

**MC/22/1079**

**Date Received:** 28 April 2022

**Location:** Cooling And Cow Marshes Are Located To The North Of Cliffe Village On The Hoo Peninsula.

**Proposal:** Cooling Marsh Is Directly South Of The Thames Estuary Sea Wall, To The West Of The New Managed Realignment Salt Fleet Flats Wetland habitat restoration/enhancement comprising of engineering works to enhance the in-field topography and disconnect from the existing landscape drainage system

**Applicant** Kent Wildfowling and Conservation Association

**Agent** Mr Alan Jarrett

RSPB  
Mr William Tofts

Northward Hill

Bromhey Farm

Cooling

Rochester

ME3 8DS

**Ward:** Strood Rural Ward

**Case Officer:** Wendy Simpson

**Contact Number:** 01634 331700

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**Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 14th December 2022.**

**Recommendation - Approval with Conditions**

- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 (as amended).

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

Received 28 April 2022:

Site Location Plan - Map 1

Site Location Plan - Map 1a

Site Location Plan - Map 1b

'Drawings of Design Features' within the 'Design Specification' document (author Will Tofts)

'Groundworks' as adapted for the revised layout, within the 'Design Specification' document (author Will Tofts)

Received 20 July 2022:

Revised layout - no drawing number but sheet has 'Date printed 20/07/22'

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 Notwithstanding the submitted documents, no development shall commence until:
- i. a detailed mitigation strategy; and
  - ii. habitat establishment plan

have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the agreed details thereafter.

Reason: To ensure the establishment of the habitat creation works is successful and to the works do not breach wildlife legislation and are carried out at the correct time of year, to comply with Policies BNE38 and BNE39 of the Medway Local Plan 2003 and paragraph 174 of the NPPF.

- 4 An archaeological watching brief (to be undertaken by Canterbury Archaeological Trust unless an alternative accredited archaeologist is first agreed with in writing by the Local Planning Authority) shall be maintained during development so that any groundworks are observed, and items of interest and finds are recorded. The watching brief shall be carried out in accordance with the approved written programme and specification ['Habitat Enhancement Project, Cooling and Cow Marsh, North of Cliffe Marshes, Hoo Peninsula, Kent - Archaeological Watching Brief Written Scheme of Investigation', Canterbury Archaeological Trust, dated October 2022]. On completion of the watching brief a written report will be submitted to and agreed in writing with the Local Planning Authority in accordance with the timetable set out in the written programme and specification.

Reason: To ensure that features of archaeological interest are properly examined and recorded in accordance with Policy BNE21 of the Medway Local Plan 2003.

- 5 All works shall take place in accordance with the recommended mitigation works within the Detailed Unexploded Ordnance (UXO) Risk Assessment (1st Line Defence, ref DA15136-00, dated 28 February 2022).

Reason: To ensure safety of the works/workers and in accordance with Policies BNE2 and BNE23 of the Medway Local Plan 2003.

**For the reasons for this recommendation for approval please see Planning Appraisal Section and Conclusions at the end of this report.**

## **Proposal**

The application proposes a development that will disconnect the application site areas

from the existing land drainage systems and restore a wetland habitat comprising the following works:

- Reprofilng existing pond edges
- Excavation of numerous new scrapes
- Excavation of connecting footdrains/rills
- Pipe section under PROW
- Building up land level of some PROW route
- Resurfacing of some PROW with geotextile and stone
- Creation of low bunds
- Installation of dams
- Install various new gates and wing-sets

The application is supported by the following documents: Planning Statement, Design and Access Statement, Archaeology report, Bat Records, Biological Records, Kent Bird Records, Conservation Concern Species Inventory, Kent Rare and Scare Species Inventory, Protected Species Inventory, Design Specification, Unexploded Ordnances Assessment, Ecological Site Assessments, Habitat Enhancement proposals, Thames Estuary and Marshes RAMSAR Citation, Thames Estuary and Marshes SPA Citation, Thames Estuary and Marshes SSSI Citation.

During the course of the application the layout of the new scrapes and rills was amended to avoid known areas of archaeology. Furthermore, a Written Scheme of Investigation was later submitted.

### **Site Area/Density**

Site Area: 64 hectares (158.15 acres)

### **Relevant Planning History**

No relevant history

### **Representations**

The application has been advertised on site and in the press. The Lower Medway Internal Drainage Board, High Halstow Parish Council, Cliffe and Cliffewoods Parish Council, Cooling Parish Council, RSPB, Kent Wildlife Trust, KCC Biodiversity, LLFA, KCC Archaeology, Natural England, Health and Safety Executive, were also consulted.

