

**IN THE MATTER OF
THE TOWN AND COUNTRY PLANNING ACT 1990**

**AND IN THE MATTER OF
FAREHAM BOROUGH COUNCIL LOCAL PLAN PART 2
POLICY DSP14
(SUPPORTING SITES FOR BRENT GEESE AND WADERS)**

OPINION

1. I am asked to advise Foreman Homes Limited in respect of the correct approach to surveys under Policy DSP14 (Supporting Sites for Brent Geese and Waders) in the Fareham Borough Council Local Plan Part 2: Development Sites & Policies (June 2015). I am asked to give general advice, rather than in respect of a specific site, as I am Instructed that Fareham Borough Council ['FBC'] seek 3 years' worth of survey data for sites designated as 'uncertain' sites before considering development proposals. I am asked to consider whether this is a lawful and binding policy requirement and whether, indeed, surveys are necessary should the land use since the designation have rendered a site unsuitable.
2. Policy DSP14 divides 'Supporting Sites for Brent Geese and Waders' into 'Important' and 'Uncertain' sites, resulting from survey data including that gathered over three winters 2006-2009.
3. For 'uncertain' sites, the policy provides:

'Development on 'uncertain' sites for Brent Geese and/or Waders (as identified on the Policies Map or as updated or superseded by any revised plans, strategies or data) may be permitted where studies have been completed that clearly demonstrate that the site is not of 'importance.'

4. The supporting text at para. 4.40 explains that the designation on the Proposals Map derives from the information available to the ‘Solent Waders and Brent Goose Strategy (2010)’ and that as on-going work may result in changes to site value, the policy applies to the latest ‘plans, strategies or data held by the Hampshire Biodiversity Information Centre.’
5. While the designation ‘uncertain’ remains, however, policy provides for other studies to be conducted to establish whether or not the site should be considered ‘important’. To this end, para. 4.42 provides:

‘Where development proposals could impact sites of ‘uncertain’ value (with limited survey data), site surveys will need to be undertaken to determine their level of importance. An example survey methodology is set out in the Solent Waders and Brent Goose Strategy (2010). For such surveys to be considered valid, reasonable measures should be taken to ensure the site is suitable for Brent Geese during the survey period.’

6. The survey methodology referred to is the regular winter counts to a standardised format, done for the 2010 Strategy over the winters of 2006/7, 2007/8, 2008/9. This would appear to be the origin of FBC’s insistence of three years’ worth of data.
7. To answer the first question in my Instructions: in my opinion, the policy and supporting text do not justify such an approach.
8. The methodology used in the 2010 is expressly described in the supporting text to the policy as ‘an example survey methodology’. The Policy itself sets a bar that any studies undertaken should ‘clearly demonstrate that the site is not of ‘importance’; it does not set a particular methodology as required. No doubt following the 2010 Strategy methodology would be an acceptable approach to FBC (although it is far from clear that even then three years would be methodologically required, as opposed to what was done historically), but provided the studies followed a methodology which allowed one to ‘clearly demonstrate’ the non-importance of the site, the Policy test would be satisfied.
9. To answer the second question in my Instructions: the above conclusion applies *a fortiori* in cases where changes to the land use of the site or its surroundings have

rendered the previously ‘uncertain’ site obviously unsuitable wintering habitat for the birds in question.

10. This is because a site which by reason of its own nature, or that of its immediate surroundings is *unsuitable* for the wintering of these birds cannot, by definition, be ‘important’.
11. This might have occurred by some action on the site itself – such as a change in cropping regime or other change to the land surface (eg poly tunnels or manure windrows), or a change to the land adjacent – such as noisy or disturbing activities that make the land in question unsuitable.
12. Thus, were that to have occurred since the 2010 surveys, the ‘study’ called for by the Policy would merely have to record that the site was now unsuitable (and why) in order to ‘clearly demonstrate that the site is not of ‘importance’’. In such circumstances, no further surveys or studies would be necessary, as the policy test would have been met.
13. I note, in passing, the last sentence of 4.42 ‘For such surveys to be considered valid, reasonable measures should be taken to ensure the site is suitable for Brent Geese during the survey period.’
14. This is plainly and understandably directed to preventing invalidation of survey effort by actions being taken to prevent the geese making use of an otherwise suitable site during survey period (the use of a bird scarer, for example, or other conduct or management intended to disturb the birds).
15. It would not extend, in my opinion, to actively altering or otherwise managing an unsuitable site so as to make it suitable (whether by changing the cropping regime, or controlling activities lawfully conducted for reasons unconnected with geese). It would not be a ‘reasonable measure’ to require a landowner to render what is currently an unsuitable site into a suitable one in order to see if geese might use it in the future.
16. I answer my Instructions, therefore, as follows:

(1) Is it lawful to *require as a matter of policy* 3 years survey data: No

(2) Are surveys necessary where a site has become unsuitable since 2010: No

17. The above is my generalised Advice. I am happy to advise on specific circumstances as they arise.

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