Ashford Borough Council

Strategic Habitat Regulations Assessment (HRA)

1. Background

1.1. The purpose of this Report is to address the regulatory requirements relating to what is generally referred to as the Habitats Regulations Assessment (HRA) process.

1.2. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 (as amended), known as the Habitats Regulations, requires competent authorities to determine whether any plans or projects that they are giving consent or granting permission to, are likely to have significant (adverse) effects on European Sites, either alone or in combination with other plans and projects. If significant effects upon a European Site are anticipated, then the plan or project must be subject to an Appropriate Assessment. Considering the conclusions of any Appropriate Assessment, a plan or project can only be granted permission after the competent authority has ascertained that the plan or project will not result in an adverse effect on the integrity of any European Site. Where an adverse effect on the integrity of any European Site cannot be ruled out and where there are no alternative solutions, the plan or project can only proceed if there are imperative reasons of overriding public interest and if the necessary compensatory measures can be secured.

1.3. This HRA has been prepared by Ashford Borough Council, as Local Planning Authority and the relevant competent authority, to determine whether the strategic retrofitting mitigation measures, referred to in Section 6 of this report, would have an adverse effect on the integrity of European Sites.

2. Nutrient Neutrality and the Stodmarsh Lakes

2.1. The Stodmarsh Lakes, located to the east of Canterbury, are a set of lakes that are afforded a range of environmental designations and protections including a Special Protection Area (SPA), Ramsar site, Special Area of Conservation (SAC), and a Site of Special Scientific Interest (SSSI). Parts are also designated a National Nature Reserve (NNR).

2.2. In accordance with Regulation 8 of the Conservation of Habitats and Species Regulations 2017 (as amended) (referred to as the Habitats Regulations) the Stodmarsh Lakes are designated as 'European Sites' and referred to as 'Habitats Sites' within the National Planning Policy Framework (NPPF) (2023).

2.3. In July 2020, Natural England (NE) issued an Advice Note to Ashford Borough Council titled 'Advice on Nutrient Neutrality for New Development in the Stour Catchment in Relation to Stodmarsh Designated Sites – For Local Planning Authorities'[1]. This Advice was then updated in November 2020 and

[1] https://www.ashford.gov.uk/media/l3dgnfyu/stodmarsh-nutrient-neutral-methodology-november-2020.pdf

again on 16 March 2022 in a letter titled 'Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites'[2].

2.4. The Advice note sets out that there are excessive nitrogen and phosphorus levels in the Stodmarsh Lakes, and so the water within the Lakes is in an unfavourable condition and has the potential to further deteriorate.

2.5. In line with established case law and the 'precautionary principle', Natural England advise that applications for certain types of development (including housing) within the Stour River catchment, and/or which discharge to particular Wastewater Treatment Works within the catchment, have the potential to contribute to deterioration of the Stodmarsh Lakes. Natural England concluded that these type of development proposals have the potential to affect water in such a way that adverse nutrient impacts on the Stodmarsh Lakes cannot be ruled out.

2.6. Regulation 63 of the Habitats Regulations requires a 'competent authority' to undertake an Appropriate Assessment (AA) of the implications of the project (planning permission) to determine the effect on the integrity of the Stodmarsh Lakes. For an AA to conclude that there is no significant adverse effect, the decision maker must be satisfied that the development can achieve nutrient neutrality.

2.7. This report is prepared at a strategic level to review a form of nutrient mitigation being prepared by the Council. The mitigation, once generated, would enter a centralised nutrient mitigation bank and can subsequently be sold to developments in the form of nutrient credits. This report therefore assesses whether the proposals will generate nutrient mitigation which can then be sold as nutrient credits to individual developments and planning applications within the borough.

3. European designated sites impacted

3.1. This section of this report sets out the details of the plan/project and the internationally designated sites that could be impacted by the proposed plan/project.

