

STATEMENT

Warrington Local Plan Examination: Ref 1432

Matter 6c: Fiddlers Ferry: Response to Inspectors Questions 03/10/22

Satnam Millennium Limited

Brooklyn Limited

1. By email of 10 October 2022, we have been requested to submit representations on the above note prepared by the Council regarding the availability of ecological survey information and the proposed timeline for the delivery of this strategic allocation.
2. We set out our considerations on the HRA implications of this Note as discussed at the Hearing on 15 September 2022. It is clear from the note that full ecological and other surveys are not at present prepared, and the matter is evolving. This has serious implications for the soundness of the Plan and/or the site allocation.
3. The duty imposed by regulation 63(5)¹ of the Conservation of Habitats and Species Regulations 2017 is as follows:

(5) In the light of the conclusions of the assessment, and subject to regulation 64, 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).

4. The duty, applicable at the stage of appropriate assessment (as summarised at paragraph 20(iv) in *Mynydd Y Gwynt Limited v. Secretary of State*) is as follows,

iv) In respect of the second stage – the appropriate assessment itself – the competent authority can only grant consent for a project if, applying the precautionary principle, it is “convinced” that the project will not adversely affect the integrity of the protected site concerned (Waddensee at [48] and [56]-[59]). A project not directly connected to the management of a European Site (such as this)

¹ Regulation 63 applies at the decision making stage. A similar duty applies when adopting a land use plan – regulation 105(4) of the Conservation of Habitats and Species Regulations 2017

will adversely affect its integrity if, applying the precautionary principle, it is liable to prevent (i.e., it poses a real risk to) the lasting preservation of the constitutive characteristics of the European Site that are connected to the presence of a priority natural habitat whose conservation was the objective justifying the designation of the European Site in accordance with the Habitats Directive. Thus, as was said by the Grand Chamber in Waddenzee (at [59]):

“... [T]he competent national authorities, taking account of the conclusions of the appropriate assessment of the implications of mechanical cockle fishing for the site concerned, in the light of the site’s conservation objectives, are to authorise such activity only if they have made certain that it will not adversely affect the integrity of the site. That is the case where no reasonable scientific doubt remains as to the absence of such effects...”. (See also, the opinion of Advocate General Sharpston in Sweetman at [51] to similar effect). “Certain”, here, also has a particular meaning. For a competent authority to “have made certain that [the project] will not adversely affect the integrity of the [European] site”, it must be satisfied that there is no real (as opposed to merely hypothetical) risk to the integrity of the site.

5. In the HRA update (SP12):

At 4.6 - it concludes that the site has potential functional linkage to the Mersey Estuary SPA / Ramsar. Given the current evidence base, it is concluded that further wintering bird data is required as part of the policy requirement for the allocation of this site in the Warrington Local Plan.

At 4.11 - it is said that a legally compliant approach can be followed, relying in part on a **‘tiered approach’**.

6. However, if reliance is placed on the fact that an HRA will be carried out at the application stage, and a view taken on adverse impact on integrity at that stage, that may be capable of securing compliance with regulation 63(5) point, but the plan will be unsound as there is assumed to be a potential impediment to delivery at a later stage.

7 Therefore the allocation either:

a. Should be rejected as, without adequate and complete surveys, it cannot be said with the requisite degree of certainty that there will be no adverse impact on the integrity of the European site, and therefore regulation 105(4) of the Habitats Regulations operates to prohibit adoption of the plan; or

b. If point (a) is overcome by providing that development be prohibited if, at the application stage, it is found that there is an adverse impact on integrity, the allocation is unsound as it would not be effective as you could not conclude that it would be deliverable over the plan period (paragraph 35(c) NPPF).