**Lower Medway Internal Drainage Board** advise that the proposals are within the drainage district of the North Kent Marshes Internal Drainage Board. Watercourses within the district are under the jurisdiction of the North Kent Marshes Internal Drainage Board for the purposes of land drainage. Any temporary or permanent works within the channel of any watercourse at the site require prior consent from the Board under the Land Drainage Act 1991 in addition to the grant of any planning permission.

**KCC Biodiversity** advise that, following the receipt of additional information, no objection is raised but conditions will be required for a detailed mitigation strategy and habitat establishment plan to be produced.

**Natural England** also engaged in discussions directly with the applicant during the course of the application and following the submission of additional information. They now advise that the proposed development will not have significant adverse impacts on the designated sites - Thames Estuary and Marshes Special Protection Area and Thames Estuary and Marshes Ramsar and South Thames Estuary and Marshes Site of Special Scientific Interest (SSSI). They are satisfied that the planned activity is necessary for the conservation management of the site and following recent surveys undertaken by Natural England the condition of the site was deemed unfavourable, due to the hydrological resources on site and the quality of the grazing marsh, for the breeding and overwintering of wintering wader assemblages. As such the planned activity is recommended and supported to help achieve the favourable condition of the site for these wintering birds.

**KCC Archaeology** advise that the redesigned submission suitable showed the proposed works avoiding the known archaeological features. The Written Scheme of Investigation (WSI) is acceptable, and it would be suitable for the works to progress in accordance with this. A condition can be used to require works to be in accordance with the WSI.

**Health and safety Executive** have not provided a response to date in respect to the UXO report.

### **Development Plan**

The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan). The policies referred to within this document and used in the processing of this application have been assessed against the National Planning Policy Framework 2021 and are considered to conform.

### **Background**

The proposal forms part of a landscape-scale habitat restoration project across the Greater Thames Estuary, which proposes innovative solutions for climate resilience. The RSPB are working with partner organisations; Kent Wildlife Trust, Essex Wildlife Trust, Kent Wildfowling & Conservation Association and Elmley Nature Reserve Community Interest Company and will restore and enhance 1,805 ha across 24 important Coastal and Floodplain Grazing Marsh (C&FGM) sites.

Across all 24 sites habitat conditions are failing to meet the needs of waders & other priority species. The overall project seeks to make better use of freshwater across the landscape implementing 29 innovative smart solar pumps at 14 of the project sites, while also improving habitat.

The overall project will work to address the below key issues facing the project sites:

- Surface pools dry out, depriving wader chicks of food and habitat for other species. Existing hydrological systems are inefficient and do not provide the volume of water required to maintain wet features throughout the spring and summer, this is getting worse through climate change.

- The lack of infrastructure to support grazing regimes which create the optimal grass sward structure that breeding waders need.
- Lack of nesting habitat for waders.

## **Site Description**

Cooling Marsh is located directly south of the Thames Estuary sea wall, to the west of the new, managed realignment Salt Fleet Flats. It is an area of approximately 51 hectares and is predominantly grassland of variable quality grazing marsh, with ditches intersecting the fields. There is a Public Right of Way running through the site.

Cow Marsh is single field of grazing marsh surrounded by ditches to the north of Cliffe village. There is a Public Right of Way running to the eastern side of the site.

Cooling Marsh is within the South Thames Estuary and Marshes SSSI (Unit 10), the Thames Estuary and Marshes SPA and Thames Estuary and Marshes RAMSAR.

Cow marsh is bounded on 3 sides by the South Thames Estuary and Marshes SSSI (Unit 11) and also lies immediately adjacent to the Thames Estuary and Marshes SPA and Thames Estuary and Marshes RAMSAR.

Both sites fall within the North Kent Marshes Special landscape Area, as designated in the Local Plan and are areas identified as having archaeological potential.

## **Planning Appraisal**

### *Principle of the development*

Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. The Development Plan for the area comprises the Medway Local Plan 2003 (the Local Plan).

The proposal is for ecological works within existing marsh grazing land, comprising of engineering works.

Policy S1 of the Local Plan is entitled 'Development Strategy' and in part states:

*"In recognition of their particular quality and character, long-term protection will be afforded to: (i) areas of international, national or other strategic importance for nature conservation and landscape;"*

Policy BNE25 of the Local Plan states that development in the countryside will only be permitted if it is in accordance with two of seven criteria (part (i) and one of the other six parts) The first three points relate to this proposal:

*"Development in the countryside will only be permitted if:*

*(i) it maintains, and wherever possible enhances, the character, amenity and functioning of the countryside, including the river environment of the Medway and Thames....; and is....*

*(iii) development essentially demanding a countryside location (such as agriculture, forestry, outdoor or informal recreation); ...”*

The site is agricultural land and demands a rural location and may be acceptable in principle subject to its impact on the countryside function, amenity and character as well as matters related to the impact on the SLA and SPA/RAMSAR designations.

