

**South Downs Local Plan Hearing
Compliance with Habitat Regulations (River Itchen SAC) and Allocation Policy SD63 Land south of the
A272 at Hinton Marsh**

Statement by Martin Hendry BA(Hons) MRTPI MCIHT

Introduction

1. This statement supports my representation that the Local Plan has not been prepared in accordance with the requirements of the Habitats Directive or the Conservation of Habitats and Species Regulations 2017 in respect of the submitted proposals affecting the River Itchen SAC around Cheriton and Hinton Marsh. Throughout I refer to the report entitled "Pre-Submission (September 2017) Habitats Regulations Assessment" (with an update in 2018) as 'the Report'.
2. I am an experienced Chartered Town Planner, retired from consultancy, and a Cheriton resident. Most of my career has been spent at a high technical level preparing and advising both public and private sectors on major plans and projects, which have often involved assessments of the implications for European Sites.
3. I have lived near the Itchen SAC for many years (I am a riparian owner) and in my professional capacity been involved on many occasions in resolving planning and environmental issues related to the river and its surroundings. I am fully aware of the nature and significance of current of concerns for the future of the SAC.

The importance of the Itchen Headwaters

4. The River Itchen is probably the best example of a true chalk stream in the world. It is not in the best condition and under considerable pressure from trends in land-use and land-management including large-scale urbanisation to the south of the national park which, like the river, relies on the chalk aquifer. Improvement of the health of the headwaters, which are spring-fed and therefore subject to substantial seasonal variation, is vital if the overall objective of returning the SAC to as near its natural state as possible is to be achieved. This requires exceptional care and attention to detail starting with the recognition that surface water is simply the visible evidence of a much more extensive natural system. NE's Magic website thus shows much of the land around the headwaters around Cheriton and Hinton Marsh supporting BAP habitats, some that benefit from seasonal or occasional inundation and all part of the headwater system.
5. There is concern in Cheriton at the condition of the headwaters through the Parish. The many signs of deterioration include seasonal low flows, siltation, excessive weed growth increased shading, local blockages enrichment from changing agricultural practices, growing road run-off and pollution from private drainage systems. Recognising that the relevant statutory bodies have limited capacity to focus on the necessary detail to bring about the changes needed to restore the SAC to original condition, the community response has been the establishment of the Cheriton Conservation Volunteers Group (CCVG). Residents, including the writer, freely give time to carry out essential work in to maintain and where possible improve the headwaters and associated land, and assist in restoring them to acceptable ecological condition. The Group has the support of Natural England, the Environment Agency and the Hants and IoW Wildlife Trust, and has recently secured funds from the National Lottery.
6. Viewing the headwaters close-up, as I do on a daily basis and over the years with the benefit of background knowledge of and involvement in the planning and environmental context, I was extremely surprised to hear that the NPA believes it sensible to promote additional development within the headwaters, including, of all things, the introduction of public access to the source spring area. I had expected such a proposition to idea to be vetoed at the outset by the necessary appropriate assessment but, as explained below, I now see that the Report is inadequate and cannot be relied upon.

The Report and the Habitats Directive

7. Article 6.3 (an UK Regulation 63) requires an appropriate assessment to be made of the implications of the local plan for the SAC in the light of the latter's conservation objectives. Appropriate assessment must identify, in the light of the best available scientific knowledge in the field, all the aspects of the local plan which can affect the objectives of the Directive. The plan can then only be agreed if the competent authority has first ascertained that it will not adversely affect the integrity of the European site.

8. In the following paragraphs I review the full extent of the information provided in the submitted Report relevant to the Itchen headwaters, demonstrating its inadequate scope and lack of credibility. It does not show that that the plan will not adversely affect the integrity of the River Itchen SAC.

