Gladman Developments Ltd.

Land at the Hill, Littlebourne

SHADOW HABITATS REGULATIONS ASSESSMENT

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1.0 INTRODUCTION

1.1 The following Shadow Habitats Regulations Assessment has been prepared by FPCR Environment and Design Ltd., on behalf of Gladman Developments Ltd., to assess the potential effects of the proposed Evenhill planning application (CA/23/00484), henceforth referred to as "the Site", on nearby sites designated as part of the National Site Network (NSN) and Ramsar Wetlands, in accordance with the Conservation of Habitats and Species Regulations 2019 (EU Exit) (as amended).

1.2 The Habitat Regulations aim to protect a network of sites in the UK that have rare or important habitats or species. The competent authority has a duty to ensure that the activities they regulate, have no adverse effect on the integrity of a European designated site. It is the responsibility for the competent authority to undertake the assessment; however, ecological consultants routinely supply as much information as possible to aid the authority in their assessments as part of the planning process, taking the form of a shadow HRA, or similar document.

1.3 The purpose of this sHRA is to provide the "Competent Authority" (Canterbury City Council), under the Habitats Regulations, the required information to either a) conduct their own HRA, as is their legal obligation, or b) adopt this document as the official HRA.

Proposals and Site Context

1.4 The Site (*Figure 1*), is approximately 15.77 ha in area, comprises the northern and southern extents of one larger arable field, bisected by a stream passing east to west. The field is bordered by arable margins, scattered scrub, and tall ruderal vegetation. The eastern edge of the northern extent of the field was bound by the stream, which passes north along the eastern boundary. Hedgerows form the northern and western boundaries of the northern extent, and the northern and south-eastern boundaries of the southern extent.

1.5 The Site is situated on the south-western periphery of Littlebourne, east of Canterbury. The surrounding landscape to the north, south and west was predominantly comprised of a mosaic of arable farmland and woodland, including parts of the Trenley Park Woods Local Wildlife Site (LWS). Howlett's Wild Animal Park lies directly to the south. Canterbury Road (A257) runs along the northern boundary, with Bekesbourne Lane directly parallel with the south-easternmost boundary.

1.6 The Site is being submitted for outline planning (previous ref from applications submitted in 2021: CA/21/01657), formerly for up to 115 residential dwellings (covering 3.13ha), now being revised to comprise a residential development of up to 300 units (8.58ha), with associated infrastructure. Green infrastructure (GI) will be incorporated, which will include structural landscape planting (trees and scrub), a community orchard, species-rich grassland, wetland, and public open space (comprising play provision and footpath/cycle routes) (*Development Framework, 09538-FPCR-XX-XX-DR-L-0001 issue 14, FPCR, Nov 2023)*.

1.7 Sustainable drainage and wetland will be implemented adjacent to the stream on the eastern boundary of the northern extent of the field, and the northeast corner of the southern extent of the field. These will comprise buffer strips of meadow grassland that include attenuation ponds, which will also incorporate features of ecological benefit.

1.8 Habitat loss will be predominantly restricted to cultivated arable land, with associated margins. The majority of the hedgerow extent, and the stream on the eastern boundary, will be retained, with the exception of a few small losses to the hedgerows along Canterbury Road and Bekesbourne Lane to facilitate vehicular and pedestrian access. New hedgerows and several lines of trees will be planted throughout.

The HRA Process and Legislation

1.9 The legislation and national policy, relevant to the Habitats Regulation Assessment process, are summarised in *Appendix A*.

1.10 The HRA process has developed into a four-stage process summarised as follows:

- Stage One: Screening - also known as the Test of Likely Significant Effect (TOLSE). If the Competent Authority cannot screen out a *likely significant effect (LSE),* an Appropriate Assessment is required.
- Stage Two: Appropriate Assessment - the Competent Authority will only agree to plans or projects that will not affect the *integrity* of a European site, assessed via a process also known as the "Integrity Test". "Integrity" is assessed against a given European site's published Conservation Objectives.
- Stage Three: Alternative Solutions - assesses any alternative solutions of a potentially damaging plan, or project, that failed the Integrity Test. If it is determined there are no alternative solutions to the proposals, the project cannot be agreed to, and it will either need to be changed or refused.
- Stage Four: The final stage may allow a plan or project to proceed if after failing stage three, if it is for Imperative Reasons of Overriding Public Interest, and only if suitable compensatory measures are secured.

1.11 This sHRA has been conducted in the knowledge of two recent influential cases: the People Over Wind Judgement (12th April 2018) and recent Holohan Judgement (7th November 2018); a summary of which is provided in *Appendix A*. *Appendix A* also provides some background and case law examples in relation to "*Likely Significant Effect*" and "*Functionally Linked Land*", both of which are concepts discussed within this sHRA.

1.12 This sHRA identifies and considers each of the likely ecological pathways, in turn, between the Site and all NSN and Ramsar sites within a justified Zone-of-Influence (ZoI). Each was screened through a Stage 1: TOLSE for alone or in-combination effects, and any ecological pathways that could not be screened-out, or where specific mitigation was required to address a likely significant effect, were taken to a Stage 2: Appropriate Assessment (AA).

Zone of Influence and the National Site Network Considered

1.13 The following NSN sites have been screened-in to this HRA as they fall within 10km of the Site (*Figure 1*).

1.14 The two nearest NSN sites, listed below, cannot be ruled out of further assessment on the basis of a policy defined ZoI, which in this case is considered to be 6km, as determined by Birdwise North Kent[1,2].

- Stodmarsh SPA, SAC, and Ramsar – 2.3km north
- Blean Complex SAC – 5.9km north

1.15 Parkgate Down SAC, Tankerton Slopes & Swalecliffe SAC, Lyddon & Temple Ewell Downs SAC, The Swale SPA / Ramsar, Thanet Coast & Sandwich Bay SPA / Ramsar, and Wye & Crundale SAC, can each be scoped out of further assessment on the basis of the intervening distance (>11km) between these statutory designated sites and the application site, well outside their respective Zones of Influence (e.g., 6km for The Swale and 7.2km for Thanet Coast), which would make any potential impact from the development negligible.

1.16 Additionally, statutory designated sites are typically designated for supporting priority habitats and/or populations of notable species; for example, Tankerton Slopes & Swalecliffe SAC supports a nationally important population of Fisher's Estuarine moth, the main threat to which is damage to its preferred habitat from trampling. However, the Tankerton Slopes site comprises steep, difficult terrain, so visitors do not leave footpaths, minimising risk of trampling. Given the distances of these designated sites to the application site, which exceed their impact risk zones, and the nature of the features for which they were designated, any significant effect from the development is likely to be negligible.