European Sites potentially impacted by the plan or project	Stodmarsh Special Protection Area Stodmarsh Special Area of Conservation Stodmarsh Ramsar Site

Details of the European sites affected

Stodmarsh SAC

The Stodmarsh Special Area of Conservation (SAC) has been designated under the EU Habitats Directive for the presence of the following habitats/species:

[2] https://www.ashford.gov.uk/media/0jabvost/ne-march-2022-letter-water-quality-and-nutrient-neutrality-advice.pdf

International House,
Dover Place, Ashford TN23 1HU
01233 331111
www.ashford.gov.uk
AshfordBoroughCouncil
ashfordcouncil
Ashford Borough Council

- S1016 Desmoulin's whorl snail (*Vertigo moulinsiana*)

The Conservation Objectives of the Stodmarsh SAC are as follows:

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring.

- The extent and distribution of the habitats of qualifying species
- The structure and function of the habitats of qualifying species
- The supporting processes on which the habitats of qualifying species rely
- The populations of the qualifying species, and,
- The distribution of the qualifying species within the site.

Stodmarsh SPA

The Stodmarsh SPA has been designated under the EU Habitats Directive for the presence of the following individual species and/or assemblage of species:

- A021 Great bittern (Non-breeding) (*Botaurus stellaris*)
- A051 Gadwall (Breeding) (*Anas strepera*)
- A051 Gadwall (Non-breeding) (*Anas strepera*)
- A056 Northern shoveler (Non-breeding) (*Anas clypeata*)
- A082 Hen harrier (Non-breeding) (*Circus cyaneus*)
- Waterbird assemblage
- Breeding bird assemblage

The Conservation Objectives of the Stodmarsh SPA are as follows:

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and,
- The distribution of the qualifying features within the site.

Stodmarsh Ramsar

The Stodmarsh Ramsar was designated under criterion 2 of the Ramsar criteria for the presence of 6 British Red Data Book wetland invertebrates, two nationally rated plants, five national scarce species and a diverse assemblage of rare wetland birds.

View more details on the Stodmarsh Ramsar designation

International House,
Dover Place, Ashford TN23 1HU
01233 331111
www.ashford.gov.uk
AshfordBoroughCouncil
ashfordcouncil
Ashford Borough Council

Is the plan or project directly connected with or necessary to the management of the site?	No – the development is neither connected to, nor necessary for, the management of any European Site.

4. Scope of this HRA/AA

4.1. This strategic HRA/AA has been written by Ashford Borough Council, as competent authority, to assess the proposed mitigation measures on the impacts on the Stodmarsh Lakes. Mitigation is proposed in the form of retrofitting Council Housing with water flow control devices.

4.2. This report is solely focused on the issue of water quality and nutrients on the Stodmarsh Lakes. Other impacts on the European site, are not within the scope of this report.

4.3. The assessment is a strategic level assessment and does not assess the individual needs for mitigation for planning applications which are required to achieve nutrient neutrality.

5. Relationship with individual planning applications

5.1. This Strategic HRA/AA provides an overarching assessment that will support individual planning applications seeking to rely on the proposed mitigation measures. Site specific Appropriate Assessments will be undertaken by the competent authority and should be read alongside this strategic HRA/AA.

5.2. For the site-specific Appropriate Assessments relying on this mitigation measure, developers will be required to submit the following information:

5.3. Nutrient load calculations, using the Natural England Nutrient Neutral Methodology, to assess the net phosphorus and nitrogen load generated by the proposed development.

5.4. Evidence of the credit purchase via Nutrient Credit Certificates.

6. Mitigation measure – retrofitting Council Housing with water flow control devices

6.1. This Strategic HRA/AA reviews the proposed mitigation measure of retrofitting existing Council Housing with water flow control devices for the purposes of generating nutrient mitigation.

6.2. Existing Council Housing within the Stour catchment has been fitted with Cenergist Control Flow HL2024 devices to improve water efficiency. By reducing the water usage, the nutrients in the water savings can be calculated and consequently used as nutrient credits. A full technical report of how mitigation is generated by the installation of water flow control devices is set out in Appendix 1.

6.3. For ease of reference, this mitigation measure will hereafter be referred to as ‘strategic retrofitting’.

7. HRA Screening Assessment

International House,
Dover Place, Ashford TN23 1HU
01233 331111
www.ashford.gov.uk
AshfordBoroughCouncil
ashfordcouncil
Ashford Borough Council

7.1. This section of the report contains an assessment of whether the proposed plan/project would have a likely significant effect on the European sites identified above.

