criteria	
The individual elements of the project (either alone or in combination with other plans or projects) likely to give rise to impacts on the Arun Valley SAC, SPA and Ramsar site	Based on the threat from water demand identified by Natural England's Position Statement, the development proposals need assessment for hydrological changes to the Arun Valley SAC/ SPA/ Ramsar site. For applications, does the evidence show any likely significant effect on Arun Valley SAC/SPA/Ramsar site, without mitigation measures (either alone or in-combination with other plans or projects)? **YES** Test 1 the significance test below has been completed as the evidence shows a likely significant effect on Arun Valley SAC/SPA/Ramsar site, without mitigation measures (in-combination with other plans or projects).

Test 1 the significance test: – Can a judgement be made as to whether there could be any potential significant impacts of the development on the integrity of the Arun Valley SPA/ SAC/Ramsar.	Following the CJEU ruling People over Wind, it is no longer legal to take into account any avoidance and mitigation measures as part of the application at this stage of HRA. For applications where increased demand for water resources is the only mechanism of impact, Natural England's advice is that such applications - **without mitigation** - will have a likely significant effect on the Arun Valley SAC/SPA/Ramsar site in combination with other developments in the Sussex North WSZ. **YES** Therefore, such applications, even where mitigation measures (minimise water use and water offsetting) are proposed, will progress directly to Stage 2 Appropriate Assessment to consider, with mitigation, the impacts of the development on mains water usage on the above designated sites, either alone or in combination with other plans and projects. **Explanation: All development likely to increase the demand for mains water usage, is predicted to result an identifiable impact on the Arun Valley SAC/SPA/Ramsar sites.** After mitigation has been embedded into the project design, Test 2 – the integrity test then needs to be applied.
Stage 2 Appropriate Assessment	
The above Stage 1 HRA screening has determined that a Likely Significant Effect is predicted at Arun Valley SAC/SPA/Ramsar site as a result of impacts on water quantity. This pathway has been screened in, and the potential for adverse effects on site integrity, either alone or in-combination will be assessed. Therefore, this section of the report to inform HRA Stage 2 only discusses the potential for impacts on water quantity as a result of the proposed development.	
Potential for Adverse Effects On the Integrity (AEOI) of a Habitats site from the development alone or in combination.	Supplementary advice on conserving and restoring site features for Arun Valley SAC/SPA sets a number of targets for the site under the supporting the Conservation Objectives in order that the integrity of the sites is maintained or restored as appropriate, and ensure that the sites contribute to achieving the Favourable Conservation Status of the Qualifying Features. The targets cover hydrology and flow, water quantity, area depth and water quality. The hydrology of the river Arun is the major factor affecting these targets and this is turn is affected by the abstraction at Hardham for the supply of drinking water. Continued or increased levels of groundwater abstraction at Hardham reduces water quantity in the Arun Valley sites and adversely affects water levels and flow within the sites (in combination with other plans and projects in the Sussex North WRZ). Without an alternative sustainable water supply or mitigation measures, the hydrology of the sites will be unable to maintain the types and extents of habitats requited to maintain the Qualifying Features.

Details of Water usage for the development	The proposal seeks to convert the existing barn to a dwelling. The submitted water neutrality statement provides limited details relating to rainwater harvesting tank and the use of efficient white goods / fixtures. However, the strategy does not detail the baseline water demand for the existing use or the proposed water demand. Accordingly, the strategy does not demonstrate that the proposed use would utilise less water than the existing. In the absence of a detailed strategy setting out how the applicant intends to demonstrate water neutrality, the Local Planning Authority is not currently in a position to ascertain whether or not the proposal would result in an adverse impact on the integrity of the interest features of the Arun Valley SPA, SAC & Ramsar site from the development either alone or in combination with other plans and projects.
Proposed mitigation for the project to secure the mitigation as a condition of any consent e.g. alternative sustainable water supply, minimising water use in new development. Water offsetting for residual demand in existing buildings in the Sussex North WRZ. See Position Statement issued by Natural England (September 2021)	**Summary of mitigation package** The following measures to minimise water use have been embedded within the development (see Waterwise Water Neutrality Practical Guidance January 2021) to be secured as part of any planning consent: • None provided The following water offsetting measures for demand in existing buildings have also been embedded within the development to be secured as part of any planning consent: • None provided These measures have been embedded within the development to be secured as part of any planning consent and are considered not sufficient to avoid adverse effects on the integrity of the interest features of the Arun Valley SPA, SAC & Ramsar site from the development either alone or in combination with other plans and projects.
Test 2 – the integrity test	**Conclusion:** Having considered the proposed avoidance and mitigation measures above to be provided in-perpetuity through: • ~~The on-site water efficiency measures,~~ • ~~The off-site water demand reduction measures secured through a condition of consent/legal agreement~~ • ~~The provision of an alternative sustainable water supply,~~ Horsham District Council concludes that, with mitigation, the project will have an Adverse Effect on the Integrity of the Arun Valley SAC/ SPA /Ramsar site, either alone or in combination with other plan and projects. This development would therefore not be in conflict with the conservation objectives for the Arun Valley SPA, SAC and Ramsar site which include 'maintaining or restoring the population of Qualifying Features'. See Appendix 1. As the mitigation has been considered after HRA screening, this HRA Appropriate Assessment is in line with the People over Wind CJEU Court