Consultation Responses

1.17 In their decision notice concerning the previous outline planning application (CA/21/01657), Canterbury City Council, provided several reasons for refusal, among which were concerns relating to the impact of the development on statutory sites, specifically noting that:

"The proposed development would cause a likely harmful significant impact on the Stodmarsh SAC, SPA and Ramsar and without appropriate mitigation it would fail the Appropriate Assessment required by the Habitat Regulations. The proposal is also in conflict with the National Planning Policy Framework and policies SP1 and LB5 of the Canterbury District Local Plan 2017."

1.18 Natural England (NE) were also consulted on the earlier iteration of the application (CA/21/01657), in August 2021. In relation to designated sites they similarly noted that:

"The proposed development falls within the Stodmarsh Nutrient Impact Area. All new development with overnight accommodation must take into account Natural England's Advice on Nutrient Neutrality for New Development in the Stour Catchment. Canterbury City Council will need to address the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended), for which the applicant will need to provide information regarding nutrient budget calculations, as detailed in Natural England's advice note. We advise that due to the need for mitigation to avoid an impact on Stodmarsh there will be a need for an appropriate assessment to be carried out as part of this application."

[1] Bird Wise North Kent (2023) About Bird Wise: SPA and Ramsar 6km buffers, available at https://northkent.birdwise.org.uk/about/ [accessed 07.02.23]
[2] North Kent SAMMS Project Board (2018) Bird Wise North Kent – Mitigation Strategy, Bird Wise

1.19 The decision to submit this sHRA to Canterbury City Council, was based on the need to address the comments from the council, and Natural England, to provide a robust assessment of the impacts to statutory sites, likely to arise due to the revised proposals. This sHRA and accompanying Ecological Impact Assessment have been completed to support a resubmission of these revised proposals.

2.0 STAGE 1 SCREENING: STODMARSH SPA, SAC, AND RAMSAR

Designations

Stodmarsh Special Area of Conservation[3]

Annex II Species – Primary Reason for Site Selection:

2.1 The SAC is designated for the substantial population of Desmoulin's whorl snail *Vertigo moulinsiana* that can be found beside ditches, which pass through wet pastureland on the River Stour floodplain. Reed sweet-grass *Glyceria maxima,* large sedges *Carex sp.,* and common reed *Phragmites australis* dominate the vegetation.

Stodmarsh Special Protection Area[4]

2.2 Stodmarsh is wetland of international importance, comprising open waterbodies, reedbeds, grazing marsh and alder carr. It qualifies under Article 4.1 of the EC Birds Directive by regularly supporting an internationally important wintering populations of two Annex I species; bittern *Botaurus stellaris* and hen harrier *Circus cynaneus* (each in numbers comprising at least 1% of the British wintering population).

2.3 The SPA also qualifies under Article 4.2 of the Directive by virtue of regularly supporting 1% of the British breeding population of gadwall *Anas strepera*, and an average of 42 pairs of bearded tit *Panurus biarmicus* (representing 7% of the British breeding population).

2.4 The area further qualifies under Article 4.2 by regularly supporting nationally important numbers of the following migratory, overwintering and breeding waterfowl, waders, and songbirds, associated with reedbeds, grazing marsh, and marsh (*Table 1: Stodmarsh SPA Qualifying Bird Species*).

Table 1: Stodmarsh SPA Qualifying Bird Species

Nationally Important Migratory	Nationally Important Breeding	Nationally Important Wintering
Gadwall *Anas strepera* (1.2% British)	Great crested grebe *Podiceps cristatus*	White-fronted goose *Anser albifrons*
Shoveler *Anas clypeata* (1.8% British)	Lapwing *Vanellus vanellus*	Wigeon *Anas penelope*
	Redshank *Tringa totanus*	Mallard *Anas platyrhynchos*
	Snipe *Gallinago gallinago*	Pochard *Aythya ferina*
	Grasshopper warbler *Locustella naevia*	Tufted duck *Aythya fuligula*
	Savi's warbler *Locustella luscinioides*	Water rail *Rallus aquaticus*
	Sedge warbler *Acrocephalus schoenobaenus*	Lapwing

[3] Natural England (2015), Standard Data Form for sites within the 'UK national site network of European Sites, Stodmarsh SAC, (UK0030283) <https://jncc.gov.uk/jncc-assets/SAC-N2K/UK0030283.pdf> accessed 06.02.2023.
[4] JNCC (1993), EC Directive 79/409 on the Conservation of Wild Birds: Special Protection Area: Stodmarsh, Kent <file:///C:/Users/PJP1/Downloads/Stodmarsh%20(1).pdf> accessed 06.02.2023.

Nationally Important Migratory	Nationally Important Breeding	Nationally Important Wintering
	Reed warbler *Acrocephalus scirpaceus*	Snipe

Stodmarsh Ramsar Wetland of International Importance[5]

2.5 Stodmarsh qualifies as a Ramsar wetland under criterion 2 for supporting six British Red Data Book wetland invertebrates, two nationally rare plants, five nationally scarce plants, and a diverse assemblage of rare wetland birds.

2.6 The Ramsar supports nationally important overwintering, breeding, and migratory populations of the wetland bird species included in the SPA designation; gadwall, bittern, shoveler, and hen harrier, in addition to other noteworthy birds (water rail and ruff *Philomachus pugnax*) present in numbers of national significance in winter.

Conservation Objectives[6]

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

"…e*nsure that, the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its qualifying features, by maintaining or restoring;*

- *The extent and distribution of the habitats of qualifying features,*
- *The structure and function of the habitats of qualifying features,*
- *The supporting processes on which the habitats of the qualifying features rely,*
- *The populations of each of the qualifying features; and*
- *The distribution of the qualifying features within the site."*

Threats and Pressures

2.8 The following section details the main threats and pressures that have been identified through existing documentation and evidence related to the Stodmarsh SPA and SAC. The Site Improvement Plan (SIP) for Stodmarsh[7], which encompasses both the SPA and SAC, identifies several key pressures relevant to this sHRA (*Table 2* below).

[5] Information Sheet on Ramsar Wetlands (RIS): Stodmarsh (1993) JNCC https://jncc.gov.uk/jncc-assets/RIS/UK11066.pdf [accessed 07.02.23].
[6] Natural England (2019), European Site Conservation Objectives for Stodmarsh Special Protection Area Site Code: UK9012121 Publication date: 21 February 2018 (Version 3) <http://publications.naturalengland.org.uk/publication/6543516511502336> [accessed 06.02.23].
[7] Site Improvement Plan: Stodmarsh (SIP231). Natural England (30/10/2014 version 1) http://publications.naturalengland.org.uk/publication/5749196032311296 [accessed 06.02.23].

