Herts & Middlesex Wildlife Trust

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Hillingdon Council
FAO Michael Briginshaw
Deputy Team Leader
North Area Planning Team
Planning, Regeneration and Environment
Central Services

By email: PlanningEConsult@Hillingdon.gov.uk

21 December 2023

Dear Mr Briginshaw

2382/APP/2023/2906

Town and Country Planning Act 1990 (as amended)

Broadwater Lake, Moorhall Road, Harefield

Proposal: Redevelopment of the site to create the Hillingdon Watersports Facility and Activity Centre

The Herts and Middlesex Wildlife Trust strongly **objects** to the proposed development. Our reasons for objecting are set out fully below.

Yours sincerely

Simon Marsh

Simon Marsh MBE BA MA MSc MRTPI
Planning and Policy Manager

Summary

- The proposed development will cause significant harm to biodiversity, largely because the disturbance caused during both the construction and operational phases will damage or destroy the interest features for which the Mid Colne Valley SSSI has been designated.
- Many biodiversity impacts have been wrongly underplayed or discounted in the Environmental Statement in order to justify a finding of no adverse effects on the SSSI.
- The proposed refuge is far too small to safeguard the designated features of the site.
- The islands used by breeding waterbirds are too close to the development and are likely to be disturbed.
- The increased intensity of use of the water throughout the year will lead to a significant deterioration of the SSSI.
- As well as impacts on breeding, moulting and wintering birds, there are likely to be impacts on bats, European Eels and water quality.
- We conclude that the proposed development will cause significant harm to biodiversity and have an adverse effect on the SSSI from both its construction and its operational use. The proposed mitigation measures are insufficient to avoid harm, and indeed it is not possible to provide adequate mitigation. Compensation has not been proposed.
- The proposed development is contrary to both national policy and the development plan contained in the London Plan and Hillingdon Local Plan.
- By approving the development, Hillingdon Council would be failing in its statutory duty to conserve and enhance biodiversity.
- Examples of other waterbodies reinforce our view that intensive watersports cannot successfully coexist with nature conservation interests on a lake the size of Broadwater Lake, and that the case sets a damaging precedent for other SSSIs.
- The Alternative Sites Assessment is seriously flawed. It remains the case that Broadwater Lake, as a designated SSSI, is not the right place for such a development. Hillingdon Council has been slow in securing a suitable alternative site and needs to be more flexible in its requirements.
- Community consultation on the proposal was flawed. Engagement with stakeholders, such as Herts and Middlesex Wildlife Trust, was belated and inadequate.

Introduction

Herts and Middlesex Wildlife Trust is a local charity supported by people who care about protecting wildlife, including over 22,000 members. We are the leading voice for wildlife conservation in Hertfordshire and Middlesex. Our vision is for a world where wildlife has space to thrive and our precious habitats and species populations are recovering; people feel more connected to wildlife and are empowered to take action to give nature a positive future.

In our strategy for a wilder Hertfordshire and Middlesex by 2030, we have identified 3 key goals:

- More land in Hertfordshire and Middlesex is managed and protected for nature
- More people are standing up for wildlife and taking action for nature's recovery
- Nature plays a central and valued role in helping to address climate issues and people's health and wellbeing

We engage with the planning process for the purpose of securing biodiversity gain and preventing negative impacts of development on biodiversity. The Trust considers development on its own merits and assesses its potential impact purely on biodiversity issues. In providing responses to planning applications, the Trust provides information based on available evidence, sound science and without bias.

The Herts and Middlesex Trust manages more than 40 nature reserves, including part of Broadwater Lake. Although the site is currently closed to public access because of HS2 construction works, the Trust has worked hard over the last 19 years to improve access, provide a hide and observation places, with interpretation along with many guided walks and events.

Wildlife is in trouble. Successive reports have shown that the UK is one of the most nature depleted countries in the world and we have lost up to half our biodiversity in the last century.[1] We are facing a nature and climate crisis and people are less connected with nature than ever before. We must act now to reverse the declines in wildlife and wild spaces and re-connect everybody with nature.