	ruling and, being beyond reasonable scientific doubt concerning the effects of the work envisaged on the site concerned, is also in line with the Holohan and Others v An Bord Pleanála court ruling. Having prepared this Appropriate Assessment of the implications of the project for the Arun Valley sites in view of their conservation objectives, subject to consultation with Natural England and fully considered any representation received where necessary, the authority must refuse the project under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended).

Approving Planner: RHERMITAGE **Date:** 02.04.2024
Approving Ecologist: insert name & credentials **Date:**
Draft AA issued for Natural England comments: **Date:** insert date
Final AA signed off by Horsham DC **Date:** insert date

DISCLAIMER: This information has been produced by Place Services's Ecology Team on behalf of Horsham District Council, at their request.

Appendix 1 – details of Arun Valley SAC/SPA/Ramsar site

Qualifying Features for SPA/SAC	**Arun Valley SPA** A037 Bewick's swan, *Cygnus columbianus bewickii* (non-breeding). During the time of site notification, the SPA supported 115 individuals representing at least 1.6% of the wintering population in Great Britain (5 year peak mean 1992/93 - 1996/97). During the non-breeding season, the SPA regularly supports an assemblage of waterfowl with the area regularly supporting 27,241 individual waterfowl (5 year peak mean for 1992/93 to 1996/97) including: Shoveler *Anas clypeata*, Teal *Anas crecca*, Wigeon *Anas penelope*, Bewick's Swan *Cygnus columbianus bewickii.* **Arun Valley SAC** 4056 Little Whirlpool Ramshorn snail *Anisus vorticulus* *Anisus vorticulus* occurs across a range of sites in southern and eastern England. The Arun valley is one of the three main population centres for this species in the UK. This proposed site includes two of its core sites in the wash lands of the Arun floodplain (Pulborough Brooks and Amberley Wild Brooks SSSIs).
Qualifying Features for Ramsar	**Arun Valley Ramsar** **Ramsar criterion 2** The site holds seven wetland invertebrate species listed in the British Red Data Book as threatened. One of these, *Pseudamnicola confusa*, is considered to be endangered. The site also supports four nationally rare and four nationally scarce plant species **Ramsar criterion 3** In addition to the Red Data Book invertebrate and plant species, the ditches intersecting the site have a particularly diverse and rich flora. All five British duckweed (*Lemna* species), all five water-cress (*Rorippa* species), and all three British water milfoils (*Myriophyllum* species), all but one of the seven British water dropworts (*Oenanthe* species), and two-thirds of the British pondweeds (*Potamogeton* species) can be found on site.

	Ramsar criterion 5 Assemblages of international importance: Species with peak counts in winter: 13774 waterfowl (5 year peak mean 1998/99-2002/2003)
Conservation Status of the relevant Qualifying Features	**Arun Valley SAC, SPA and Ramsar** In line with the national trend, the number of Bewick's swans wintering in the Arun Valley has declined since the time of designation and is now typically fewer than 50 birds. This may reflect an overall decline in the population of the species and/or be due to the effects of a milder climate in which more are able to winter in continental Europe (The Birds of Sussex, 2014). The waterfowl assemblage numbers fluctuate depending upon conditions in the valley but over the past five years have averaged 40,311, an increase from the five year mean of 27,241 at the time of designation. The Arun Valley is one of the remaining strongholds for the Little Whirlpool Ramshorn Snail.
Conservation Objectives (Only Relevant for SPA/SAC)	**Arun Valley SAC & SPA** Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring; • The extent and distribution of the habitats of the qualifying features • The structure and function of the habitats of the qualifying features • The supporting processes on which the habitats of the qualifying features rely • The population of each of the qualifying features, and, • The distribution of the qualifying features within the site.