Table 2: Relevant Threats and Pressures – Stodmarsh SPA and SAC

Priority & Issue	Threat or Pressure	Measure
Air Pollution: risk of atmospheric nitrogen deposition	Pressure	Control, reduce, and ameliorate atmospheric nitrogen impacts
Water Pollution	Pressure	Provide planning guidance and advice to developers and landowners

2.9 Further pressures and/or threats to the integrity of the SAC/SPA were highlighted in the SIP; however, these were impacts related to invasive species and inappropriate scrub control, which relate to direct habitat management of the Stomarsh and will be unaffected by the development proposals. Given the intervening distance and nature of the residential development proposed at Evenhill (the Hill), neither impact pathway is relevant, and have been scoped out of further consideration in this assessment.

Potential Ecological Pathways

2.10 This section (*Table 3*) identifies the possible ecological pathways between the site and the SAC/SPA that should be considered, applying assessment criteria based on best available scientific knowledge, and concludes whether there is a risk, or uncertainty, of a likely significant effect (LSE). Where risk or uncertainty is identified, those ecological pathways are then considered further in an Appropriate Assessment. The test does not require an assessment of every conceivable pathway, and the Precautionary Principle is applied only where there is *reasonable* scientific doubt that a pathway may have a possible LSE.

Table 3: Ecological Pathways and HRA Screening Conclusions – Stodmarsh SAC and SPA

Ecological Pathway	Assessment applied	Likely Significant Effect (LSE)
Habitat Loss - Direct Loss	**Will there be any direct loss, land take, damage, or fragmentation of habitat within the SPA and SAC itself?** - **No** (application Site is situated >2.0km from SAC/SPA)	No LSE Screened out
Habitat Loss - Functionally Linked Land/Habitat	**Will there be any loss of functionally linked habitat associated with the SAC/SPA?** - **No:** Ecological survey work detailed in the most recent Ecological Appraisal (FPCR, 2023) determined that the application site, which is dominated by arable monoculture, provides little supporting habitat of value to qualifying species associated with the Stodmarsh SAC or SPA designations. - The stream (drainage ditch, with flowing water) that bisects the field is isolated from neighbouring watercourses and unlikely to have been colonised by Desmoulin's whorl snail, which require calcareous wetlands, associated with rivers, lakes, and fens, with reed-grass and sedge[17] – habitat not identified within the application boundaries.	No LSE Screened out

[17] 1016 Desmoulin's whorl snail *Vertigo moulinsiana* (2023) JNCC https://sac.jncc.gov.uk/species/S1016/ [accessed 07.02.23].

Ecological Pathway	Assessment applied	Likely Significant Effect (LSE)
	- The Site does not constitute Functionally Linked Land in the context of the SPA/SAC. - **No likely significant effects** on the species associated with the statutory site, in relation to loss of FLL, are anticipated as a result of the development alone.	
Recreational Pressure	**Will there be a likely significant effect from recreational pressure on the SAC from increased visitation rates as a result of the proposals?** - Recreational activities at Stodmarsh are currently managed through the National Nature Reserve and a stewardship agreement, so most potential impacts from changing water levels and visitor pressure, have pre-existing management mechanisms in place. Currently, the numbers of people using the site are well controlled, and an education program is in place for visitors. - Access into Stodmarsh SPA/Ramsar for visitors appears to be limited at its nearest extent to the application site, with the best access being from the National Nature Reserve entrance, which does have a designated car park for a limited number of cars, and pre-existing footpath system. This is accessible off Stodmarsh Road, Stodmarsh, located approximately 5.6km (3.5miles) north of the application site (10-minute drive or an estimated 1-hour walk). - Additionally, the areas designated as a SAC, due to the presence of the Desmoulin`s whorl snail *Vertigo moulinsiana*, are inaccessible to the public, so direct negative effects from recreation to this species are unlikely.	No LSE Screened out
Air Quality - Traffic (Alone and in-combination)	**Will there be a likely significant effect from nitrogen deposition on the SAC from increased traffic as a result of the proposals?** Assessment: Natural England 4 step Guidance[18] on traffic emissions. **Step 1:** Does the proposal give rise to emissions which are likely to reach a European site? No **Step 2:** Are the qualifying features of sites within 200m of a road sensitive to air pollution? No There are no notable strategic roads within 200m of Stodmarsh, with the only major road being the A28, that passes between 250 and 350m of the northern edge of the statutory site boundaries. Narrow country lanes; Grove Road, and Grove Ferry Road, pass directly adjacent to the south and east edges of the Stodmarsh SPA boundary; however, these are not on main routes into the surrounding area, and are unlikely to receive any meaningful increase in traffic flow from the development at the Hill, Littlebourne.	No LSE Screened out

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

Ecological Pathway	Assessment applied	Likely Significant Effect (LSE)
	Wardell Armstrong concluded in their air quality assessment that a proposed application for ~300 new properties (as per the revised scheme that encompasses a larger area) would not be expected to have a significant increase in local road traffic. Eleven representative, pre-existing receptors were selected for their assessment, these were considered based on their sensitivity to air pollutants and proximity to roads likely to be affected by development generated traffic. Traffic flow along these routes was calculated by consultants i-Transport. No roads near to Stodmarsh were selected for this assessment, so it can be reasonably concluded that the development is considered unlikely to increase traffic flow in proximity to Stodmarsh. Impacts on the concentrations of nitrogen dioxide and particulate matter-based pollutants were determined to be negligible at each of the sensitive human receptors considered, and do not lead to an exceedance of annual mean objectives. The effect of the proposed development on human receptors is considered not significant. By extension therefore, any impact of the development on air quality at roads near Stodmarsh would also be expected to be **negligible**. **No likely significant effects** (from the application alone) on the SPA/SAC are anticipated. In combination effects on Stodmarsh can also be scoped out on the basis that the qualifying features of the SAC/SPA vulnerable to air pollution lie beyond 200m of strategic roads likely to receive significant increases in traffic flow from developments in Canterbury area.	
Air Quality and Pollution - Dust from construction	**Will there be a likely significant effect on the SAC from temporary dust generated during construction near the SAC?** Assessment: 1. The distance dust particles are likely to travel is between 350-400m[19,20] with the negative effects of dust on habitats and flora greater in magnitude the closer to the source of release (mostly within 100m from source). The SAC is located >2.0km from the Site, at its nearest point, and thus lies beyond this zone of dust dispersal.	No LSE Screened out
Water Quality - Phosphates and nitrates	**Is the Site hydrologically linked to the SAC/SPA?** - **No:** the stream that flows alongside the site, bisects the field, and drains into a culvert. The ultimate destination of the water flow once it enters the culvert is the Little Stour River, downstream of the Stodmarsh SAC/SPA.	LSE without appropriate mitigation **Appropriate Assessment Required**