#### *Design, Impact on the countryside and SLA*

In addition to Policy BNE25, Policy BNE33 relates to the North Kent Marshes Special Landscape Area, which only allows development that conserves and enhances the natural beauty of the area's landscape or if it fails to do so the economic and social benefits would be so great as to outweigh the county level priority. Policy BNE1 of the Local Plan BNE1 'General Principles for Built Development' requires the design of development to be appropriate in relation to the character, appearance and functioning of the built and natural environment. Paragraph 130 is key to the achieving well designed places.

Within the adopted Landscape Character Assessment 2011 both sites fall within the 'Cliffe to St Mary's Marshes' character area. The landscape is strongly influenced by a largely unspoilt landscape character with creeks and dykes and water and wildlife contributing to a strong sense of place.

Objectives for this area include protection of the grazing marsh from reversion to arable farmland. As part of this conservation objective should be the protection and reinstatement of drainage ditches, creeks, channels, dykes, ponds, reed bed scrubs and the encouragement of traditional management and the promotion and use of agri-environment mechanisms to encourage appropriate management of grazing marshes to maximise landscape and wildlife benefits.

This proposal is directly seeking to fulfil the landscape objectives of the Character Assessment in relation to this area. The proposal is considered to comply with Policies BNE1, BNE25 and Policy BNE33 of the Local Plan.

#### *Ecology*

Cooling Marsh is within the South Thames Estuary and Marshes SSSI (Unit 10), the Thames Estuary and Marshes SPA and Thames Estuary and Marshes RAMSAR. Cow Marsh is bounded on 3 sides by the South Thames Estuary and Marshes SSSI (Unit 11) and also lies immediately adjacent to the Thames Estuary and Marshes SPA and Thames Estuary and Marshes RAMSAR.

The policy related to an area with such a lot of sensitive ecological designations is extensive and the proposal has been considered at length by both Natural England and the Kent County Council Ecologist.

Policy BNE35 relates to 'International and National Nature Conservation Sites' (SPAs, RAMSAR, National Nature Reserve, SSSI). Such sites will be given long term protection and the policy does not allow development that would materially harm the scientific or wildlife interests of the site. Policy BNE37 (Wildlife Sites) of the Local Plan states that development will not be permitted unless: there is an overriding need for the development that outweighs the importance of these wildlife resources; and the development is designed to minimise the loss; and appropriate compensatory measures are provided. Policy BNE38 (Wildlife Corridors and Stepping stones) of the Local Plan is concerned with the provision of wildlife habitats in new developments that link into wider wildlife networks. Consistent with the statutory duties Policy BNE39 (Protected Species) of the Local Plan states that "*Development will not be permitted if statutorily protected species and/or their habitats will be harmed*" and requires conditions or obligations to be attached to permissions to "*ensure that protected species and/or their habitats are safely guarded and maintained*".

Paragraph 174 of the NPPF 2021 states that '*the planning system should contribute to and enhance the natural and local environment by... d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;...*' Paragraph 180 outlines the principles that should be applied when determining planning applications in relation to biodiversity, SSSI and irreplaceable habitats (including SPAs, SACs, Ramsar sites, as expanded in Para 181).

Part of the function and character of this rural area is the ecological importance of the area.

Paragraph 180 of the NPPF 2021 states that:

*"d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity or enhance public access to nature where this is appropriate."*

The objectives of the submitted planning application have as their primary objective, the conservation and enhancement of biodiversity.

Paragraph 180 also includes the requirement that:

*"b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;"*

Paragraph 182 of the NPPF, 2021 states that: "*The presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or*

*projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. “*

Paragraph 181 of the National Planning Policy Framework gives Ramsar sites the same protection as European sites (i.e., SPAs and SACs). This means that projects in, or in the vicinity of, Ramsar sites, as well as European sites, must be assessed under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

Having taken all of the above into account Natural England do not object to the proposed works but advise that the proposed development will not have significant adverse impacts on the designated sites - Thames Estuary and Marshes Special Protection Area and Thames Estuary and Marshes Ramsar and South Thames Estuary and Marshes Site of Special Scientific Interest (SSSI). They are satisfied that the planned activity is necessary for the conservation management of the site.

The Kent County Council Ecologist advises that following the receipt of additional information, no objection is in respect to ecological and wildlife matters other than the interests of Natural England, but conditions will be required for a detailed mitigation strategy, to ensure that the works do not breach wildlife legislation, and a ‘habitat establishment plan’ to be produced for a more specific management to be implemented while the habitats establish to ensure they establish as intended and the proposed benefits are achieved.