9. In fact, the Report does not claim to be an appropriate assessment. Section 2, Methodology, says it is 'a prior stage' and a test of 'LSE' (likely significant effect) "to decide whether a full test at a subsequent stage known as an Appropriate Assessment, is required". The Report's status in relation to the legal requirement is unclear. Paragraph 2.2.4 volunteers the unsubstantiated idea that "there is a tacit acceptance that appropriate assessment can be tiered and that all impacts are not necessarily appropriate for consideration to the same degree of detail at all tiers." Whilst obviously full details may not be available at plan stage, that is a matter for the application of the precautionary principle (of which more later). It does not justify a failure to produce the required assessment at plan level.

10. Figure 2 on page 9 of the Report agrees with paragraphs 2.1/2.2 of the draft CLG Guidance of 2006 when it identifies LSE screening as one of three tasks. However, the report then takes no notice of the Guidance's warning that the three tasks "are collectively described as 'appropriate assessment', and should not be confused with the title of task 2, which is the second stage of the process". The Report proceeds to re-interpret it as a three-stage process. 'Task 1' becomes 'Stage One' (i.e., the LSE test), and 'Stage 2' becomes the required 'appropriate assessment', which the Report proceeds to assert can be carried out later (or, in the case of SD63, not at all).

11. The draft Guidance is fully in line with the Directive when it advises that is necessary to complete all three 'tasks' in order to satisfy the terms of article 6.3. In reality, the 'LSE screen' in the Report is a basic checklist using unvalidated and generalised information that is insufficiently sensitive or local to identify individual impacts or attempt to measure their significance. It exhibits none of the evaluative and analytical techniques implied by the term 'assessment', nor can it be said to be an 'appropriate' way of ensuring that the conservation objectives of the River Itchen SAC are not endangered. The Report thus cannot be used to advise the competent authority on the matter of the Directive's preclusion of the adoption of either a plan or project unless it can be shown, following appropriate assessment, that they will not adversely affect the integrity of the site.

12. An appropriate assessment self-evidently needs to be underlain by adequate science. The Report is not. The well-known ECJ Waddenzee judgement went as far as to say that the effects of a plan or proposal 'must be identified in the light of the best scientific knowledge in the field', which sets a high standard. Genuine lack of evidence has to be dealt by the application of the precautionary principle (see later).

13. Page (ii) of the Report (headed 'Limitations') identifies some basic provisos that rule the Report out as a serious assessment. It says the Report is evidently entirely based on information provided by others which the authors have not vetted, and also solely on SAC conditions encountered in the brief period between April 2017 and June 2017 - the most benign period for spring-fed chalk stream headwaters, parts of which are winterbournes. Even in normal years, the seasonal change is significant: winter headwater flows are several times greater, frequently extending several kilometres to the east to Bramdean and south of Hinton House,

with local flooding and occasional known springs emerging elsewhere and former springs sometimes re-emerging. The Report lacks basic scientific credibility.

14. Appendix B then records the initial LSE screening of settlement policies and allocations, and confirms that the Report identifies the potential for significant effect on the Itchen SAC of Policies SD65 and SD26 (housing within the settlement boundary at Cheriton) and Policy SD63 (which allocates 0.86ha at Hinton Marsh for residential development in a scheme that requires the public recreational use of BAP land within a few metres of the source of the Headwater). Although they have obvious direct adverse implications for a world-class SAC in unfavourable condition, the Report makes no mention of the public access proposals, nor does it consider the combined implications of the three elements. These are inexcusable errors.

15. Page B-60 claims that the LSE test mainly looks at the potential impact pathways associated with Policies SD25 and 26 under those heading in the body of the report. Before that, a section headed "2.6 Stage 2 Appropriate Assessment (Air Quality Impact Assessment) is (with Section 5 and Appendix C) a record of the results of traffic modelling affecting the Itchen. It fails to consider the B3046 and the A272, which are intimately entangled with the River Itchen headwaters in Cheriton and Hinton Marsh areas.