[19] Guidance on the assessment of dust from demolition and construction (2014) Institute of Air Quality Management
[20] Guidance on the Assessment of Mineral Dust Impacts for Planning (2016). Institute of Air Quality Management

Ecological Pathway	Assessment applied	Likely Significant Effect (LSE)
	- Water Environment Ltd. (September 2023), in their recent nutrient neutrality assessment[21], identified that the levels of nitrogen and phosphorus compounds in several of the component SSSI units that comprise Stodmarsh SPA/SAC exceed the favourable condition targets set by Natural England. WwTW which outfall into the Stour upstream of the Habitats Sites, runoff from urban/agricultural land, flood waters, and recycling of nutrients were all identified as possible mechanisms of nutrient input. - The Little Stour outfalls downstream of Stodmarsh and consequently there is no pathway for an impact from nutrient input from the development. However, the Flood Risk Assessment has identified that there is potential for impacts from nutrient input at Preston Marshes SSSI, which lies 3.3km northeast of the application site, from flood events in the Little Stour River. While Preston Marshes is not a component part of the Stodmarsh SAC/SPA, it does lie 0.75km southeast. Given the proximity of the river to the application site, and between Preston Marshes and Stodmarsh, and resulting uncertainty from flood events, a likely significant effect on Preston Marshes cannot be ruled out in the absence of mitigation.	

Conclusion

2.11 No likely significant effect is anticipated for all identified ecological pathways, *except* water quality, given the possibility of impacting phosphate and nitrogen levels at Preston Marshes SSSI, which lies within the wider Stodmarsh catchment. Mitigation is required to ensure nutrient neutrality, as detailed in the following Appropriate Assessment.

2.12 Air quality, recreational pressure, and direct/supporting habitat loss are scoped out of further assessment on the basis of the distance of the development from Stodmarsh, lack of visitor access, lack of supporting habitat for qualifying features of the designated site, a lack of strategic roads near to Stodmarsh, and increases in traffic flow on local roads that do not exceed 1000 AADT, a likely significant effect on air quality, habitat, and recreational pressure at Stodmarsh, due to the development proposals, is considered unlikely.

[21] Garrard, C. (2023) Littlebourne, Evenhill. Nutrient Neutrality Assessment and Mitigation Strategy. Water Environment, London

3.0 STAGE 2 APPROPRIATE ASSESSMENT: STODMARSH SAC, SPA AND RAMSAR

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

Water Quality: Nutrient Neutrality

3.2 There are two likely sources of nutrients from the site: surface water and wastewater. Surface water from the site discharges to the Little Stour at a point upstream of the Stourmouth Pumping Station. Consequently, there is limited hydrological linkage between the district's wastewater treatment facilities and the Little Stour. Given the application site lies downstream of Stodmarsh, a likely significant effect on water quality at the statutory site, from development in the Littlebourne area, is unlikely.

3.3 However, Natural England have highlighted there remains uncertainty regarding the impact of nutrient influx from flood events on Preston Marshes SSSI. Given this uncertainty, an Appropriate Assessment has been undertaken.

3.4 Wastewater from the site is acknowledged to normally discharge to Newnham Valley WwTW; however, instead wastewater will be treated on-site at a new Water Recycling Centre, before discharging into the Nail Bourne, a smaller tributary of the Little Stour. This reduces pressure on the existing WwTW at Newnham Valley and avoids issues with failing infrastructure at the site, where groundwater has, on occasion, flooded sewerage at Newnham Valley, requiring removal via tankers to a neighbouring WwTW.

3.5 The proposed on-site Water Recycling Centre will be designed and operated by Severn Trent Connect (STC), an Ofwat-licenced water company. An outline proposal for this Water Recycling Centre is included in Water Environment's Nutrient Neutrality Assessment and Mitigation Strategy report (2023)[22]. Wastewater nutrient load will be reduced from 852.06 kgN/year (nitrogen) and 28.40 kgP/year (phosphorus) to 227.21 kgN/year and 5.68 kgP/year. Combined with the surface water mitigation measures detailed below, this is sufficient to achieve neutrality.

3.6 Sustainable drainage systems included in the landscape design. Rates of nutrient reduction vary depending on the type of SuDS implemented. The highest achievable removal rate is 84.5%, without accounting for infiltration. Inclusion of a bioretention zone and adsorptive media basket can remove as high as 80% particulate phosphorus and 90% of dissolved phosphorus. Bioretention systems also remove nitrogen, with CIRIA guidance suggesting a nitrogen removal rate of 40%. Water Environment calculate that the surface water nutrient load of the development would be reduced from 135.56 kgN/year (nitrogen) and 12.62 kgP/year (phosphorus) to 88.79 kgN/year and 2.06 kgP/year, respectively.

3.7 With the implementation of the proposed mitigation measures, as outlined above, including provision of a Water Recycling Centre to handle wastewater treatment on-site, coupled with on-site Sustainable Drainage Systems to reduce surface water nutrient load, no likely significant effect is anticipated and there will be no adverse effect on the integrity of the Stodmarsh SAC/SPA, or Preston Marshes SSSI, as a result of proposed development alone, or in combination with other plans or projects.

[22] Garrard, C. (2023) Littlebourne, Evenhill. Nutrient Neutrality Assessment and Mitigation Strategy. Water Environment, London

3.8 Mitigation measures to control nutrient input into the wider Stour catchment (and therefore the Stodmarsh SAC/SPA and Preston Marshes SSSI) will also be of more immediate benefit to Littlebourne Stream LWS, providing on-site wastewater treatment and removal of excess nutrients, prior to discharging into the Nail Bourne river.

Appropriate Assessment Conclusion

3.9 With the mitigation measures identified above implemented, and appropriately conditioned, as part of the outline application, there will be no adverse effect on the integrity of Stodmarsh SAC, SPA and Ramsar, or Preston Marshes SSSI, as a result of the proposed development alone or in combination with other plans or projects.

4.0 STAGE 1 SCREENING: BLEAN COMPLEX SAC

Designation

Blean Complex Special Area of Conservation[23]

Annex I Habitat – Primary Reason for Site Selection:

4.1 The SAC is classified under article 4(4) of the Habitats Directive as it supports an Annex I listed habitat type. The presence of Sub-Atlantic and medio-European oak, or oak-hornbeam, forest habitat forms the primary reason for the selection of the site as a SAC. At Blean, hornbeam *Carpinus betulus* coppice occurs, interspersed with stands of pedunculate oak *Quercus robur* and introduced sweet chestnut *Castanea sativa.* The sweet chestnut stands have also been managed historically as coppice.