The UK Government has committed to protect and conserve a minimum of 30% of land and sea for biodiversity by 2030. This is largely made up of protected sites like Sites of Special Scientific Interest (SSSIs) but currently only includes 8.5% of land in England, according to the Government's definition.[2]

This is the national context for the proposed development. As we will demonstrate, it is a development which causes significant harm to biodiversity and is contrary to national and local policy. Broadwater Lake is also important in a regional context. It is an integral part of an ecological network of waterbodies in the Colne Valley which extend south to the South West London Waterbodies, which are designated as wetlands of international importance. Together they form part of London's Blue Ribbon Network[3], a strategic network of waterspaces, and are part of the Colne Valley Regional Park.[4]

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[1] E.g. Burns, F., Mordue, S., al Fulaij, N., et al., 2023. *State of Nature 2023*, the State of Nature partnership. Available at: www.stateofnature.org.uk
[2] Defra, 2023. *Delivering 30 by 30 on land in England*.
[3] As defined in the London Plan 2021.
[4] See https://www.colnevalleypark.org.uk/

Herts and Middlesex Wildlife Trust's vision for Broadwater Lake is as a peaceful refuge for wildlife, giving people an opportunity to experience, enjoy and learn about nature in a beautiful setting.

We therefore strongly **object** to the proposed development. Our reasons for objecting are set out fully below.

Ecological harm

The proposed development will cause significant harm to biodiversity, largely because the disturbance caused during both the construction and operational phases will damage or destroy the interest features for which the Mid Colne Valley SSSI has been designated. In particular:

- The proposed refuge is far too small to safeguard the designated features of the site.
- The islands used by breeding waterbirds are too close to the development and are likely to be disturbed.
- The increased intensity of use of the water throughout the year will lead to a significant deterioration of the SSSI.
- As well as impacts on breeding, moulting and wintering birds, there are likely to be impacts on bats, European Eels and water quality.

The proposal claims to deliver public benefits associated with the Hillingdon Watersports Facility and Activity Centre (HWFAC) without adverse effects to the SSSI. Yet the ecological assessment completely ignores or misses the key importance and function of the site that the proposal will have a detrimental impact upon. Many biodiversity impacts have been wrongly underplayed or discounted in the Environmental Statement in order to justify a finding of no adverse effects on the SSSI. Indeed, it seems to us that the ecological assessment is an exercise in greenwashing to justify the Council's preference to locate HWFAC on a site with high nature conservation value. We are concerned that stakeholders have been misled about the extent of ecological harm, and in particular that statements have been made alleging the support of Natural England for the proposals. It is clear from Natural England's objection that this is not the case; this calls the integrity of the planning process into question. Our comments here are based on a detailed understanding of the ecological function of Broadwater Lake built up through survey work over several decades.[5]

Key importance of site

- As a wintering location for waterbirds, with Shoveler above the level of National importance and Pochard and Tufted Duck of regional importance. 'Wintering' birds arrive from July, with key assemblages of moulting birds from July through to September or later.
- As a breeding site for waterbirds, notably a colony of Cormorants, Grey Herons and Little Egrets.

However, the key function of the site is as a refuge from disturbance on both Broadwater Lake itself and wider waterbodies in the Colne Valley. The change of location of the water sports activities and its increased intensity, the loss of a significant part of the existing refuge area, and the reduction in size of a proposed refuge, will all have a significant detrimental impact on the SSSI.

[5] E.g. White, G. (October 2023) *The wetland resource of the Colne Valley: an assessment of its importance to nature conservation, with special reference to waterbirds*. Heritage Fund, Herts & Middlesex Wildlife Trust and Colne Valley Regional Park.