Would the proposal lead to a likely significant effect on the European Sites, without mitigation measures, either alone or in combination with other plans or projects?

7.2. In accordance with the Natural England advice titled 'Advice for development proposals with the potential to affect water quality resulting in adverse nutrient impacts on habitats sites' (dated 16 March 2022), Natural England have stated that any net gain in new overnight accommodation within the Stour catchment or which discharges wastewater into the catchment poses a risk to the conservation objectives of the designated sites at Stodmarsh, due to increased levels of nitrogen and phosphorus from wastewater and treated sewage effluent.

7.3. Where wastewater from development is discharged into the Stour catchment, the nutrients in the wastewater could follow hydrological pathways to the Stodmarsh Lakes. Therefore, development could have a likely significant effect on the Stodmarsh Lakes SPA, SAC and Ramsar designated sites in combination with other plans or projects within the Stour catchment. As the likelihood of a Likely Significant Effect cannot be excluded, an Appropriate Assessment is required.

Note: the proposed mitigation measure does not generate a net increase in overnight accommodation. The purpose of this Strategic HRA/AA is to review the proposed strategic retrofitting to confirm whether it can provide nutrient mitigation for development schemes required to achieve nutrient neutrality.

8. Appropriate Assessment

8.1. This Appropriate Assessment is being undertaken on the proposed strategic retrofitting to determine whether any developments relying on this mitigation measure can, in principle, achieve nutrient neutrality.

8.2. This section of the report should be read in conjunction with Appendix 1.

Scope of nutrient mitigation

8.3. Water control flow devices have been installed in existing Council housing to reduce water usage and generate a source of strategic nutrient mitigation which will be held and recorded in the Council's Nutrient Credit Ledger.

8.4. Details of the proposed devices and the nutrient mitigation generated, including the methodology, is set out in the technical report in Appendix 1.

8.5. The scope of the strategic retrofitting is limited to Council housing only. Retrofitting has taken place in existing Council housing rather than private/general market housing. The scope is narrowed to solely council-owned housing due to the complexities with securing nutrient mitigation in perpetuity, in non-Council owned stock.

International House,
Dover Place, Ashford TN23 1HU
01233 331111
www.ashford.gov.uk
AshfordBoroughCouncil
ashfordcouncil
Ashford Borough Council

8.6. Under the precautionary principle, which underpins the Habitats Regulations, the Local Planning Authority does not consider that the installation of water control flow devices in private market housing is sufficiently robust. The primary basis for reaching this conclusion is that in the Local Planning Authority's view this form of mitigation in non-Council housing is unlikely to be able to be enforced appropriately in perpetuity. Installing water control flow devices in Council housing where the Council is the landowner, housing provider and is also a public body provides a far greater degree of certainty that the mitigation will be retained and secured in perpetuity. Therefore, it is considered appropriate to limit the scope of retrofitting to Council housing only.

Location of mitigation

8.7. To generate nutrient mitigation, the existing Council houses must be located within the Stour catchment and be served by one of the Wastewater Treatment Works listed in Table 1.

Table 1 List of Wastewater Treatment Works where retrofitting of Council housing can provide mitigation

List of Wastewater Treatment Works
• Ashford (Bybrook) • Charing • Chartham • Lenham • Sellindge • Wye (after 1 April 2030)

8.8. Any retrofitting taking place which is not served by one of the above Wastewater Treatment Works will not generate nutrient mitigation and cannot be relied upon for this source of nutrient mitigation. This includes sites which are served by non-mains drainage measures.

8.9. The location and the Wastewater Treatment Works serving the dwelling is important as this will influence the methodology for calculating the nutrient mitigation. Further details on the approaches for nutrient mitigation is set out in Appendix 1.

Mitigation generated by retrofitting

8.10. The process for determining the quantum of nutrient mitigation generated from retrofitting will be dependent on the permit limits for Nitrogen and Phosphorus at the Wastewater Treatment Works listed in Table 1. Appendix 1 sets out the methodologies for the generation of nitrogen and phosphorus mitigation.

