

Date: 14 March 2022



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Dacorum Borough Council  
St Albans City and District Council  
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## BY EMAIL ONLY

Dear All,

### **Developments to the emerging evidence relating to the recreational impacts upon Chilterns Beechwoods Special Area of Conservation (SAC) and the need for a Mitigation Strategy.**

Natural England are writing to this group to inform you of emerging evidence which identifies significant recreational pressure on Chilterns Beechwoods Special Area of Conservation (SAC), more specifically Ashridge Commons and Woods Site of Special Scientific Interest (SSSI) component. This advice applies to all Local Planning Authorities (LPAs) which were identified as partly or wholly with the 12.6km Zone of Influence (ZOI) and contribute to more than 2% of visits to the SAC. This relates to the piece of evidence instructed by Dacorum Borough Council and completed by Footprint Ecology, due to be released on 14<sup>th</sup> March 2022<sup>1</sup>.

We have been working proactively with Dacorum Borough Council over the past two years to assist them in developing the evidence base to support their Habitats Regulations Assessment to inform their emerging Local Plan. In addition, we are aware that there have been informal meetings between the LPAs with Dacorum and ourselves to introduce the issue.

The following information within this letter will outline some of the headlines from the emerging evidence as well as setting out the work that is currently underway and what is required going forward to progress a bespoke solution that will be fit for purpose.

#### **1. Chilterns Beechwoods Special Area of Conservation**

Chilterns Beechwoods SAC was designated on the 1<sup>st</sup> April 2005 by the Secretary of State for the Department for Environment, Food and Rural Affairs. The citation is included at **Annex 1**. Chilterns Beechwoods SAC was designated due to the importance of its habitats which qualify under Annex I of the European Habitats Directive<sup>2</sup>: H9130 *Asperulo-Fagetum* beech forests; Beech forests on neutral to rich soils and H6210 Semi-natural dry grasslands and scrubland facies: on calcareous substrates (*Festuco-Brometalia*); Dry grasslands and scrublands on chalk or lime.

Chilterns Beechwoods SAC is separately notified by Natural England as a SSSI, under the provisions of the *Wildlife and Countryside Act 1981*<sup>3</sup>, as amended. All public bodies have a duty to take reasonable steps to further the conservation and enhancement of the SSSI in the exercise of their functions<sup>4</sup>. As previously mentioned it is Ashridge Commons and Woods SSSI unit in which the emerging evidence highlights the greatest recreational pressure.

<sup>1</sup> [www.dacorum.gov.uk/chilternsbeechwoodsSAC](http://www.dacorum.gov.uk/chilternsbeechwoodsSAC)

<sup>2</sup> Council Directive on the conservation of natural habitats and of wild fauna and flora (92/43/EEC)

<sup>3</sup> *Wildlife and Countryside Act 1981* (as amended). Section 28.

<sup>4</sup> *Wildlife and Countryside Act 1981* (as amended). Section 28G

## 2. Emerging Evidence

Footprint Ecology carried out research on the impacts of recreational pressure at Chilterns Beechwoods SAC<sup>5</sup> to inform the Habitats Regulations Assessment of Dacorum Borough Council's Emerging Local Plan in addition to update existing evidence.

The greatest pressure, noted in the report and experienced on the Chilterns Beechwoods SAC, in particular Ashridge Commons and Woods SSSI arises from recreational pressure. The SAC is an attractive and accessible honeypot site of regional significance for recreation. With increasing residential development within the surrounding district/unitary authorities, the SAC will experience further pressure from people using the designated site for recreation.

Natural England have reviewed the draft report produced by Footprint Ecology. The method is robust and consistent with other strategic solutions and we support the conclusions. That is there are likely significant effects upon the integrity of the SAC from the upcoming Dacorum Local Plan, and future Local Plans from LPAs surrounding the SAC. In light of the emerging research, we recognize that there could be a significant potential conflict between the plans for new housing provisions in the areas around Chilterns Beechwoods SAC, and the conservation objectives for the site.