The water bodies in the Colne Valley Regional Park extend south to include the South West London Waterbodies, a collection of reservoirs which are designated as a Special Protection Area and Ramsar, the highest level of protection under nature conservation legislation. The South West London Waterbodies are only about 13km from Broadwater Lake yet have been scoped out of the Environmental Statement which uses a cut-off of 10km. A radio-tagging study of the movement of Gadwall in the Lea Valley shows that birds travelled over 20km between suitable sites.[6] It is reasonable to assume that there is regular movement of waterbirds between Broadwater Lake and the SPA/Ramsar site to exploit the different habitats and that there is potential for development affecting the SSSI to have an indirect effect on the SPA/Ramsar. This would require an assessment under the Habitats Regulations. However, this has been totally ignored by the Environmental Statement.

The impact on Broadwater Lake

A review of scientific literature on disturbance of birds (particularly waterbirds) is included at Annex A. It concludes that buffer zones should be a minimum of 100m from shore-based disturbance and 200m from water-based disturbance.

At Broadwater Lake, the Greengage report confirms the movement of key species into the refuge area during sailing activities:

'The disturbance surveys have confirmed the following: In the absence of disturbance the whole lake is used by a wide range of species. Once sailing commences birds typically move to refuge areas within the lake in the south-west and east'.

Currently, the edge of the refuge (buoy-line) is in excess of 150m from the nearest islands behind which birds gather. The current refuge area is in excess of 500 x 400m. Birds move into the centre of this area when shore-based disturbance (e.g. angling) is also present, with the critical area being the water between the two sets of islands. The proposed sailing will operate from within the existing refuge area, with the new proposed refuge being restricted to an area of 300 x 350m. Considering the need for a buffer zone within this of 100m from the shoreline and 200m from the water sports, makes this refuge totally ineffective.

The islands within the refuge area are currently used by Cormorants, Grey Heron and Little Egret as breeding islands, and also for roosting. The proposed development is barely 100m from the nearest islands. The impact of this is uncertain, and may cause desertion of nests. The process of island construction may also cause desertion of both the islands and the refuge area and is clearly nonsensical in providing alternative habitat due to the time that will be needed to develop suitable habitat.

Other considerations:

- The sailing and rowing clubs will operate all year from the south of the site – significantly reducing the refuge area. In addition, there will be a huge increase in intensity of use during the months of April to September, with the latter months being a critical time for moulting

[6] Spencer, R., Roper, P., Hill, T. & Scott, S. J. (2022) A pilot study for satellite-tracking Gadwalls *Mareca strepera* wintering in the Lea Valley, UK, Ringing & Migration, 37:1-2, 13-25, DOI: 10.1080/03078698.2023.2242050

waterbirds. All activities on the water disturb the waterbirds. Motorised safety boats, that often are the first boats to be used, cause significant disturbance.

- The proposals to create islands/reedbeds in the refuge area and along the western shore will provide no benefit to the key function of the site.
- Many proposals are unnatural and not acceptable in a SSSI, e.g. bubbling aerators, which will have only a tiny effect on a lake of this size.

Conclusion on disturbance:

- The proposed refuge is far too small to safeguard the designated features of the site.
- The islands used by breeding waterbirds are too close to the development and are likely to be disturbed.
- The increased intensity of use of the water throughout the year will lead to a significant deterioration of the SSSI.

Bats

Broadwater Lake supports at least 10 bat species, including four of our most threatened species – Serotine, Barbastelle, Leisler's and Nathusius' Pipistrelle. Extensive survey efforts undertaken over the last decade have shown that the waterbodies of the Colne Valley are extremely important for Nathusius' Pipistrelle in particular. Species such as Daubenton's rely on invertebrates gleaned from the surface of the lake. The high levels of bat activity associated with this site infer it supports a diverse abundance of invertebrates.

The impact of this proposed development on bats, in terms of both construction and operation, has not been adequately considered. Dredging activity and intensified levels of water-based activities across the site will degrade water quality and it is highly likely that the subsequent reduction in insect prey would reduce habitat availability and quality, and hence foraging opportunities, significantly impacting the resilience of local bat populations, as discussed further below.