4.2 Great wood-rush *Luzula sylvatica* is locally dominant throughout the woodland ground flora, with greater stitchwort *Stellaria holostea* found in more open glades.

Qualifying Species

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

Site of Special Scientific Interest

4.4 The boundaries of Church Woods (Blean) SSSI, East Blean Woods SSSI, and Ellenden Wood SSSI are each coincident with the boundaries of the SAC.

4.5 Church Woods SSSI comprises one of the most extensive areas of broadleaved woodland remaining in the Forest of Blean. The woodland supports a population of heath fritillary, a nationally rare species of butterfly. An outstanding assemblage of invertebrate species has also been recorded, along with a wide range of woodland birds, including three woodpecker species, eight warblers, and six tits. Several species which regularly breed here are elsewhere rather scarce in East Kent; these include woodcock *Scolopax rusticola*, nightjar *Caprimulgus europaeus*, redstart *Phoenicurus phoenicurus*, and wood warbler *Phylloscopus sibilatrix*. The area has especially good numbers of nightingales *Luscinia megarhynchos*.

4.6 Blean Woods is owned and managed by several partner organisations including the RSPB and is home to a variety of wildlife, including heath fritillary butterfly and various woodland birds, such nightjars, woodpeckers, tawny owl *Strix aluco* and 35 pairs of nightingales.

4.7 Ellenden Woods comprises an ancient woodland with several uncommon woodland types, including sessile oak-beech, hornbeam with pedunculate and sessile oak, and small plantations of sweet chestnut coppice. The wood supports a diverse flora with over 250 higher plants and 300 fungi present. Large numbers of insects, including three nationally rare species have been recorded.

[23] JNCC (2015), Natura 2000 Standard Data Form, Blean Complex, <www.publications.naturalengland.org.uk/publication/5635542465729600> [accessed 06.02.23].

4.8 The area also supports a diverse breeding bird community including wren *Troglodytes troglodytes*, blackcap *Sylvia atricapilla*, nightingale, and several common woodland species. Invertebrate species recorded here include brindled white spot moth *Ectropis extersaria*, two nationally rare flies (*Lophosia fasciata* and *Syntemna nitidula*), and a rare beetle *Cicindela hybrid*. Hazel dormouse *Muscardinus avellanarius* have also been recorded here.

4.9 While the SSSI designation of each separate woodland compartment are National designations, not European statutory designations, the elements of each SSSI do form component parts of the larger Blean Complex SAC and have therefore been referred to within this document, where relevant.

Conservation Objectives[24]

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

"…e*nsure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring:*

- *The extent and distribution of qualifying natural habitats*
- *The structure and function (including typical species) of qualifying natural habitats, and*
- *The supporting processes on which qualifying natural habitats rely".*

Threats and Pressures

4.11 The following section details the main threats and pressures that have been identified through existing documentation and evidence related to the SAC itself.

4.12 The SIP for the Blean Complex[25], identified one key threat and/or pressure relevant for this HRA (*Table 4*).

Table 4: Relevant Threats and Pressures – Blean Complex SAC

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

4.13 Blean Complex comprises several interconnected SSSI units, the nearest of which includes Church Woods, comprising 526ha of lowland broadleaved, mixed and yew woodland. All 16 SSSI units that form Church Woods were found to be in 'favourable' condition, except one (assessed as 'unfavourable – recovering') in the last assessment of each unit, conducted between 2009 and 2021[26].

[24] Natural England (2019), European Site Conservation Objectives for Blean Complex Special Area of Conservation Site Code: UK0013697 Publication date: 27 November 2018 (Version 3)
[25] Site Improvement Plan: Blean Complex (SIP018). Natural England (01/09/2015 version 1) http://publications.naturalengland.org.uk/publication/6295825890148358
[26] Natural England (2011) Church Woods Condition Assessment, <https://designatedsites.naturalengland.org.uk/ReportUnitCondition.aspx?SiteCode=S1004055&ReportTitle=Church%20Woods,%20Blean%20SSSI> [accessed: 06.02.23]

4.14 Blean Complex, notable for its oak hornbeam forest, is thought to be most vulnerable due to a lack of coppice management and deteriorating air quality; the former of which is unlikely to be impacted in any meaningful way from a residential development and is not considered further in this assessment.

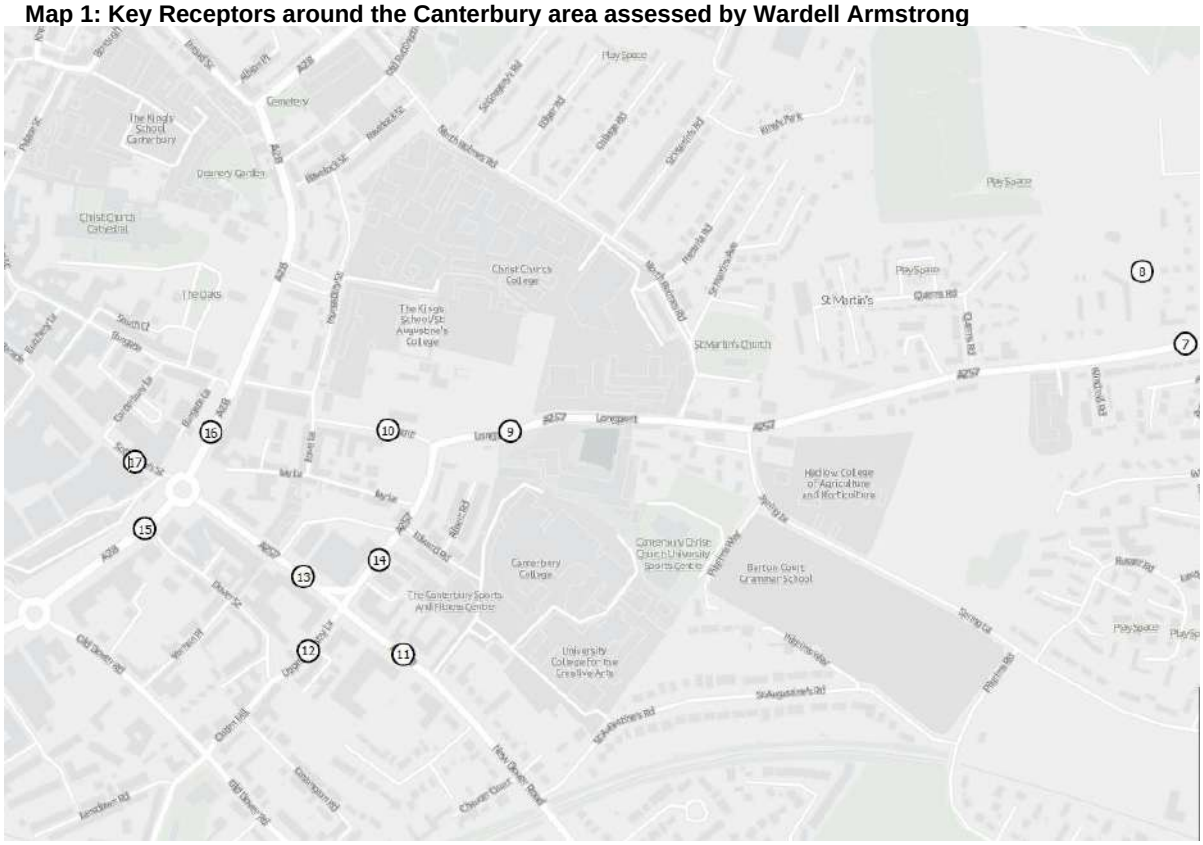
Air Quality

4.15 As discussed earlier in paragraph 2.10, new guidance from Natural England (2018)[27] provides a methodology for assessment of air quality impacts.