8.11. The nutrient methodology based on Wastewater Treatment Work permits is considered by the Local Planning Authority as sufficiently robust and suitable to be acceptable in principle. The suitably of this approach is based on the legal requirements for Wastewater Treatment Work operators to operate in

International House,
Dover Place, Ashford TN23 1HU
01233 331111
www.ashford.gov.uk
AshfordBoroughCouncil
ashfordcouncil
Ashford Borough Council

accordance with discharge permits, therefore providing the required level of certainty for the principle of the mitigation. This includes for both nitrogen and phosphorus permits.

8.12. In the interim, the Council has prepared a methodology for nitrogen retrofitting based on the presence of nitrogen in drinking water (referred to as nitrogen at source). This approach is based on data taken directly from South East Water's monitoring and so, in the absence of a permit is considered to be a robust approach to calculating the nitrogen mitigation generated as part of the retrofitting.

8.13. For properties which connect to the Sellindge Wastewater Treatment Works and are served by Affinity Water, it is also considered that there is a high probability that the potable water originates from a similar groundwater source and therefore the "nitrogen at source" approach is also appropriate for these dwellings to be retrofitted.

8.14. Once nitrogen permits are introduced for the Wastewater Treatment Works specified in Table 1, due from the 1 April 2030, the 'nitrogen at source' methodology will cease, and the methodology based on permit levels will be implemented for calculating nitrogen mitigation.

8.15. The technical report in Appendix 1 calculates the quantum of mitigation generated by retrofitting for houses and flats and under the pre-2030 and post-2030 Wastewater Treatment Works permit limits. A copy of the data is highlighted below in Table 2.

Table 2 Mitigation generated per Council house retrofit by accommodation type, expressed in kilograms per year. Data taken from Appendix 1.

	Phosphorus Pre-2030*	Phosphorus Post-2030	Nitrogen Pre-2030	Nitrogen Post-2030
Dwelling - flats	0.01	0.00	0.09	0.16
Dwelling – house	0.01	0.01	0.12	0.21

* Phosphorus and Nitrogen mitigation will not be generated prior to 1 April 2030 for any dwellings served by the Wye Wastewater Treatment Works.

5% precautionary buffer

8.16. The Appropriate Assessment process is underpinned by the precautionary principle and therefore it is considered appropriate to include a precautionary discount/buffer to the total nutrient mitigation generated. This discount/buffer therefore accounts for any failures/damages to the mitigation devices or if any housing no longer forms part of the Council housing stock (e.g. sold under right to buy).

8.17. It is proposed that a 5% discount will be applied to the total mitigation generated. This discount will be applied once the mitigation is added onto the Nutrient Credit Ledger. Any mitigation comprising the 'precautionary buffer' would not be sold as nutrient mitigation credit.

International House,
Dover Place, Ashford TN23 1HU
01233 331111
www.ashford.gov.uk
AshfordBoroughCouncil
ashfordcouncil
Ashford Borough Council

8.18. A 5% discount/buffer is considered as appropriate and sufficiently precautionary to account for errors or damages in the mitigation.

Management, maintenance and monitoring of the mitigation

8.19. Once installed, the retrofitting devices may require occasional management and maintenance, as well as the replacement at the end of the lifetime of the device or failure of the device where it cannot be fixed. Any replacements will be fitted with a device of the same specification or a higher water efficiency.

8.20. To secure the required maintenance and management the landowner, (the Council), has entered into a Section 106 legal agreement. The Section 106 legal agreement requires the landowner to maintain and manage the water control flow devices in perpetuity.

8.21. Monitoring is also required as part of the Section 106 legal agreement, which requires the submission of an update report every 5 years providing updates on the status of retrofitted devices, including any devices that have been replaced.

8.22. It is therefore considered that the mitigation, management and monitoring requirements for the nutrient mitigation have been robustly considered and secured.

Nutrient credit ledger

8.23. To record the mitigation generated, the Council will hold a Nutrient Credit Ledger which tracks the available and secured mitigation and records the mitigation allocated as credits to individual developments. It will be a composite list of the mitigation generated and where this source has come from, e.g. the addresses of the properties that have been retrofitted.

