

Date: 12 January 2018  
 Our ref: [Click here to enter text.](#)  
 Your ref:



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

T 0300 060 3900

**BY EMAIL ONLY**  
**DRAFT ONLY**

Dear Mr Clews

**North Essex Authorities' Joint Strategic Plan Examination: Natural England Comments on the Representation from Dr Chris Gibson, on behalf of Wivenhoe Town Council.**

Thank you for the opportunity to comment on the documents submitted by Dr Chris Gibson in relation to the Habitats Regulations Assessment (HRA) undertaken for the Part 1 Strategic Local Plan for Colchester, Braintree and Tendring. We have had a very short time frame to respond to this representation but we hope our comments address the concerns raised by Dr Gibson.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

**Summary of Natural England's Advice**

Whilst Natural England notes the representations made by Dr Gibson, we are of the view that the HRA has reached the correct conclusion and we are confident that the measures that are being put in place are sufficient and deliverable to ensure the plan is compliant with the Habitats Regulations. Dr Gibson also points out that the HRA has been undertaken in line with standard practice, with which we would agree.

However, we do agree with Dr Gibson that it would be prudent to include the Outer Thames Estuary Special Protection Area into a revised HRA and we will work closely with Colchester, Braintree and Tendring to scope this out. Please see our comments under 7a below for further details on this particular aspect.

**Detailed comments**

We provide the following detailed comments on Dr Gibson's comments and have used the numbers as detailed in his original representation.

- 4 & 5 – When giving our advice on the HRA for the Strategic Local Plan, Natural England took a comprehensive approach to ensuring that all new housing and the recreational impacts associated with this proposed housing were considered on all coastal European protected sites. Part of our advice promoted the production of a strategic solution through the development of a Recreational disturbance Avoidance and Mitigation Strategy (RAMS). This involves 10 European protected sites (of which the Colne Estuary Special Protection Area/Ramsar is one), involving 11 local planning authorities including Tendring, Colchester and Braintree.
- 7a – The Outer Thames Estuary Special Protection Area (SPA) was screened out of the HRA as the main type of impacts identified in the assessment were recreational disturbance to birds from

visitors walking and dog walking activities. These activities would not impact on the interest features of the Outer Thames Estuary SPA.

One of the interest features for the Outer Thames Estuary SPA is Red Throated Diver, and Dr Gibson is right to say that these birds are very sensitive to water based disturbance such as boating. However, most of these birds will be located quite a way off shore. That is why:

- (1) the landward boundary of the Outer Thames Estuary SPA in the vicinity of the Colne and Blackwater estuaries (i.e. between the Dengie and Clacton) is several kilometres offshore along most of its length; and
- (2) Wetland Bird Survey annual peak counts for Red Throated Diver in the Colne and Blackwater SPAs are very low (typically less than 10) compared to the estimated total wintering population for the Outer Thames Estuary SPA of 6,466 of these birds.

As can be seen from the figures above, Red Throated Diver numbers are relatively small inshore and within the estuaries. It would be expected that the greatest increase in water based recreational activities would be likely to occur in the estuaries or inshore. To properly address this issue **Natural England would agree that it would be prudent to include the Outer Thames Estuary SPA into a revised HRA to ensure that any impacts of water based recreation can be more thoroughly considered.** We would be happy to discuss this with the Local Planning Authorities to scope out the detail.

- 7b - This was not intended to be an exhaustive list of all the areas used by birds. We would be content for Figure 2 to be described as “*Most sensitive areas*” or “*particularly sensitive areas*”. It is worth noting that there are differences between different parts of Colne Estuary in terms of their relative importance for interest features and their relative sensitivity to disturbance. Natural England and the other Local Authority partners will work to ensure that the RAMS is tailored to reflect these differences in sensitivity so that appropriate mitigations and avoidance measures can be identified to ensure all European protected sites are more resilient to the impacts of recreational pressure and any adverse effect on integrity will be avoided.
- 7c- As part of the Statement of Common Ground with Natural England the LPA has agreed to update the wording in the plan to ensure the RAMS is in place by the time the plan is adopted. This will be written into policy, and so carries sufficient weight in NE’s view to ensure any development coming forward will be compliant with the Habitats Regulations. Natural England has also agreed an interim approach (copy attached) to ensure that any development coming forward ahead of the local plan and RAMS will be compliant with the Habitats Regulations. There will be a monitoring element to the RAMs to ensure the mitigation which is being put into place is being effective.