### 2.1 Ashridge Commons and Woods SSSI

Recreational impacts were observed throughout Ashridge with close to 500 incidences of damage recorded. They were particularly high in the central areas north and south of Monument Drive and Northchurch Common. Damage through trampling was the most widespread impact with widened paths and extensive areas of bare and compacted ground.

The report identified several ways in which public access and disturbance can have an impact upon the designated features of the site, these included:

- **Damage:** encompassing trampling and vegetation wear, soil compaction and erosion;
- **Contamination:** including nutrient enrichment (e.g. dog fouling), litter, invasive species;
- **Fire:** increased incidence and risk of fire; and
- **Other:** all other impacts, including harvesting and activities associated with site management.

The report recognises Ashridge Commons and Woods SSSI as a complex site with a range of mainly woodland habitats which are particularly vulnerable to increased recreational pressure around the beech forests with any increase likely to result in further trampling, path expansion, more den building, reduced longevity of the beech trees, scarp bank erosion and the creation of new desire lines.

Ashridge has a unique draw as a destination site, which results in visitors coming from further afield. The report places visitor estimates for Ashridge Estate at 1.9 million visitors a year, which is likely to be an underestimate. For the Chilterns Beechwoods SAC a total of 97% of visitors visited the site directly from home with a third of all interviewees saying they visit the 1 to 3 times a week (40-180 visits per year).

The busiest visitor survey point was Monument Drive with 27 people entering the site per hour. In addition the vehicle transects identified that Monument Drive counts for 44% of all vehicles counted on the transect at Ashridge, although this is recognised as likely to be an underestimate due to the

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<sup>5</sup> Footprint Ecology, data collated during 2021, *Visitor survey, recreation impact assessment and mitigation requirements for the Chilterns Beechwoods SAC and the Dacorum Local Plan*. Unpublished report by Footprint Ecology for Dacorum Borough Council.

sheer volume of movements. Visits to Ashridge Commons and Woods SSSI and in particular Monument Drive are likely to be exacerbated by the facilities hub located there. Surveying showed that 6% of visitors captured at the Monument Drive café point were primarily there to visit the café. Overall, food or drink was mentioned by another 9% of visitors as one of the secondary reasons for being at Ashridge Estate<sup>6</sup> (variances being quite significant at certain survey locations).

Footprint Ecology estimated an increase of 6.5% in visitor numbers based on estimated potential change in housing levels within the Ashridge ZOI as a result of Dacorum Borough Council's emerging Reg. 18 Local Plan (2020) with visitor survey data from Chilterns Beechwoods. Growth in surrounding local authorities would increase visitor numbers further.

## 2.2 Tring Woodlands SSSI

It should also be noted that Tring Woodlands SSSI was given consideration during this piece of work, which also forms part of the Chilterns Beechwoods SAC. As it stands we will not be requiring any specific work as part of this Strategic Solution. We are looking into this site further with our Natural England SSSI colleagues and reserve the right to reconsider our position. We accept that large housing developments within 1.7km of the site, may need to provide bespoke mitigation, outside the scope of the Strategic Solution.

## 2.3 Zone of Influence

Postcode data was used to derive a ZOI, within which net new development would be expected to result in increased recreational pressure to the Ashridge Commons and Wood SSSI part of the Chilterns Beechwoods SAC. Based on the 75<sup>th</sup> percentile (distance of which 75% of visitors originated), a 12.6km zone around Ashridge Commons and Woods SSSI was recommended which represents the core area surrounding that part of the SAC where likely significant effects on the SAC from net increases in development due to recreational impacts cannot be ruled out, triggering the need for an Appropriate Assessment. We are advising that in such cases, adequate mitigation measures to avoid additional recreational impacts from net increases in development will be needed, in order for the Appropriate Assessment (AA) to be able to conclude that there will be no adverse effects on the integrity of the SAC. Guidance on the application of the conservation of Habitats and Species Regulations 2017 is provided in **Annex 2**.

The scale of the ZOI is partly influenced by the draw of the site but also due to the distribution of urban centres and the availability of other greenspace in the surrounding countryside. This approach for generating the ZOI is the industry standard used at all of the other mature Strategic Solutions around England<sup>7,8</sup>.