16. Chapter 4 deals with the recreational pressure pathway. Although paragraph 4.2.7 includes Cheriton in the list of settlements vulnerable to impacts from additional recreational pressures, this is immediately contradicted by 4.10.1 - 'this is not a pathway of concern to the Itchen SAC and does not require any further discussion'. This volte face ignores both the fact of rising recreation pressure on the headwaters and the inclusion in the sLP of proposals to introduce public access to a very sensitive stretch of the river that is currently not accessible.

17. Chapter 5, which reverts to Air Quality, has nothing to say about the traffic pollution pathways around the Itchen headwaters.

18. Chapter 6 considers Hydrology, the obvious principal pathway for chalk streams and their environs. Section 6.2, which deals with the River Itchen SAC, is split into sub-sections covering water quality and water quantity. The section as a whole relies on summarised information culled from reports of Natural England and the Environment Agency. There is no specific mention of the headwaters. The summary under water quality identifies a list of problems and issues that demonstrably are some way from solution, yet the Report implies that all is under control. The conclusion at the end of 6.2.12 (that 'the policies for each of these allocations include wording to ensure the protection of the River Itchen SAC') is thus evidentially unsupported and unsupportable.

19. Similar criticisms apply to the sub-section on water quantity. In spite of the obvious relevance of the implications of low flows for biodiversity and the physical state of channels in and around the headwaters, the Report solely deals with the implications for salmon and the long-running saga of extraction limits, which have failed to halt the declining condition of the Itchen. The Report gives the impression that this is resolved but in the face of continued government-backed pressure for major growth in reality the pressures on the Itchen SAC can only be relieved over the longer term by the expenditure of unprecedented levels of investment in alternative supplies of water. The report does not mention wider problems of low flow, including the cumulative effects of current and future changes in climate and land management.

20. Paragraphs 6.2.1, 6.2.11 and 6.2.12 wrongly assume that the developments proposed for Cheriton and Hinton Marsh will be served by waste water treatment works (neither settlement has mains drainage). The known issues surrounding additions to the existing mass of small discharges and the inevitable run off from housing area are therefore not addressed. There is no overall recognition that the sLP proposes development on a locally substantial scale in hydrological connection with headwater drainage or that policies in local plans are powerless to alter the inevitability that the various polluting products of additional urbanisation and recreation will find their way into the headwaters.

21. Paragraph 6.2.20 confirms the Report's sole concentration on water extraction as the cause of low flow. This leads to the entirely illogical and unsupportable principal conclusion that if the development proposals in the sLP can be shown to be accommodated within the new extraction licences the plan "will not contribute to an adverse effect on any European sites". Section 6.2 nowhere acknowledges the current position that the Itchen headwaters are in unacceptable conservation condition.
22. Although it is headed 'Loss of functionally-linked habitat', Chapter 7 does not mention the Itchen. As noted earlier, the headwaters contain large area outside the statutory designation that functionally support the SAC, one such area being subject to a sLP proposal for public recreation.
23. Chapter 8 covers 'Urbanisation' and contains a brief paragraph (8.2.5) on the urbanisation effects of development at Hinton Marsh. Imaginatively describing the Itchen SAC as "located adjacent to Cheriton", it concludes that as the Hinton Marsh allocation is 180 metres from the SAC behind other dwellings and a road, "it is not considered that urbanisation is a significant issue". As an example of scientific excellence, this approach (treating the SAC boundary, which simply identifies the main channel, as marking the extent of the European site) would win few prizes. It is ingenuous and impossible to justify. It once again fails to acknowledge that the allocation includes a public recreation proposal, with obvious urbanising effects, wrapped around the Itchen next to its source. The proposals patently must have an urbanising effect, and urbanisation and its cumulative implications are what is harming the Itchen.
24. Chapter 10, although entitled "In combination effects", does not mention the Itchen. This is illogical: several adopted and draft plans and proposals for surrounding area contains major residential and employment proposals (at Alresford and on a larger scale in south east South Hampshire that are likely to increase traffic on the B3046 and A272 which runs alongside the SAC and contributes to water pollution. The report takes no account of these additional pressures on the SAC.
25. Chapter 11 headed 'Summary of Recommendations' contains no recommendations for further changes to the sLP.
26. Tucked away towards the end of the Report, in Appendix A, Chapter 26 finally sets out the reasons for designation of the River Itchen SAC and does explain that the River is under considerable strain (section 26.3). The text is unattributed but presumably originates from Natural England. This is the only place where the Report identifies the serious nature of the issues, which are likely to be aggravated by residential and recreation development within the headwaters. None of the following matters are, however, taken up by the Report in considering the implications for the proposals for Hinton Marsh and Cheriton:
- *"Recent Condition Assessment process reviews indicated that large sections of the river are suffering from inappropriate water levels, with siltation and abstraction cited as problems in places. In some areas, discharges were causing reduced water quality.*
 - *The key environmental conditions needed to maintain integrity include:*
 - *Maintenance of flow velocities – low flows interact with nutrient inputs from point sources to produce localised increases in filamentous algae and nutrient-tolerant macrophytes at the expense of Ranunculus.*
 - *Low levels of siltation.*
 - *Unpolluted water and low nutrient inputs.*
 - *Maintenance of grazing pressure is essential for southern damselfly habitat"*