4.16 Wardell Armstrong have conducted an Air Quality Assessment (January 2023), following guidance from the Institute of Air Quality Management (IAQM) into the potential impacts to air quality that may result from the proposed development. Assessment was based on predicted levels of nitrogen dioxide and particulate matter at various sensitive receptors during the construction and operational phases of the proposed development[30]. Traffic flow at each of these receptors was calculated by consultants i-Traffic.

4.17 The locations of these key receptors along the A257 and around the Canterbury area are shown on *Map 1* below, based on email correspondence from John Wilkinson (of i-Traffic):

Map 1: Key Receptors around the Canterbury area assessed by Wardell Armstrong



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

[30] Sanderson, P.M (2023) Air Quality Assessment: The Hill, Littlebourne. Wardell Armstrong, Bolton

4.18 The assessment of traffic flow conducted by the i-Transport team concluded that the traffic flows along the A257 and around Canterbury, at each of these receptors, would be less than 1000 AADT threshold, as summarised in *Table 5* below:

Table 5: Annual Average Daily Traffic (AADT) Levels at Specific Key Receptors around Canterbury and the A257

Link Number	Links	Development Traffic
7	A257 Littlebourne Road (East of Smith Way)	961
9	A257 St Martin's Hill (East of St. Augustine's Rdbt)	884
13	A257 St. Georges Place (West of Upper Chantry Lane)	842
14	A257 Lower Chantry Lane (North of A2050 New Dover Road)	884
15	A28 Upper Bridge Street (South of A257)	453
16	A28 Lower Bridge Street (North of A257)	301

4.19 i-Transport have not calculated any change in traffic flow on the A290, at Blean Complex, but given the traffic levels above, which demonstrate traffic notably dispersing as it moves out from Littlebourne, with the nearest point to the development already less than 1000 (961 AADT), the development would be expected to generate significantly lower traffic flows on the A290 than the 1,000 AADT parameter.

4.20 The application site is situated 5.9km from the Blean Complex SAC, separated by the city of Canterbury, with the nearest strategic/main road to the SAC being the A290, which is located northeast of Canterbury. While it is likely that traffic generated by the development would travel towards Canterbury, the nearest large settlement, it is unlikely to follow this route, which would necessitate a large detour from the most direct available route. The number of additional vehicles using the A290, from the development, once operational, is thus likely to be low; with the AADT figures calculated for key areas around Canterbury demonstrating that traffic levels reduce with distance from the development, as it disperses through the local road network, quickly dropping below 1000 AADT.

4.21 Given the distance, and relative location, of the section of the A290 that passes in close proximity to Blean Complex SAC from the application site, AADT levels are likely to be far lower than the 1000 threshold.

Ecological Pathways

4.22 This section (*Table 6*) identifies the possible ecological pathways between the Site and the SAC that should be considered, applying assessment criteria based on best available scientific knowledge, and concludes whether there is a risk, or uncertainty, of a LSE.

Table 6: Ecological Pathways and HRA Screening Conclusions – Blean Complex SAC

Ecological Pathway	Assessment Applied	Likely Significant Effect
Habitat Loss - Direct Loss	**Will there be any direct loss, land take, damage, or fragmentation of habitat within the SAC itself?** - **No** (application Site is situated >5.0km from SAC)	No LSE Screened out

Ecological Pathway	Assessment Applied	Likely Significant Effect
Habitat Loss - Functionally Linked Land/Habitat	**Will there be any loss of functionally linked habitat associated with the SAC?** - **No:** As detailed in the most recent Ecological Appraisal (FPCR, 2023) the Site is dominated by arable monoculture and field margins of limited botanical diversity. - No such oak-hornbeam woodland habitat exists on-site, nor is there any supporting habitat of value to qualifying and/or notable species associated with the Blean Complex SAC designation. - The Site does not therefore constitute Functionally Linked Land in the context of the SAC, particularly given the intervening distance and limited connectivity. - **No likely significant effects** on the habitats or species associated with the statutory site, in relation to loss of FLL, are anticipated as a result of the development alone.	No LSE Screened out
Recreational Impact	**Will there be any impact on the SAC as a result of increased recreational pressure from the development?** - Research by Natural England for the Thames Basin Heaths SPA/SAC[31] found that the average length of a typical walking route, for a local visitor with a dog, was 2.63km (with 75% of dog walkers covering up to 3.23km). 'Local visitors', who were walking without a dog, on average, covered a similar distance of 2.51km, with 75% covering up to 3.80km. - On the basis of the above research, Blean Complex, nearly 6km northwest of the Ste, lies well outside the typical distance most people would access it on foot. New residents would thus be expected to travel via vehicle from the Site to access the SAC, requiring access to car parking, which is limited to the small RSPB car park at Blean Woods, a 20-minute drive from Littlebourne (the RSPB recommend parking larger vehicles in the neighbouring residential area of Ross Gardens). - Due to the intervening distance between Blean Complex and the Site, and limited parking availability, regular recreational visits to this SAC by residents from the new development are unlikely. - The SAC is managed by the RSPB and Kent Wildlife Trust, who also undertake regular monitoring. In the 2014 Canterbury HRA[32] monitoring work at Blean Complex considered the component SSSI units be in largely favourable condition (100.5%), with only 0.2% noted as 'recovering'. - It is unlikely that the modest increase in residential dwellings from a development of this size, given pre-existing controls and limitations set in place by the RSPB/KWT, would lead to a significant increase in visitors to the Blean Complex and detrimentally impact on its predominantly favourable status.	No LSE Screened out

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

[32] Habitat Regulations Assessment: Report to inform screening for appropriate assessment (2014) AMEC Environment & Infrastructure Ltd., Canterbury City Council