European Eel

Contrary to survey findings and assessments supporting the planning application, Broadwater Lake is deemed to be of at least national importance (and possibly international importance) for European Eel – a species assessed as Critically Endangered by the IUCN[7] and a Priority Species under the UK Post-2010 Biodiversity Framework. Broadwater Lake supports an abundant Eel population which has produced very large Eels for many decades, suggesting both habitat and food availability are favourable, and the lake's proximity to the River Colne means it provides a valuable source of breeding-age Eels. The impact of this proposed development, in terms of both construction and operation, on European Eels has not been considered. Dredging activity and intensified levels of water-based activities across the site will impact water quality negatively and it is highly likely that the feeding, resting and hibernation habitats of the lake's rare Eel population will be destroyed.

Water quality

The Water Framework Directive (WFD) sets targets for the ecological and chemical status of waterbodies, such as Broadwater Lake. Any works, such as this proposal, which could affect the hydro-morphology, ecology or water quality of any classified waterbody, requires an assessment

[7] https://www.iucnredlist.org/species/60344/152845178

under the WFD to demonstrate how any adverse impacts will be mitigated and where possible, the status of the waterbody enhanced in order to achieve the required good status targets.

As discussed in this response, Broadwater Lake supports a nationally important avifauna made up of breeding and non-breeding birds and in addition, significant populations of bats and Eels. This assemblage of species is indicative of a healthy aquatic ecosystem where the food chain is functioning, enabling apex animals to thrive.

During construction and operation, the proposal will cause significant disturbance to the lake, through dredging and then the significantly increased proposed water-based activities. Such activities will lead inevitably to mobilisation of lake bed and littoral material, leading to increased turbidity and decreased water quality which is likely to impact negatively on the aquatic ecosystem. Loss of plants through shading and poorer water quality will threaten the survival of water plants on which herbivorous animals depend. Loss of aquatic invertebrates which depend on such plants will mean that birds, fish and bats which feed on them will be impacted negatively. Notably, Shoveler ducks which are currently present at Broadwater Lake in nationally important numbers, depend on zooplankton as their primary food. Loss of these invertebrates would put at risk the Shoveler population, one of the features for the designation of the SSSI. Loss or decrease in the population of aquatic invertebrates would also impact negatively on populations of European Eel and bats.

For the reasons given above, we are very concerned that this proposal will have a significant negative impact on water quality, leading to damage to the wetland ecosystem and thereby, the species for which Broadwater Lake has been designated as a SSSI. Unless the applicant can prove that Broadwater Lake's water quality will be maintained in line with Water Framework Directive standards, the application should be refused.

Land-based activities

Herts and Middlesex Wildlife Trust also objects to the impact of the construction of the activity centre and the operation of land-based activities. There will be a loss of trees during construction; even if clearance works take place outside the breeding season this will reduce habitat for breeding birds that rely on both scrub habitat and woodland.

The site planned for the activity centre is currently undisturbed. Use of the peninsula for the activities proposed during the breeding season, even though the woodland is outside the activity area, will create noise disturbance which is likely to have an impact on breeding birds.

Key conclusions on ecological harm

In the light of the above comments, we conclude that the proposed development will cause significant harm to biodiversity and has an adverse effect on the SSSI from both its construction and its operational use. The proposed mitigation measures are insufficient to avoid harm, and indeed it is not possible to provide adequate mitigation.

Legal and policy context

Development must be determined in accordance with the development plan unless material considerations indicate otherwise. The proposed developed conflicts with policies protecting biodiversity in the statutory development plan as found in the London Plan and Hillingdon Local Plan, as well as national planning policy. The Planning Statement quotes these policies but draws the wrong conclusion, based on the erroneous conclusion of the Environmental Statement that there is no ecological harm.

London Plan (2021)

The London Plan forms part of the statutory development plan. Policy G6 is of particular relevance to the proposed development, as Broadwater Lake is also a Site of Importance for Nature Conservation (SINC) at the Metropolitan level. The full text of the policy is shown at Annex B.