The Precautionary Principle

27. The start and end point for an appropriate assessment are one and the same, i.e., recognition of the prima facie position, which in this case is that the insertion of additional residential and recreation development and activity within the headwaters of the Itchen will inevitably have an adverse effect on, and may endanger the integrity of, the SAC. The fact that the headwaters are already in unsatisfactory condition means that whatever the proportionate scale of the impact the LP proposals can only make matters worse.

28. Application of the precautionary principle, which underpins the Habitats Directive and is separately grounded in European Law, places the onus on the Report to prove that these adverse effects will not occur. The Report, which patently never attempts to identify, still less quantify, the impact of the LP's proposals on the Itchen SAC still claims to have applied a version of the principle ("the plan is never given the benefit of the doubt; it must be assumed that a policy/measure is likely to have an impact leading to a significant adverse effect upon a European site unless it can be clearly established otherwise"). Unsurprisingly, in view of the complete lack of evidence (of the scientific kind not simply a measurement of the distance to the SAC boundary) there is no sign of the Principle being applied. If it had been then the sLP would not have been able to have included any development proposals for Hinton Marsh or Cheriton.

29. Allowing the Hinton Marsh proposals) to go forward in an adopted local plan would be the reverse of the precautionary principle. In a final twist/aberration, the text of the submitted policy requires a future applicant for planning permission to demonstrate the prima facie position does not apply and that implementation of the allocation will not have significant effects on the SAC. In other words, the applicant has to prove that the appropriate assessment so obviously required at draft Plan stage is unnecessary. Hardly the best starting point for an objective assessment.

Overall Conclusions

30. The main conclusion must be that the Report does not resemble the appropriate assessment required by the Directive and UK Regulations. Its analysis of the issues raised by the SD63 allocation is inadequate and it cannot be relied on to support a conclusion that policy SD63 will not adversely affect the integrity of the Itchen SAC.

31. The promotion of a plan for residential and recreational use of two parcels of land that has no mains drainage and is in groundwater connectivity with the headwaters of probably the finest true chalk stream in the world which is currently in unfavourable condition, is quite obviously a considerable threat to the prospects of returning the Itchen to its original condition. The Directive is clear about the need for a thorough assessment based on the best scientific knowledge and scoped appropriately to the circumstances that must identify the impact on the conservation objectives for the site. The submitted Report clearly does not meet these requirements and is unfit for purpose. The proposals for Hinton Marsh and Cheriton should be removed from the Local Plan

Martin Hendry
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