Ecological Pathway	Assessment Applied	Likely Significant Effect
	- The assessment done on allocated sites in the Canterbury local plan established that there was unlikely to be significant effects on the SAC from increased recreational pressure from allocated sites in combination. - Additionally, the proposed GI, which includes a buffer of public greenspace, circular footpath/cycle routes, and two play areas, will provide alternative outdoor recreational space in the immediate vicinity of the development to deflect new residents from regularly travelling longer distances to local statutory sites.	
Air Quality and Pollution - Traffic (Alone and in-combination)	**Will there be a likely significant effect from nitrogen deposition on the SAC from increased traffic as a result of the proposals?** Assessment: Natural England 4 step Guidance[33] on traffic emissions. **Step 1:** Does the proposal give rise to emissions which are likely to reach a European site? Yes **Step 2:** Are the qualifying features of sites within 200m of a road sensitive to air pollution? Yes, the SAC boundaries pass within 200m of strategic roads, primarily the A290; however, these sections of road are all >5km from the application site and are unlikely to receive any significant increase in traffic flow. 1. 9.3km northwest Blean Common Road (A290) – 615m section.  2. 8.0km northwest Blean Common Road (A290) – 165m section  The SAC boundaries also pass within 200m of, or directly adjacent to, several smaller, access roads (including New Rd, Denstroude Ln., Fox's Cross Rd., and Pean Hill). Though these are unlikely to receive meaningful increases in traffic from the development, given their distance from the application site and separation from main travel routes.	No LSE Screened out

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

Ecological Pathway	Assessment Applied	Likely Significant Effect
	Step 3: Could the sensitive qualifying features of the site be exposed to emissions? Yes. **Step 4:** Application of screening thresholds. Use of the 1000 Annual Average Daily Traffic. Traffic consultants i-Transport determined that the development as a whole is expected to generate a total of 1667 two-way trips a day (as taken directly adjacent to the application site along the A257 at the Hill), which is then distributed across the network. While this exceeds the 1000 AADT threshold, the AADT drops off quickly with distance from the Site, with the nearest receptor (A257 East of Smith Way) assessed by i-Traffic registering 961 AADT. As the application is situated 5.9km from the Blean Complex SAC, separated by the city of Canterbury. The nearest main road to the SAC is the A290, which is located northeast of Canterbury. While it is likely that traffic generated by the development would travel towards Canterbury, the nearest large settlement, it is unlikely to follow this route. Given the intervening distance, traffic is likely to have dispersed sufficiently through the local road network, as demonstrated by assessment from i-Transport, to ensure that the number of additional vehicles using the A290, from the Site, is likely to be lower than the 1000 AADT threshold. Consequently, likely significant effects on Blean Complex SAC from air quality changes associated with increased traffic from the development at the Hill, are considered unlikely. **No likely significant effects alone** (from the application alone) on the SAC are anticipated. In combination effects on the SAC can also be scoped out on the basis that the HRA conducted by Amec Foster Wheeler, which assesses the most recent amendment to the Canterbury City Council Local Plan (2017)[34], established that there was unlikely to be significant effects on the SAC from increased nitrogen deposition resulting from allocated sites, taken cumulatively. The HRA does not anticipate any long-term, likely significant effects from traffic emissions on the statutory sites located within the Canterbury area (including Blean Complex).	
Air Quality and Pollution - Dust from construction	**Will there be a likely significant effect on the SAC from temporary dust generated during construction near the SAC?** Assessment: The distance dust particles are likely to travel is between 350-400mwith the negative effects of dust on habitats and flora greater in magnitude the closer to the source of release (mostly within 100m from source).	No LSE Screened out

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

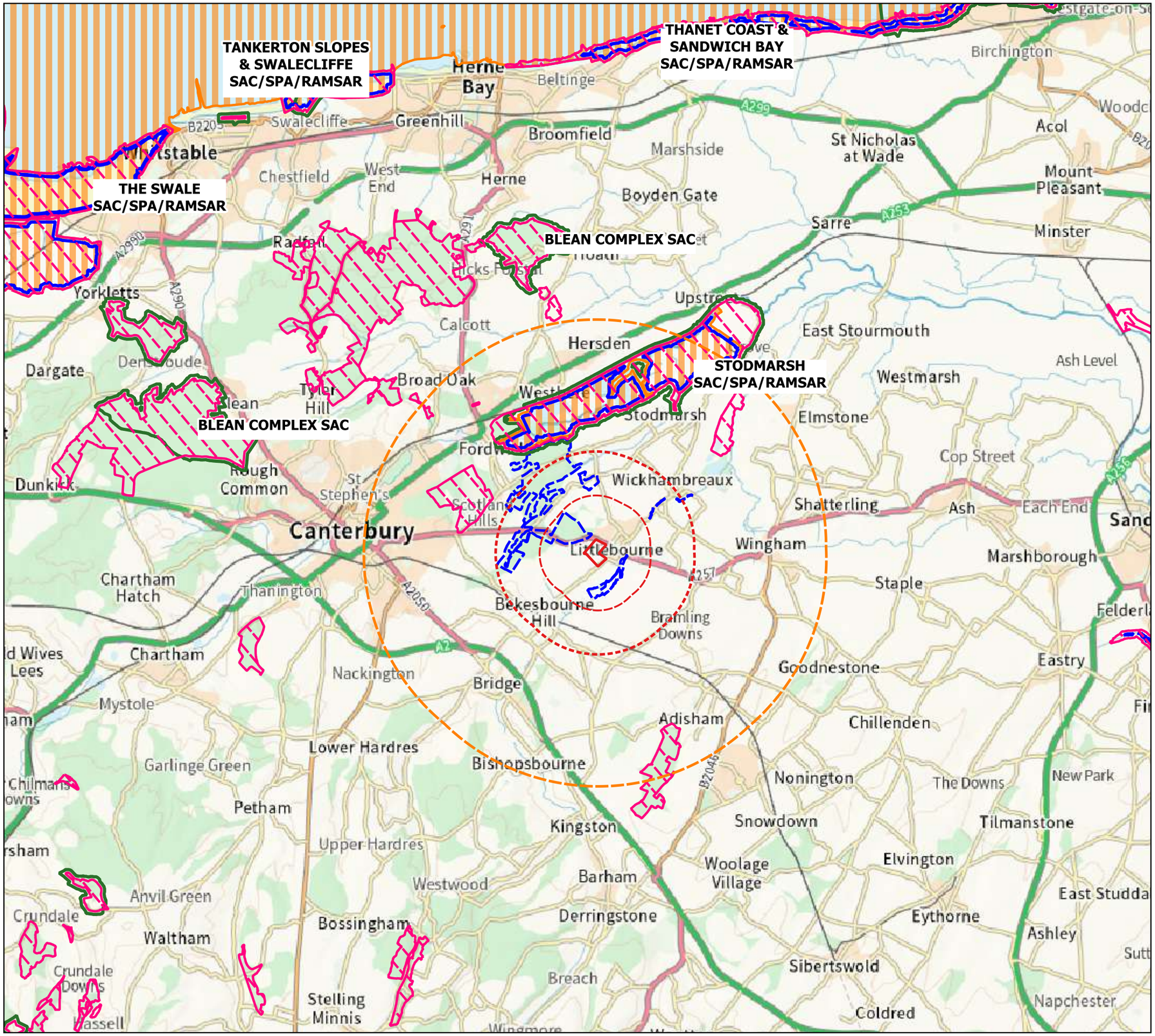
Ecological Pathway	Assessment Applied	Likely Significant Effect
	The SAC is located >5.0km from the Site, at its nearest point, and thus lies beyond this zone of dust dispersal.	