8.24. The Nutrient Credit Ledger records each dwelling that has been retrofitted, including whether the property is within the Stour catchment, the corresponding Wastewater Treatment Works, and the relevant S106 legal agreement which secures the mitigation.

8.25. Using the methodologies set out in Appendix 1, the Ledger will record the kilograms of phosphorus and nitrogen mitigation that has been generated.

8.26. Mitigation will only enter the Ledger once it has been secured through the relevant Section 106 legal agreements. At this stage, the mitigation enters a central bank. Mitigation is then allocated to individual planning applications, removing it from the central bank (to prevent double counting of mitigation).

8.27. Credit certificates will be issued by the credit provider (e.g. the Council) to developers using the mitigation to confirm the mitigation has been allocated for the proposed development. The certificates will then be submitted as part of the planning application and Appropriate Assessment for individual developments.

Securing the nutrient mitigation

8.28. As stated in paragraphs 8.20 – 8.21 a Section 106 legal agreement will be used to secure the nutrient mitigation. The Section 106 legal agreement will

International House,
Dover Place, Ashford TN23 1HU
01233 331111
www.ashford.gov.uk
AshfordBoroughCouncil
ashfordcouncil
Ashford Borough Council

be between the Council (as mitigation provider) and the Local Planning Authority to secure the retrofitting which has taken place in each dwelling.

8.29. The following elements will be secured:

8.30. To maintain the Water Saving Devices in accordance with manufacturer's instructions

8.31. To routinely manage and maintain the Water Saving Devices

8.32. To provide a report every 5 years on the inspections and any replacement or maintenance on the Water Saving Devices

8.33. To replace any Water Saving Devices at the end of its operational life

Summary of nutrient mitigation

8.34. Nutrient mitigation has been provided from the installation of water flow control devices in existing Council housing properties. For properties which are served by Wastewater Treatment Works listed in Table 1, nitrogen and phosphorus mitigation can be generated from the water savings.

8.35. The mitigation savings per dwelling are set out in Table 2 of this Appropriate Assessment, based on the nitrogen and phosphorus mitigation methodologies as set out in Appendix 1.

8.36. The retrofitting mitigation will be secured by Section 106 legal agreement, which will require the landowner, the Council, to manage, maintain and monitor the installation and use of the water flow control devices in perpetuity.

8.37. Any mitigation generated from the retrofitting will enter the Council's Nutrient Credit Ledger and the central credit bank to be used by individual planning applications.

8.38. Therefore, subject to the nutrient mitigation being secured by S106 legal agreement, as set out in the report, it is concluded that the strategic retrofitting can offset the nutrients generated from development proposals.

Conclusion

8.39. In accordance with Regulation 63(5) of the Conservation of Habitats and Species Regulations 2017 (as amended), the Council, as the competent authority, has undertaken an Appropriate Assessment to determine the nutrient impact of the proposed strategic retrofitting measure on the integrity of the Stodmarsh Lakes.

8.40. The proposed mitigation measure is the strategic retrofitting of Council Housing with water control flow devices to reduce water usage. This method generates savings of both nitrogen and phosphorus in dwellings currently served by the specific Wastewater Treatment Works listed which are located within the Stour catchment.

8.41. In accordance with the Natural England advice and methodology, based on the evidence provided, mitigation proposed and subject to appropriately worded legal agreements to secure the mitigation, it is considered that the strategic retrofitting measures can provide nutrient mitigation. Consequently, it is concluded that any development which should seek to rely on this form of

International House,
Dover Place, Ashford TN23 1HU
01233 331111
www.ashford.gov.uk
AshfordBoroughCouncil
ashfordcouncil
Ashford Borough Council

mitigation will not have an adverse effect on the integrity of the Stodmarsh Lakes, either alone or in combination with other plans or projects.

9. Natural England consultation

9.1. In accordance with Regulation 63(3) the Local Planning Authority, in its role as competent authority, must consult the Natural England and have regard to any representations made by Natural England.