## 2.4 Exclusion Zone

Research indicates<sup>6,10,11</sup> that the effects of new residential development in close proximity to protected sites cannot be avoided through mitigation measures for a number of reasons, including high risk (due to their proximity) of use of these sites by residents for recreation. Other significant effects arising from housing in close proximity to protected sites include garden waste dumping, garden extensions, fly tipping, and accidental and malicious fires. Natural England considers that given the range and intensity of such impacts it is unlikely that the effects of additional residential development in such close proximity to the SAC could be successfully avoided through mitigation measures. As such, the AA for such development would not be able to conclude no adverse effects on site integrity, meaning the development could not proceed as the requirements of the Habitats

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<sup>6</sup> Panter, C., Liley, D., Lake, S., Saunders, P. & Caals, Z., Visitor survey, recreation impact assessment and mitigation requirements for the Chilterns Beechwoods SAC and the Dacorum Local Plan, February 2022, Para 5.36: *One of the most common was for food or drink, mentioned by 9% (99 interviewees); including 26% of cyclists (8), 14% of walkers (63) and 10% of those on an outing with the family (3). It accounted for 30% of interviewees (24) at survey point 10: Aldbury foot access, 22% (34) at 1: Monument Drive – Café and 18% (17) at 2: Monument Drive – Barracks Square.*

<sup>7</sup> Buckinghamshire Council, November 2020, Burnham Beeches SAC Strategic Access Management and Monitoring Strategy SPD.

<sup>8</sup> Footprint Ecology, October 2009, Cannock Chase Visitor Impact Mitigation Strategy.

Regulations would not be satisfied.

Evidence Suggests<sup>6,10,11</sup> that development within easy walking distance of the SAC is more likely to be of risk to the beechwoods, unrestricted by accessibility factors such as car parking provision or travel times, etc. It is highly likely that residents living within easy walking distance would use the SAC frequently and unlikely that they would be diverted to use suitable alternative natural green space in preference to the SAC for many recreational facilities. For these reasons, Footprint Ecology recommend a presumption against net increases of residential development within 500m of the SAC.

There are a range of potential figures for walking distances to protected sites, ranging from the generally accepted 300 metre ANGst model<sup>9</sup> and the 400 metre GLA figure<sup>10</sup>, to 700m or less for 75% of walkers in the Liley *et al* (2005)<sup>11</sup> study. In the latter survey, 40% of walkers came from 400m or less. The results do not include any analysis of the amount of urban development adjacent to the access points surveyed. Of these potential figures for walking distances, the report concluded that the selection of 400m would provide a reasonable generic figure that captures a significant proportion of potential visitors on foot and is generally accepted within open space design as representing an easy walking distance.

A range of other urban impacts including garden extensions, garden waste dumping, fly-tipping and fires are likely to be more prevalent when the urban area is within 500 metres of the site boundary (Liley, 2004; Liley, 2005; Underhill-Day, 2005) .

The Footprint Ecology report to inform the Habitats Regulations Assessment of Dacorum Borough Council's Emerging Local considers that 500m represents a reasonable boundary for an inner zone around the SAC where **new net increases** in development will be very difficult to deliver. They will struggle to pass a HRA. It is proposed that net increases in development within the ZOI but beyond the exclusion zone will need to incorporate mitigation measures to avoid additional recreational impacts – with such measures to be delivered by a Strategic Solution, as outlined below.

### 3. Future Involvement in Developing a Strategic Solution

Based on the evidence, Natural England believes that the following Local Planning Authorities and other bodies should be involved in the development and delivery of a permanent Strategic Solution for Ashridge Estate.

- Buckinghamshire Council (Aylesbury Vale and Chilterns Districts);
- Central Bedfordshire Council;
- Dacorum Borough Council
- St Albans City and District Council;
- Hertfordshire County Council (as Ecological advisors to Dacorum Borough Council and St Albans City and District Council); and
- National Trust as land owner and delivery body for Ashridge Estate

These are the districts/unitary authorities providing the majority of the visits, and impact to this component part of the Chilterns Beechwoods SAC.