Conclusion

4.23 Given the scale of the development proposals and the intervening distance between the Site and the SAC (5.9km), impacts related to direct loss, damage, or fragmentation of habitat within the SAC; loss of functionally linked land for qualifying species; dust and particulate air pollution; and increases in recreational pressure from visitors to the SAC from the Site, have been scoped out of any further assessment.

4.24 Similarly, while the SAC does pass within 200m of major roads, including the A290 to the northeast of Canterbury, this does not form a direct route from the Site to Canterbury. Following assessment of traffic flow several key receptors around Canterbury, traffic demonstrably reduces with distance from the site, and as such the A290 near to Blean Complex is considered unlikely to receive any significant increase in traffic flow from the development.

4.25 Consequently, no likely significant effects on the Blean Complex SAC, from the proposed development at the Hill, Littlebourne are anticipated.



Key

- Site Boundary
- 5km buffer
- 2km buffer
- 1km buffer

Designated sites

- Site of Special Scientific Interest (SSSI)
- RAMSAR Sites
- Special Area of Conservation (SAC)
- Special Protection Area (SPA)
- Local Wildlife Site (LWS)

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client
Gladman Developments Ltd.

project
Land at the Hill,
Littlebourne

drawing title
SITE LOCATION & STATUTORY SITES PLAN

scale @ A3
1:90000

drawn
PJP

issue date
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Figure 1

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APPENDIX A. THE HABITATS REGULATIONS ASSESSMENT PROCESS AND LEGISLATION

Legislative Background

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

The Habitats Directive

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

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

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

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

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

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

The Habitats Regulations

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

> *"61. 1) A competent authority, before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which - (a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and (b) is not directly connected with or necessary to the management of that site, must make an appropriate assessment of the implications for that site in view of that site's conservation objectives.*
>
> *(2) A person applying for any such consent, permission or other authorisation must provide such information as the competent authority may reasonably require for the purposes of the assessment or to enable them to determine whether an appropriate assessment is required.*
>
> *(3) The competent authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specify.*
>
> *(4) They must also, if they consider it appropriate, take the opinion of the general public, and if they do so, they must take such steps for that purpose as they consider appropriate.*
>
> *(5) In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest), the competent authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).*
>
> *(6) In considering whether a plan or project will adversely affect the integrity of the site, the authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which they propose that the consent, permission or other authorisation should be given."*

Habitats Regulations Assessment Process

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

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

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

Key Case law in relation to Test of Likely Significant Effect

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

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

"…any plan or project … is to be subject to an appropriate assessment … if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"The competent authority does not have to be satisfied that there is no risk, however remote…"

Note of Functional Linkage

A1.15. "Functional linkage" is a term that refers to the potential for habitat away from the designation boundaries of a Natura 2000 site, that is considered to have a "role" or "function" for a qualifying feature "beyond the boundary". This is covered in the Guidance document on the strict protection of animal species of Community interest under Habitats Directive 92/43/EEC 2007. Paragraph 7 sates:

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

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

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

A1.17. Paragraph 40 of The Holohan and others versus An Bord Pleanála C-461/17 [7th November 2018] judgement states "an 'appropriate assessment' must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and

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

Note on the Sweetman ruling "People over Wind" and definition of "mitigation"

A1.18. The *People Over Wind* judgement (Peter Sweetman v Coillte Teoranta (C-323/17)), in April 2018, changed the way mitigation is viewed during the HRA Stage One screening i.e. the Test of Likely Significant Effect. The ruling was based on the view that allowing mitigation measures to be considered at the screening stage allows projects to avoid an Appropriate Assessment (Stage Two). The ruling stated:

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

A1.19. This has made what constitutes "mitigation" directly in relation to the European site, and what is considered "integrated" into the scheme for other reasons, a question that carries some uncertainty. The PINS Note 05/2018 *Consideration of avoidance and reduction measures in Habitats Regulations Assessment: People over Wind, Peter Sweetman v Coillte Teoranta* provides some clarification as follows:

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

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

A1.20. PINS Note 05/2018 goes on to further explain:

"It should be noted that there is no authoritative definition of what constitutes an integrated or additional avoidance or reduction measure and this should be considered on a case by case basis. If a measure is being introduced to avoid or reduce an effect on a European site then it can be viewed as mitigation. It may be helpful to consider whether a proposal could be considered integral to a plan or whether it is a measure to avoid harm. For instance, the HRA report could identify European sites whose designated features are vulnerable to disturbance caused by people visiting the site. If evidence presented in the HRA report and during the examination demonstrates that the housing allocation is too far from the European site to lead to increased visitor numbers then it could be concluded that there is no pathway for likely significant effects to occur. However if the HRA report determines that the housing allocation

would be likely to increase visitor use of the European site and relies on measures which reduce visitor pressure (such as securing land to provide a buffer to the European site or ensuring footpaths and car parks are located away from the site) to avoid or reduce likely significant effects an AA will be required to assess whether the plan will affect the integrity of the European site."

A1.21. The interpretation of the above being taken by legal professionals appears to be that if it can be argued that mitigation, whether integrated or additional, is an "avoidance or reduction" measure directly due to an ecological pathway to a Natura 2000 site, then an Appropriate Assessment is required. If it is truly integrated into the proposals for other reasons, for example green space due to an unrelated protected species mitigation licence, as was the case with UK High Court ruling in August 2018 (R (on the application of Langton) v Secretary of State for Environment, Food and Rural Affairs, Natural England [2018] EWHC 2190 Admin) in relation to mitigation within a badger cull licence, then the mitigation is fully integrated and would not automatically trigger the requirement for an Appropriate Assessment. However, in many cases, such a judgement would carry the risk of conflicting views within the planning process, and often it may be simpler to take a precautionary approach by progressing to Appropriate