Subject to such suitably worded conditions the proposal is considered to comply with the above Policies and guidance.

### *Heritage*

Policy BNE21 of the Local Plan seeks to account for and protect/mitigate from harm/record findings at archaeological sites, from and during development. As do paragraphs 194 and 197 of the NPPF 2021. Paragraph NPPF says that *“Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal.”*

There is known archaeology in this area, but the originally proposed layout of the drainage did not adequately account for the circumference of the plotted archaeological areas. The layout has been revised and thereby avoids harm. A Written Scheme of Investigation (WSI) was also latterly submitted to inform the method and reporting of the watching brief to take place during the works. This is acceptable and is required to be secured by condition so works take place in compliance with the WSI.

Subject to such a condition the proposal is considered to comply with Policy BNE21 of the Local Plan and paragraphs 194 and 197 of the NPPF 2021.

### *Contamination*

Policy BNE23 of the Local Plan and paragraphs 183 and 184 of the NPPF 2021 require that decisions should ensure that new development is appropriate for its location and takes account of the likely effects of pollution on health, living conditions and the natural environment.

In this case the site is not accompanied by a contamination desk top study as the history of the site and the proposed works mean that such a report is not required. However, an Unexploded Ordnances (UXO) report has been submitted with the application as the area have known history of 'moderate' bombing during from the German aerial warfare and a 'low' risk from allied aerial warfare. A number of historic bomb maps show bomb strikes within or close to the application sites.

The UXO report also submitted with the application recommends that a UXO Risk Management Plan be undertaken and UXO Awareness briefings given to staff prior to undertaking intrusive works. For open intrusive works a UXO Specialist be present on site. The HSE consulted but no response was received from the HSE. The mitigation works can be controlled by planning condition.

Subject to such conditions being used the proposal is considered to comply with Policy BNE23 of the Local Plan and the relevant NPPF paragraphs.

### *Habitat Regulations Assessment*

The applicants have submitted information to support a Habitats Regulation Assessment (HRA) under Regulation 63 of the Conservation of Habitats and Species Regulations, 2017 (as amended).

The HRA screening concludes, as suggested by Natural England in its consultation response, that that the proposed development will not have likely significant effects on the Thames Estuary and Marshes Special Protection Area and Thames Estuary and Marshes Ramsar for the following reasons:

- The proposed ground works will benefit the breeding wader assemblage by enabling more water to be kept on site into the summer months to facilitate wader chick feeding conditions.
- The botanical species recorded during a site visit by Natural England and the RSPB (October 2022), along with the wetland vascular plant assemblage within the Thames Estuary and Marshes Ramsar will thrive in wet areas created by the project. Adding wetland features and creating a varied habitat will provide an increase in surfaces that support the wetland invertebrate assemblage associated with the Ramsar European designation. By improving the habitat and increasing the number of invertebrates available for wader feeding, the proposals will lead to a positive impact on the breeding wader assemblages and individual species within the SPA and Ramsar.

Furthermore, in respect to the South Thames Estuary and Marshes Site of Special Scientific Interest (SSSI), proposed development will not damage or destroy the interest features for which the site has been notified for the following reasons:

- Following recent surveys of the SSSI units undertaken by Natural England, the condition of the site was deemed unfavourable due to the hydrological resources on site and the quality of the floodplain meadow grazing marsh for the breeding and over wintering wader assemblages.
- The activity planned is recommended and supported by Natural England as it will help achieve the favourable condition of the site.

#### *Local Finance Considerations*

No local finance considerations.

#### **Conclusions and Reasons for Approval**

The proposal is ecology led and seeks to restore a wetland habitat to increase the number of invertebrates and extend the period of availability of the habitat and invertebrates, to positively impact the breeding bird wader assemblages and individual species within the SPA and Ramsar in within which the site is located, and the adjacent SSSI. The proposal will also positively contribute to the landscape character of the 'Cliffe to St Mary's Marshes' character area and adhere to the objectives of the adopted Landscape Character Assessment document to encourage appropriate management of grazing marshes to maximise landscape and wildlife benefits.

The proposal is acceptable in accordance with Policies S1, BNE1, BNE21, BNE23, BNE25, BNE25, BNE33, BNE35, BNE37, BNE38, BNE39 of the Medway Local Plan 2003 and particularly paragraphs 174, 180, 181, 182, 194 and 197 of the NPPF 2021.

The application would normally be determined under delegated powers but is being referred for Committee determination due to the applicant being the Leader of the Council.

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#### **Background Papers**

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection in the Planning Offices of Medway Council at Gun Wharf, Dock Road, Chatham ME4 4TR and here <http://publicaccess1.medway.gov.uk/online-applications/>