Although the policy tests for a SINC are not as stringent as for a SSSI (see below), similar considerations apply. The proposed development creates harm to a SINC which is avoidable. The impacts on biodiversity are not outweighed by the benefits of the development and the mitigation hierarchy has not been properly applied. The planning application should therefore be refused.

Hillingdon Local Plan

The Hillingdon Local Plan, which also forms part of the statutory development plan, contains two relevant policies, Policy EM7: Biodiversity and Geological Conservation and Policy DMEI 7: Biodiversity Protection and Enhancement (full text at Annex B).

We note the particular attention given in Policy EM7 to the conservation and enhancement of the natural state of Colne Valley Regional Park (para. 1), within which Broadwater Lake lies, and the protection of sites with Metropolitan importance (such as Broadwater Lake) from any adverse impacts and loss (para. 2, emphasis added). The planning application is clearly contrary to Policy EM7.

In Policy DMEI 7, paragraph D is similar to NPPF paragraph 186 (see below) and we draw a similar conclusion. The proposed development results in significant harm to biodiversity which cannot be avoided or mitigated for. There are no proposals for compensation. The planning application is clearly contrary to Policy DMEI 7 and should be refused.

National Planning Policy Framework (December 2023)

Paragraph 180 is concerned with the natural environment. It states, insofar as relevant, that:

> *180. Planning policies and decisions should contribute to and enhance the natural and local environment by:*
>
> *a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*

b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland; […]

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;

e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; […]

The proposal does not comply with this policy, particularly sub-paragraphs (a) and (e) because it damages a site of biodiversity value and impacts adversely on biodiversity, both on the site and in the wider ecological network of waterbodies in the Colne Valley.

Paragraph 186 applies more specifically to the determination of planning applications where biodiversity is affected.[8]

186. When determining planning applications, local planning authorities should apply the following principles:

(a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;

(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;

(c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons 63 and a suitable compensation strategy exists; and

(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.

Sub-paragraph (a) is a general policy which applies to all development, anywhere. In our assessment, the development creates significant harm to biodiversity (as we describe above). It is not, and cannot be, adequately mitigated for. There are likely to be alternative sites with less harmful impacts (see discussion below). No compensatory proposals have been made. Planning permission should therefore be refused on these grounds alone.

[8] Paragraph numbering has changed in the most recent version of the NPPF published 19 December 2023.

Sub-paragraph (b) is a stricter policy test for SSSIs. The threshold for refusal is simply 'adverse effect'. Given our assessment of significant harm, it is also the case that there is an adverse effect on the SSSI. In our view, there is a significant adverse effect on the SSSI. The case for this is strongly made by Natural England's response to the consultation on the planning application. This is true as an individual development, but is exacerbated by the in-combination effects with the HS2 works. We note that mitigation for these works has yet to be satisfactorily addressed, and that there is a conflict between HS2 mitigation proposals and the mitigation proposals made by the applicant.

The applicant has not made out a sufficient case to pass the exceptions test. While the development has social benefits, it does not need to occur in the location proposed, and these benefits are outweighed by the need to protect the special features of the site and the integrity of the national network of SSSIs, particularly the network of waterbodies in the Colne Valley. As outlined in our response under 'Ecological harm', the proposed development has an adverse impact both on the site features and the role of Broadwater Lake in providing an undisturbed refuge within the wider network.

Sub-paragraph (c) is not relevant as there are no irreplaceable habitats affected.

Sub-paragraph (d): the development does not have the primary objective to conserve or enhance biodiversity. Although features are included to improve biodiversity as part of the mitigation package, these are inadequate to avoid biodiversity harm and should not weigh in favour of the proposal. Indeed, the application claims less than 5% biodiversity net gain, which is less than half the minimum 10% biodiversity net gain which will be shortly introduced as a statutory requirement under the Environment Act 2021. Although the development claims to enhance public access to nature, it will not be open to the general public; while important, public access cannot be at the expense of the site's biodiversity.

