

Date: 16/05/22  
Our ref: 389985  
Your ref: WSCC/030/21



**West Sussex County Council  
Planning and Rights of Way Committee**

Customer Services  
Hornbeam House  
Crewe Business Park  
Electra Way  
Crewe  
Cheshire  
CW1 6GJ

**BY EMAIL ONLY**

T 0300 060 3900

Dear Sir or Madam,

**WSCC/030/21 planning application for a clay quarry and construction materials recycling facility (CMRF) for CD&E wastes including the use of an existing access from Loxwood Road, the extraction and exportation of clay and restoration using suitable recovered materials from the CMRF to nature conservation interest including woodland, waterbodies and wetland habitats at Pallinghurst Woods, Loxwood Road, Loxwood, West Sussex RH14 0RW.**

Thank you for your meeting invitation for the West Sussex County Council – Planning and Rights of Way Committee, which was received on the 9<sup>th</sup> May 2022. Natural England will not be attending the committee meeting on Wednesday 18<sup>th</sup> May 2022. We do however wish to submit the following statement for consideration at the committee.

### **Natural England's Statement**

#### Ebernoe Common Special Area of Conservation (SAC) and The Mens SAC – Impacts to Qualifying Features

In our last consultation response (10 February 2022, Ref no 377723) we advised that likely significant effects upon the qualifying populations of bats within The Mens SAC and Ebernoe Common SAC cannot be screened out of the HRA. We further note that an HRA has not been completed by the LPA but by applicant. Our advice below is based on the Report to inform a Habitats Regulations Assessment:

- The proposed development is located on the boundary of the 6.5km key conservation area for The Mens SAC, and is also within the 12km wider conservation area for Ebernoe Common SAC. As outlined within the [Sussex Bat Protocol](#), plans or projects within the key conservation area must consider all impacts. Habitats within this zone which are required to sustain the bats associated with the SACs are considered functionally- linked habitat which is critical for sustaining the populations of bats within the SACs
- Furthermore, Barbastelle and Bechstein's bats have been recorded within this area, It is therefore not possible to screen out a likely significant effect.
- This proposal if approved would result in the loss of c3.03ha of deciduous woodland Priority Habitat,

located on the boundary of the 6.5km key conservation area for The Mens SAC (and 12km wider conservation area for Ebernoe Common SAC).

- We reiterate that it is the advice of Natural England that **it is not possible** to conclude that the proposal is unlikely to result in significant effects on the European site(s) in question. We further advise that your authority under the provisions of the Habitats Regulations should complete an appropriate assessment to assess the likely impacts from this proposal in view of the conservation objectives for the Mens SAC and Ebernoe Common SAC. We refer you to the [Sussex Bat Protocol](#) for further advice to assist you with that assessment. Natural England must be consulted on any appropriate assessment your Authority may decide to make.

#### Arun Valley Special Protection Area (SPA), SAC and Ramsar Site – Sussex North Water Supply Zone

Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal, in accordance with regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process, and a competent authority should have regard to Natural England's advice.

Your appropriate assessment concludes that your authority is not able to ascertain that the proposal will not result in adverse effects on the integrity of any of the European sites in question. Having considered the assessment, and the measures proposed to mitigate for any adverse effects, Natural England concurs with the conclusion you have drawn that it is not possible to ascertain that the proposal will not result in adverse effects on site integrity. **Natural England advises that the proposal does not provide enough information and/or certainty to enable adverse effects on site integrity to be ruled out.**

Regulation 63 states that a competent authority may agree to a plan or project only after having ascertained that it will not adversely affect the integrity of the European site, subject to the exceptional tests set out in regulation 64 of the Conservation of Habitats and Species Regulations 2017 (as amended). As the conclusion of your Habitats Regulations Assessment states that it cannot be ascertained that the proposal will not adversely affect the integrity of the European site, your authority cannot permit the proposal unless it passes the tests of regulation 64; that is that there are no alternatives, and the proposal must be carried out for imperative reasons of overriding public interest.

Your authority may now wish to consider the exceptional tests set out within regulation 64. Specific guidance about these tests can be found at: <https://www.gov.uk/government/publications/habitats-and-wild-birds-directives-guidance-on-the-application-of-article-6-4>

We advise that the measures proposed within this development are not considered sufficient to ensure water neutrality and to avoid adverse effects on the integrity of the interest features of the Arun Valley SPA, SAC and Ramsar site. We note and concur with the Council's decision that insufficient information/evidence has been provided to demonstrate the required degree of certainty that mitigation would be effective or guaranteed as follows:

- Full specifications of the proposed surface water lagoon should be submitted. This must state the capacity of the lagoon and also evidence the annual flow of rainfall that would supply the lagoon.
- Insufficient details have been provided to evidence the water usage of the dust suppression system. These details should be provided and inputted into the water neutrality calculations
- Insufficient details have been provided to evidence/support water usage of the development's infrastructure and facilities (such as wheel washers, sinks, toilets). All systems within the development that have water usage should evidence water consumption rates, and include these rates within the water neutrality calculations.
- The use of imported water for staff drinking water lacks the required level of certainty.

## Priority habitats

We note that the proposal would result in the loss of priority habitats which are listed as 'Habitats and Species of Principal Importance' within the England Biodiversity List, published under the requirements of S41 of the Natural Environment and Rural Communities (NERC) Act 2006.

Section 40 of the NERC Act 2006 places a general duty on all public authorities, including local planning authorities, to conserve and enhance biodiversity. Further information on this duty is available here <https://www.gov.uk/guidance/biodiversity-duty-public-authority-duty-to-have-regard-to-conserving-biodiversity>.

Furthermore, Natural England note with concern that the proposal appears to have a net loss in biodiversity. The National Planning Policy Framework sets out in paragraph 174(d) that planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.

## Minerals Plan

Natural England reiterates that this application site has not been allocated within either the WSCC Joint Minerals Plan (2021) or WSCC Waste Local Plan (2014) , and currently does not comply with Policy M17 (Minerals Local Plan) or Policy W14 (Waste Local Plan) due to the likely impacts on designated bat features and impacts to important habitat features.. Therefore, the need for this development does not appear to be supported.

Please note that if your authority is minded to grant planning permission contrary to the advice in this letter, you are required under Section 28I (6) of the Wildlife and Countryside Act 1981 (as amended) to notify Natural England of the permission, the terms on which it is proposed to grant it and how, if at all, your authority has taken account of Natural England's advice. You must also allow a further period of 21 days before the operation can commence.

If you have any further questions, please contact me at [thomas.scott-heagerty@naturalengland.org.uk](mailto:thomas.scott-heagerty@naturalengland.org.uk)

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