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<sup>9</sup> Harrison, C., Burgess, C., Millward, A. & Dawe, G. 1995. *Accessible natural greenspace in towns and cities: A review of appropriate size and distance criteria*. English Nature Research Reports Number 153. English Nature, Peterborough. (report now revised by Handley J *et al* (2003) *Accessible Natural Greenspace standards in towns and cities: a review and toolkit for their implementation*. English Nature Research Report 526. English Nature, Peterborough.)

<sup>10</sup> Greater London Authority. 2005. *The GLA guide to open space strategies*. GLA. London

<sup>11</sup> Clarke, R., Liley, D. Underhill-Day, J. & Rose, R. (2005). *Visitor access patterns on the Dorset heathlands*. English Nature. Wareham. Dorset.

#### **4. The Benefits of a Strategic Solution**

Strategic Solutions in other locations are already collecting Strategic Access Management and Monitoring (SAMM) payments to improve site management as well as producing high quality Suitable Alternative Natural Greenspaces (SANGs), and there are now around 20 Strategic Solutions nationally. The tests of the 2019 Habitats Regulations (EU exit amendment)<sup>12</sup> are a high bar to pass for any individual planning application. In essence each application would need to prove that in itself it wouldn't harm the SAC either alone or in combination with all other planning applications in the ZOI. Large developments might be able to provide new or improved greenspace, but that can be much more difficult for small windfall development. Likewise each individual development is unlikely to be able to provide a bespoke warden project. This is where a Strategic Solution can provide a mitigation mechanism that is readily available for all development outside of 500m to access. A more coherent, joined up, strategic approach would allow LPAs, developers, National Trust and Natural England to work together to ensure that adequate mitigation is provided for development within the identified ZOI for the Chilterns Beechwoods SAC, while also significantly reducing workloads and overall costs for all involved. A Strategic Solution would offer certainty both for the purpose of Local Plans and for developers.

We would like to see LPAs working together to deliver a coherent package. The scope of a Strategic Solution will be defined both by the circumstances as well as the quantum of development taking place in the area, and must be designed accordingly.

We look forward to working alongside all the involved parties in order to achieve a Strategic Solution that brings benefits to both the SAC and the local area.

#### **5. Natural England's Offer of Support**

Natural England is offering advice to help you all achieve a solution that is likely to be HRA compliant and will help you to continue to deliver the housing aspirations within your Boroughs. We recognise that your LPAs are the decision-makers in your capacities as competent authorities. We are also not looking to fetter our discretion when acting as a statutory consultee in relation to Local Plan and Development Control HRAs.

We have now had initial meetings with all of the affected LPAs and look forward to working with you going forward.

Most recently we have worked with the City of London (CoL) and associated LPAs to establish strategic solutions at Burnham Beeches SAC<sup>13</sup> and Epping Forest SAC. We would be happy to facilitate conversations between the organisations involved in order to share learning.

#### **6. Approach to Avoidance and Mitigation Measures**

Due to the early stage which the project is at we do not yet know what the Strategic Solution will look like and we would like to continue working with LPAs and the National Trust to develop a bespoke Strategic Solution to avoid and reduce visits to the SAC and ease recreational pressure. We have no preconceptions about precisely what the mitigation should look like (so long as it satisfies HRA requirements) and we would be happy to listen to any suggestions put on the table.

##### **6.1 Strategic Access Management and Monitoring (SAMM)**

SAMM is the preferred mechanism for managing impacts at Chilterns Beechwoods SAC due to the draw that the designation has. We are keen for the National Trust as owners of Ashridge Estate to work together with all parties to design a suite of on-site mitigation measures for the SAC to form

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<sup>12</sup> Conservation of Habitats and Species (Amendment) (EU exit) Regulations 2019  
<https://www.legislation.gov.uk/ukxi/2019/579/contents/made>

<sup>13</sup> Buckinghamshire Council, November 2020, *Burnham Beeches Special Area of Conservation Strategic Access Management and Monitoring Strategy Supplementary Planning Document*. Available at:  
[Burnham Beeches Adopted SPD \(3\).pdf](#)

the SAMM package. These measures would form a Strategic Governance Document, that all parties will need to be signatories upon. This is the process currently being signed up to by the Epping Forest LPAs, and has been in place for years at for example the Solent Bird Aware and Thames Basin Heaths.