Environmental Impact Assessment and Habitats Regulations Assessment

An Environmental Statement under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 has been provided. However, we have noted in our comments under 'Ecological harm' various deficiencies in the Environmental Statement, including a failure to appreciate the key function of Broadwater Lake as a refuge for waterbirds in the Colne Valley; missing its value for moulting waterbirds and for European Eel, the impact on bats and water quality, and inadequate mitigation proposals.

We are also concerned at the potential for the project to adversely affect the integrity of the South West London Waterbodies SPA and therefore to require an assessment under the Conservation of Habitats and Species Regulations 2017. The applicant needs to provide further evidence as to why this has not been carried out.

Biodiversity duty

The Environment Act 2021 strengthened the biodiversity duty that applies to public authorities in England, including local planning authorities. They must now consider what they can do to enhance as well as conserve biodiversity.[9] Public bodies also have a duty to take all reasonable steps to

[9] Section 40, Natural Environment and Rural Communities Act 2006, as amended

conserve and enhance the special features of SSSIs when carrying out statutory duties or giving others permission for works, such as reviewing planning applications.[10]

The site is currently owned by Tarmac, which has the primary responsibility for management of the SSSI. Although there has been little active management of the nature conservation interests of the site, it has developed a diversity of species and habitats. Herts and Middlesex Wildlife Trust, as a lessee of the nature reserve on the western bank, has made significant investment over a number of years into improving facilities for public enjoyment of the site, but has no control over most of the site or its nature conservation interests. The applicant claims that the current proposal will enhance its condition, but in the light of the ecological harm we have described above, the opposite is true and the site will lose biodiversity value.

Notwithstanding claims about previous management and biodiversity enhancement, Hillingdon Council has a clear duty as local planning authority to conserve and enhance the SSSI. In the light of the ecological harm which would be caused by the proposed development, Hillingdon Council must comply with the duty by refusing the planning application.

Conclusions on legal and policy context

As the proposed development, notwithstanding mitigation measures, will cause significant harm to biodiversity and have an adverse effect on the SSSI, it is contrary to both national policy and the development plan contained in the London Plan and Hillingdon Local Plan.

Compensation is a last resort, and has not been proposed by the applicant (and would in any case require the provision of new open water habitat).

By approving the development, Hillingdon Council would be failing in its statutory duty to conserve and enhance biodiversity.

Precedence

Currently, the use of Broadwater Lake by the Broadwater Sailing Club is at a relatively low level of intensity, but the use of the lake for watersports will become much more intensive following the proposed development. We are not aware of any other example of a case where intensive watersports and nature conservation interests successfully co-exist on a lake of similar size and biodiversity value. On the contrary, some of the principal examples of dual use we are aware of show clear separation between watersports and wildlife, either through zoning of different waterbodies or through substantial refuges within a much larger waterbody.

For example, Rutland Water is a designated SSSI, SPA and Ramsar site. It is used for various watersports including: sailing, windsurfing, kayaking, canoeing, paddle boarding and open water swimming. However, it has a total area of 1,300 ha including a nature reserve of 400 ha at the western end of the lake which acts as a very substantial wildlife refuge.

Similarly, Grafham Water in Cambridgeshire has been designated as a SSSI since 1986. Watersports include swimming, sailing, angling, paddle-boarding, and windsurfing. Out of a total

[10] https://www.gov.uk/guidance/sites-of-special-scientific-interest-public-body-responsibilities

waterbody area of 628 ha, 80 ha is designated as a nature reserve at the western end of the lake; a similar size to the whole of Broadwater Lake.

Cotswold Water Park is a complex of more than 170 lakes with a wide variety of watersports, including swimming, sailing, angling, water-skiing, paddle-boarding, and windsurfing. Although part of the site was first designated as a SSSI in 1994, the designation was extended in 2021 across 1,919 ha to cover most of the site. This reflected the need to ensure that nature conservation interests are properly reflected in the future management of the site, which due to its size gives opportunities for functional separation between uses.