9.2. Natural England were consulted on the strategic HRA AA on the 4 February 2025. In their response dated 6 March 2025, Natural England 'welcome and support your authorities' strategic approach to creation of nutrient mitigation in the region. Having assessed the proposed scheme, we are satisfied in principle that the scheme can be used to generate permanent nutrient mitigation'.

9.3. The in-principle agreement of the mitigation strategy was given based on the requirements as set out in the table below. Where required, the Local Planning Authority have indicated the relevant section of the Appropriate Assessment in response.

Natural England's comments	Response
The properties subject to water use reduction measures are connected to a Wastewater Treatment Works (WwTW) that operates with a Total Nitrogen (TN) and/or Total Phosphorous permit (TP) limit(s).	The retrofitted properties will be those connected to a WwTW as listed in Table 1 of the Appropriate Assessment.
Robust evidence is used to calculate the estimated water reduction rate.	Evidence for the water reduction rate was taken from a similar mitigation approach that has previously been accepted by Natural England. Therefore, it is considered appropriate. Further information is set out in Appendix 1.
Your authority is satisfied that any relevant measures are deliverable, and that their monitoring and enforcement schedule is sufficient that your authority can ensure, with certainty, that the mitigation measures will remain effective in perpetuity, or for the lifetime of any given development as appropriate.	All mitigation will be delivered and secured via Section 106 legal agreement prior to being used as nutrient mitigation for developments. Monitoring and reporting mechanisms will be required as part of the Section 106 legal agreement. Therefore, it is considered that the mitigation will remain effective and suitable secured.

International House,
Dover Place, Ashford TN23 1HU
01233 331111
www.ashford.gov.uk
AshfordBoroughCouncil
ashfordcouncil
Ashford Borough Council

Natural England's comments	Response
Sufficient mitigation is available for new permissions granted using this Appropriate Assessment.	All mitigation will be delivered and secured via Section 106 legal agreement prior to being used as nutrient mitigation for developments. This will ensure that sufficient mitigation is available for new planning permissions.
The principles of mitigation contained in our advice of 16th March 2022 are demonstrated.	The principles of mitigation have been used to inform the mitigation strategy as set out in Appendix 1. Should there be any differences then these are justified in the Appropriate Assessment.

9.4. Natural England have also provided generic advice relating to retrofitting and water saving measures in Annex B of their response and specific advice relating to the pre-2030 mitigation measures proposed in Annex A. It is considered that given the Natural England advice and the Appropriate Assessment set out above that the points made by Natural England have been considered whilst the strategy has been prepared and where appropriate justification for the approach has been given earlier in this report.

9.5. A full copy of the Natural England consultation response is included in Appendix 2.

10. Conclusion

10.1. In accordance with Regulation 63(5) of the Conservation of Habitats and Species Regulations 2017 (as amended), the Council, as the competent authority, has undertaken an Appropriate Assessment on the nutrient impact of the proposed mitigation measure (retrofitting by the installation of water flow control devices in the existing Council housing) on the integrity of the Stodmarsh Lakes.

10.2. The Council considers that subject to the mitigation being secured by legal agreements, planning applications may seek to rely on this form of nutrient mitigation (once secured in a nutrient credit certificate) to confirm that the development will not have an adverse impact on the integrity of the Stodmarsh Lakes either alone or in combination with other plans or projects.

International House,
Dover Place, Ashford TN23 1HU
01233 331111
www.ashford.gov.uk
AshfordBoroughCouncil
ashfordcouncil

HRA Completion Date:	28 May 2025
HRA Completed by:	Harriet Turner Deputy Team Leader – Plan Making & Infrastructure
HRA signed:	[redacted] Simon Cole Assistant Director Planning & Development

International House,
Dover Place, Ashford TN23 1HU
01233 331111
www.ashford.gov.uk
AshfordBoroughCouncil
ashfordcouncil

International House,
Dover Place, Ashford TN23 1HU
01233 331111
www.ashford.gov.uk
AshfordBoroughCouncil
ashfordcouncil

Appendix 2 – Natural England consultation response

International House,
Dover Place, Ashford TN23 1HU
01233 331111
www.ashford.gov.uk
AshfordBoroughCouncil
ashfordcouncil