## 6.2 Suitable Alternative Natural Greenspace (SANGs)

The avoidance and mitigation measures required will vary depending on a number of factors including: size of development; scale of development; proximity to the SAC; ease of access to the SAC; availability of other green space, etc. Where SANG is proposed, this should be delivered at a minimum standard of 8 ha / 1000 population. It should also be secured in perpetuity and agreed with the respective Local Planning Authority and Natural England. Our SANGs guidelines<sup>14</sup> for the Thames Basin Heaths have recently been updated and we advise that these provide a potential model for any SANGs required for Chilterns Beechwoods SAC. However, due to the uniqueness of Chilterns Beechwoods SAC, we recognise that alternative mechanisms may also have to be considered.

## 6.3 New gateway to Chilterns Beechwoods:

Recognising that Chilterns Beechwoods is a honeypot site with 75% of visitors living within a 12.6km radius, in addition to SAMM and SANG, another potential mitigation measure that could be employed is a new gateway to the Ashridge Estate. This potential option is very much at a fact finding stage. We are open to any and all different offers of mitigation, as long as they are Habitats Regulations compliant, and are agreed by all, including the National Trust as landowners.

## **7. Interim Position**

In light of the emerging evidence, we recognize that there could be a serious potential conflict between the plans for new major housing provisions in the areas surrounding the Chilterns Beechwoods SAC, and the conservation objectives for the site.

Natural England understand that Strategic Solutions can be a time consuming process, and will lead to a period of time where strategic-level mitigation hasn't yet been identified. During this period we advise that HRAs will be needed, detailing how each individual site is going to avoid adverse impacts on the integrity of the Chilterns Beechwoods SAC. **This is for all planning applications that result in a net increase in dwellings, within the entire 500m – 12.6km ZOI.** We are happy to work with the Local Planning Authorities and developers proactively to seek to find solutions during this temporary period.

The interim position is likely to apply until such time that a formal strategic solution is found. We will be looking for all applications to incorporate mitigation measures that will avoid additional recreational impacts.

## **8. Natural England lead contacts**

For any queries relating to the specific advice in this letter only relating to Dacorum, Central Bedfordshire and St Albans, please contact Robert Bishop at [rob.bishop@naturalengland.org.uk](mailto:rob.bishop@naturalengland.org.uk).

For any queries relating to the specific advice in this letter only relating to Buckinghamshire, please contact Marc Turner at [marc.turner@naturalengland.org.uk](mailto:marc.turner@naturalengland.org.uk).

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<sup>14</sup> Natural England, August 2021, *Guidelines for Creation of Suitable Alternative Natural Greenspace (SANG)*. Available at: [Natural England SANG guidelines August 2021 \(1\).pdf](#)

Yours sincerely,

A handwritten signature in black ink, appearing to read "John Torlesse". The signature is written in a cursive style with a large initial 'J' and a long, sweeping underline.

**John Torlesse**  
Area Manager – West Anglia Team

## ANNEX 1 – THE SAC CITATION

### EC DIRECTIVE 92/43 ON THE CONSERVATION OF NATURAL HABITATS AND OF WILD FAUNA AND FLORA CITATION FOR

**Special Area of Conservation (SAC) Name:** Chilterns Beechwoods

**Unitary Authority/County:** Buckinghamshire, Hertfordshire, Oxfordshire, Windsor and Maidenhead

**SAC status:** Designated on 1 April 2005

**Grid reference:** SP975134

**SAC EU code:** UK0012724 Area (ha): 1276.48

**Component SSSI:** Ashridge Commons and Woods SSSI, Aston Rowant Woods SSSI, Bisham Woods SSSI, Bradenham Woods, Park Wood and The Coppice SSSI, Ellesborough and Kimble Warrens SSSI, Hollowhill and Pullingshill Woods SSSI, Naphill Common SSSI, Tring Woodlands SSSI, Windsor Hill SSSI.