The planning authorities have signed a Memorandum of Understanding which sets out their commitment to producing a RAMS (to be completed by the time the plan is adopted). They have also signed a Service Level Agreement with Essex Place Services who have been contracted by the planning authorities to undertake the work on the RAMS and to undertake additional visitor surveys to ensure the zones of influence used in the HRA are correct and can be justified.

A Project Brief has been produced which sets out key milestones which need to be achieved to ensure the RAMS is completed by the time the Local Plan is adopted.

Natural England is working closely with all 11 local planning authorities concerned to ensure the RAMS is fit for purpose and identifies the right mitigation and avoidance measures for each site to address the impacts identified in the HRA.

Similar approaches have also been undertaken and accepted as being effective in other parts of the country e.g. North Northamptonshire Joint Core Strategy committed to preparing a Mitigation Strategy for the Upper Nene Valley Gravel Pits SPA. The Strategy was not in place at the time of the examination but was completed by the time the plan was adopted.

- 7d - The Garden Communities policies include the need for there to be green infrastructure within the development which can be used by dog walkers (one of the most significant impacts

with respect to recreational disturbance). The design of this green infrastructure will be included in more detailed masterplans.

The “within site green infrastructure” is a Garden Communities policy requirement. Natural England will influence its design at the master planning stage (we have the consultation in now) to ensure that it fulfils the role of absorbing some of the new recreational pressure (e.g. through including circular walks, dogs-off-lead areas etc.) – these ‘on-site’ measures for each of the Garden Communities will be in addition to the ‘off-site’ (i.e. at the N2K site) RAMS measures.

If any additional provision outside the Garden Communities is considered necessary when the RAMS measures are being worked up, it will form part of the ‘off-site’ package and be delivered and funded as such.

- 7e – The Examination for this Strategic part 1 Local Plan is testing the principles of the Garden Communities. There will be a separate examination to consider the Part 2 Development Plan Document which will provide more detail on GI provision, levels of GI and GI functionality. The need for GI to be used for mitigating the impacts of recreational disturbance on European protected sites will be considered as part of this proposal. The Part 2 Local Plans (3 produced one each for Colchester, Braintree and Tendring) has also been subject to a HRA. The design and layout including green infrastructure will also be subject to masterplans which Natural England will influence to ensure sufficient green infrastructure of the right quality is provided.
- 7f – Codes of conduct are not the only form of mitigation being proposed. The RAMS can also look at more comprehensive measures, which would need to be costed and recouped from developer contributions (this will be worked out as part of the RAMS) which may include the following:
  - i) Providing more resources to enable the Brightlingsea Harbour Authority to better police the speed limits, the restriction of water-skiing, jet skiing and wind-surfing to permitted areas, and unauthorised mooring;
  - (ii) Working with LPAs, the harbour authority and coastal land-owners to help them use their powers to keep the number and location of mooring places and pontoons/jetties and other access points within limits agreed as part of the RAMS;
  - (iii) Work with user groups and facility owners (like sailing clubs, marinas, water-ski clubs etc.) to sign up to the Code of Conduct and ban, or impose sanctions on, members/users who don't comply;
  - (iv) Developing/promoting a system which the public can use to report infringements of the Code to the body co-ordinating the RAMS, the harbour authority, the relevant user group or the police,
- 7g – Natural England would agree with points 7gi to 7g vi made by Dr Gibson. However, in our view the impact of boat wash causing boat erosion is probably a relatively small effect. In our view the RAMS can address these impacts as detailed in our comments to 7f above.
- 8 -10– In our view the assessment has addressed all of the impacts that can be foreseen as likely to flow from the plan that is the subject of the assessment. The HRA is rightly, an assessment of the likely effects of the housing proposals that flow from the plan under consideration. Any proposals that may follow the plan that is being assessed are not part of this plan and in our view are not sufficiently developed in terms of their being proposed to be considered additional plans or projects to be considered in combination with this one. The local plan will be reviewed, and the policies and housing proposals for the Garden Communities, including the next phase of housing numbers will be considered as part of the review which will also be subject to a HRA.
- 11 – Natural England disagrees with this point. We consider the RAMS meets the Habitats Regulations mitigation tests for the reason explained in our response to point 7c above.
- 12 – Natural England would concur that our understanding on the effectiveness of Strategic Solutions is still being developed. However, one of the key elements of the RAMS is visitor management which is a technique used on nature reserves and flagship sites to ensure the