**Site description:** The Chilterns Beechwoods represent a very extensive tract of ancient semi-natural beech *Fagus sylvatica* forests in the centre of the habitat's UK range. The woodland is an important part of a mosaic with species-rich chalk grassland and scrub. A distinctive feature in the woodland flora is the occurrence of the rare coralroot *Cardamine bulbifera*. Standing and fallen dead timber provide habitat for dead-wood (saproxylic) invertebrates, including stag beetle *Lucanus cervus*.

**Qualifying habitats:** The site is designated under article 4(4) of the Directive (92/43/EEC) as it hosts the following habitats listed in Annex I:

- *Asperulo-Fagetum* beech forests. (Beech forests on neutral to rich soils)
- Semi-natural dry grasslands and scrubland facies: on calcareous substrates (*Festuco-Brometalia*). (Dry grasslands and scrublands on chalk or limestone)

**Qualifying species:** The site is designated under **article 4(4)** of the Directive (92/43/EEC) as it hosts the following species listed in Annex II:

- Stag beetle *Lucanus cervus*



## ANNEX 2

### APPLICATION OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017

#### The Requirements of the Habitats Regulations

- A2.1 A proposal for new residential development, whether a single new dwelling or many, and whether a conversion or a new building, is a 'plan or project' to which the Habitats Regulations apply<sup>15</sup>. The Regulations must be applied by the Council when considering whether to grant planning permission, and by the Secretary of State when he or an Inspector delegated to make the decision on the Minister's behalf, is considering an appeal against a refusal of planning permission.
- A2.2 Government Circular (6/2005 (ODPM) 1/2005 (DEFRA))<sup>16</sup> accompanying Planning Policy Statement 9, *Biodiversity and Geological Conservation*<sup>17</sup> explains in detail how the Regulations should be applied. An adaptation of the flowchart in the Circular is reproduced in Figure 1 below, numbers having been added to the boxes to aid cross-referencing.
- A2.3 Essentially, the Habitats Regulations require all plans or projects with the potential to affect an SAC and not directly connected with or necessary to its management for nature conservation, to be assessed to see if effects are likely to be significant (Boxes 1 and 2 Figure 1 and paragraphs 12 – 16 of Circular 06/2005). Those that are likely to have a significant effect on the site, alone or in combination with other plans or projects, must be subject to a more detailed assessment in order to ascertain if the proposal would adversely affect the integrity of the site (Boxes 3 - 6 Figure 1 and paragraphs 17 – 22 of Circular 06/2005).
- A2.4 If the proposal would be likely to have a significant effect on the SAC, alone or in combination with other plans or projects, the planning authority must undertake an 'Appropriate Assessment' of the implications of the proposal for each qualifying feature for which the SAC is classified, in light of the conservation objectives for the SAC (see section 2 above). Natural England must be consulted as part of such an assessment (Box 3 Figure 1). The Regulations restrict the grant of permission if it cannot be ascertained that the proposal, alone or in combination with others, would not have an adverse effect on the SAC (Box 4 and 6 Figure 1). It should be noted that, unlike other planning decisions, the Habitats Regulations apply the precautionary principle as a matter of law. The Appropriate Assessment in Boxes 3 - 6 Figure 1 should conclude that the development proposal will not have an adverse effect on the integrity of the SAC before it is given consent. If the effects are uncertain, the precautionary principle applies and it must be assumed that the proposal will have an adverse effect on the site (paragraphs 17 – 22 of Circular 06/2005).
- A2.5 Measures to avoid or reduce the effects of a development proposal on the SAC, here referred to as **avoidance measures** and **mitigation measures** respectively,<sup>18</sup> can be proposed as part of the planning application and should now be taken into account by the planning authority within the Appropriate Assessment stage.
- A2.6 Regulation 63(1) of the Habitats Regulations requires a planning authority to consider the effects of a plan or project "*before deciding to .... give any ..... permission for a plan or project ...*". It is considered that this requirement can be met at any stage before a planning permission is granted. Thus, if a planning application is submitted without avoidance or mitigation measures, it may be considered to have a likely significant effect alone or in combination with other plans or projects. However, if such measures are subsequently incorporated into the proposal, before the planning application is determined, the planning authority should take the measures into account.