sensitive areas of a site are protected whilst still allowing visitors to enjoy visiting the site. Also similar strategic solutions have also been undertaken in other parts of the country so the principle is widely accepted in the context of the Habitats Regulations. In our view having the RAMS in place will undoubtedly be an improvement on the way impacts from new housing on European protected sites has historically been and is currently being mitigated on a case by case basis around the Essex coast i.e. some larger developments close to N2K sites have secured 'off site' measures but, due to financial constraints, this wouldn't typically include wardening, for example, which evidence shows is one of the most effective measures and which will be included within the RAMS package. Also smaller developments further away from the N2K sites but within the 'zone of impact' won't have been captured previously (which would technically contravene the Habitats Regulations) but will be captured by the RAMS.

- 16 - In our view there is sufficient certainty that the appropriate mitigation will be delivered. The RAMS will include a monitoring component to check whether the mitigation proposed is being effective. If it is found not to be sufficient then the mitigation and avoidance measures will need to be changed and amended. As stated previously the approach advocated for this local plan is also in line with other similar approaches across other parts of the country.
- 17 and 18 - To address Dr Gibson's criticism here we would suggest that the LPAs explain:
  - (i) what proportion of the proposed 70ha country park would be new public access land; and
  - (ii) how that new area, and the areas with existing public access, would be enhanced and managed to increase their value as mitigation for the effects of the plan on the Colne and other N2K sites nearby.
- 20 – Natural England agrees with these points and we will be addressing this through our advice at the master planning stage.
- 21 – We agree with the comment “*Within-development green infrastructure will not in itself absorb all recreational pressures: especially given the proximity of the Estuary, the 'lure of the sea' will undoubtedly be so strong as to override the potential attractions of the country park*”. We are therefore advising that a two-pronged approach of 'on-site' green space and contributions to 'off-site' measures through the RAMS are needed.
- 26b – This is a fair point which will need to be considered if near estuary open space is to form part of the RAMS package.
- 27-34 – Natural England is of the view that the conclusion of the HRA is correct and so we do not wish to comment further on these points.
- 36 - Dr Gibson asserts that as a result of a “Growth Duty” Natural England is “required to support the Government’s growth agenda”. He goes on to state, perhaps as a consequence but it is not clear, that Natural England “no longer operates as an independent watchdog”. Natural England rejects absolutely, any suggestion that it lacks independence in providing advice in this or any other case. In providing its advice, Natural England forms its own view, based on the best information reasonably available to it and advises independently and impartially in accordance with that view. The “Growth Duty” to which Dr Gibson refers is presumably that contained in section 108 of the Deregulation Act 2015. This provides that “a person exercising a regulatory function to which this section applies must, in the exercise of that function, have regard to the desirability of promoting economic growth.” We make two observations about this duty. Firstly, it is not expressed in a way that amounts to Natural England or any other body in the exercise of its regulatory functions, being “required to support the Government’s growth agenda”. It is clear from the Government’s own guidance on the duty, published in March 2017, that “The growth duty does not legitimise non-compliance and its purpose is not to achieve or pursue economic growth at the expense of necessary protections.” Secondly, in this instance Natural England is not exercising a regulatory function to which the duty would apply. In this case Natural England is acting as an adviser and not acting as a regulator.

- Natural England disagrees with Dr Gibson's statement that our response to the HRA is highly premature, inadequate and misleading. We have provided our advice objectively based on the best available information, technical understanding of the sites concerned and current best practice. We have applied an approach to help develop in partnership with LPA's a strategic solution to ensure our most valued sites are protected.

This concludes the comments we wish to make in relation to Dr Gibson's statement. If you have any further queries, then please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Aidan Lonergan', with a long, sweeping horizontal stroke at the end.

Aidan Lonergan  
Area Manager, West Anglia Area Team