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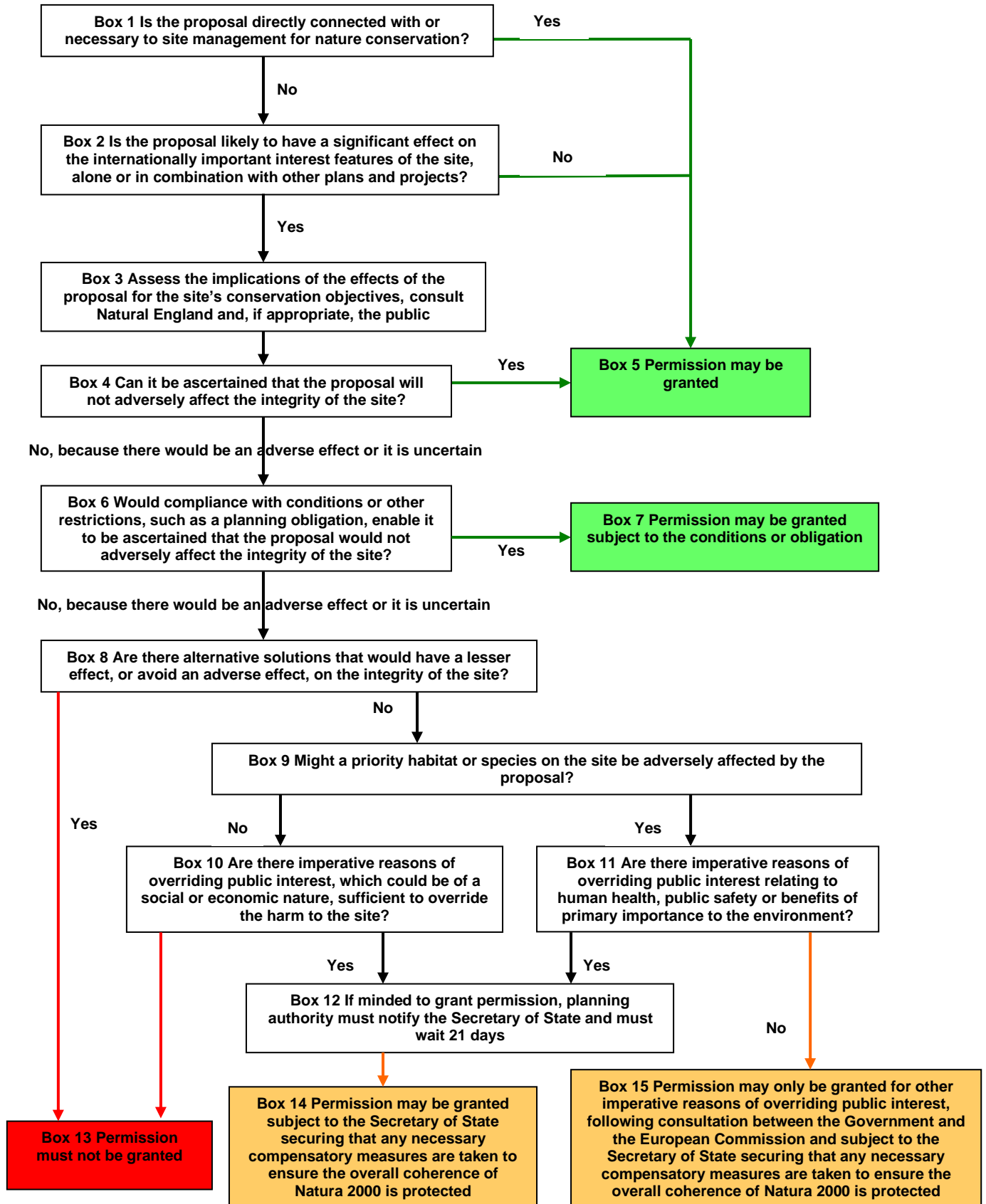
<sup>15</sup> *The Conservation of Habitats and Species Regulations 2017* Regulation 63(1)

<sup>16</sup> ODPM Circular 06/2005. *Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System*.

<sup>17</sup> Office of the Deputy Prime Minister, 2005. *Planning Policy Statement 9 Biodiversity and Geological Conservation*.

<sup>18</sup> The principle of a step-wise policy approach (starting with avoidance then considering mitigation then compensation measures) is also incorporated into the key principles of PPS 9, at paragraph 1(vi).

**FIGURE 1 FLOWCHART OF THE WHOLE DECISION MAKING PROCESS UNDER THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017**



A2.7 Natural England is mindful of the judgment in *WWF UK Ltd and RSPB v Secretary of State for Scotland et al* 27/10/1998, where Lord Nimmo Smith expressed the following opinion in the Court of Session in respect of a relevant case (the Cairngorms Funicular Railway), "*the plan or project is that which is the subject-matter of an application and can thus be identified by reference to the application. .... I therefore reject the suggestion which counsel for the petitioners made at one point that the "plan or project" included all the conditions to which it was made subject at the time when planning permission was granted.*" Having taken legal advice, Natural England is satisfied that the decision maker can take account of obligations submitted after the application was submitted because the application can change during the time it is being processed; by the time the decision maker comes to assess and determine it, the application may include additional avoidance or mitigation measures that should be taken into account in the assessment.

A2.8 Planning permission should not be granted for projects that

- a) are likely to have a significant effect and have not been assessed to determine whether there would be an adverse effect on the integrity of the site; or
- b) have been assessed and it cannot be concluded that there will be no adverse effect on integrity.

unless the project passes further stringent tests set out in Regulation 64 (see Boxes 8 – 15 in Figure 1).

A2.9 Where it cannot be concluded that there will be no adverse effect on integrity the planning authority must first consider whether there are alternative solutions that will have a lesser effect or avoid an adverse effect (Box 8 Figure 1 and paragraphs 23 – 24 in Circular 06/2005). If such alternatives exist, planning permission cannot be granted as a matter of law<sup>19</sup>.

A2.10 For most proposals, particularly residential applications, it will be clear that there are alternative solutions that will have a lesser effect, or avoid an adverse effect on the SAC, because there will be alternative sites on which dwellings could be built. It is therefore unlikely that a residential proposal that may or would have an adverse effect on the integrity of the SPA could be permitted as a matter of law (Boxes 6 – 8 - 13 Figure 1, and paragraphs 23 – 24 in Circular 06/2005).

A2.11 As indicated above, the Habitats Regulations require that, where a project alone would not be likely to have a significant effect on a SAC, it must be considered whether it would be likely to have a significant effect in combination with other plans or projects<sup>20</sup>. An Appropriate Assessment will then need to combine all those plans or projects deemed likely to have a significant effect in combination, in order to ascertain if there will be no adverse effect on the integrity of the SAC (Boxes 3 and 4 Figure 1).

A2.12 This is an important consideration, particularly in relation to residential developments. The Circular states<sup>21</sup> that when considering the combined effects with other proposals it is necessary to consider the following:

- a) Outstanding consents that are not fully implemented;
- b) Ongoing activities or operations that are subject to continuing regulation (e.g. discharge consents or abstraction licences);
- c) Other proposals that are subject to any kind of authorisation, licence, permission or consent.

A2.13 It is also important to consider plans and projects across the whole SAC, not merely the part, or the component SSSI, closest to the proposed development. The Circular clarifies that the 'in combination' requirement applies to those proposals that require planning permission and also to any other relevant plans and projects that may not necessarily require planning permission.

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<sup>19</sup> *The Conservation of Habitats and Species Regulations 2017* Regulation 64(1)

<sup>20</sup> *The Conservation of Habitats and Species Regulations 2017* Regulation 63(1)(a)

<sup>21</sup> ODPM Circular 06/2005. *Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System* Paragraph 16.

A5.16 Following the ruling of the European Court of Justice (ECJ) on 20<sup>th</sup> October 2005, in Case C-6/04<sup>22</sup>, Article 6(3) and (4) of the Habitats Directive, the Conservation of Habitats and Species Regulations 2017 include assessment of development plans in Regulations 105-109. The amendment means that allocations and policies in both adopted and draft development plans may also need to be included in the in-combination assessment.

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<sup>22</sup> Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland (C-6/04: 2005 ECJ)