Paxton Pits in Cambridgeshire is a smaller complex of waterbodies formed after mineral extraction. 132 ha of the site has been designated as a SSSI, part of which is also a Local Nature Reserve. Although sailing and other water-based recreational activities take place, these are restricted to lakes which do not fall within the SSSI designation and there is clear functional separation between uses.

Examples like these reinforce our view that intensive watersports cannot successfully coexist with nature conservation interests on a lake the size of Broadwater Lake, and that the case sets a damaging precedent for other SSSIs.

Alternative sites

Alternative Sites Assessment

The Planning Statement states that there is no alternative to locating the proposed Hillingdon Watersports Facility and Activity Centre (HWFAC) at Broadwater Lake, based on the conclusions of the Alternative Site Assessment (ASA) commissioned by Hillingdon Council. The ASA considers a long list of 28 sites, shortlists three, but rejects all of them as unsuitable except Broadwater Lake.

However, the ASA is seriously flawed. Although the ASA gives some acknowledgment to ecological sensitivities, its selection is based purely on recreational criteria: issues like the surface area of the lake, accessibility and access to wider amenities (ASA para. 2.4). If the planning process was truly ecologically-led and environmentally focused, as it claims to be (Planning Statement para. 1.6), ecological sensitivities should have been a key criterion. Broadwater Lake should have been ruled out at the earliest planning stage, as a SSSI is never a suitable site for development. This is a fundamental flaw.

The ASA also assumes that all the existing HOAC activities need to be provided together on the same site. While this might be preferable for the operator, adopting a more flexible approach which could see activities spread across two or more sites could make it easier to find alternative locations with less ecological damage.

There are also inconsistencies in the way in which the criteria have been applied. For example, Troy Lake appears to have been partly discounted on the basis of its local ecological value, yet Broadwater Lake has not been discounted despite its national ecological value. Uxbridge Golf Course was partly discounted because dredging would be required, yet dredging is an integral part of the proposed development at Broadwater Lake.

Previous site searches

We acknowledge the need to relocate the Hillingdon Outdoor Activity Centre (HOAC) due to works associated with Phase 1 of HS2.

'HOAC Lake Options' (4 April 2014), was produced for HS2 by ERM/Temple Group/Mott McDonald. It was presented to the HS2 Select Committee in 2015 and is clear that Broadwater Lake is not appropriate due to its ecological importance and that the site should not have been considered further.

The report states:

> *"Whilst the ornithological interest is being maintained with the current level of boating activity by the Broadwater Lake Sailing Club, it is likely that this would not be the case with the additional HOAC activities."*
>
> *"SSSI – development in a SSSI is contrary to national and local planning policy and will generally be resisted by NE unless there were overriding economic or social reasons. This argument would be difficult to make for the relocation of HOAC to Broadwater Lake and is a major consideration which weighs heavily against the proposal. The current assessment of effects of the HS2 Proposed Scheme is dependent on the retention of large areas of undisturbed water in parts of the lake, where boating is prohibited, and which could be used by birds in the event that they are disturbed by HS2 construction works. The main concerns about relocation of the HOAC proposals are the short term effects of construction and the expected long term increase in boating and land based activities (which would result in disturbance to breeding, moulting and wintering waterbirds), and the initial views of Natural England that suggest they are likely to strongly object to the proposals."*
>
> *"HOAC's preferred option for relocation is Broadwater Lake, however, given the significant environmental impact a move to this Lake will have on the SSSI and the associated planning risk in achieving this relocation it is HS2's view that this should not be promoted further as a viable alternative. "*

Alternatives were debated in Parliament but, as a designated SSSI, Broadwater Lake was ruled out as a potential site for the relocation of HOAC in 2015 by the Parliamentary Select Committee considering the HS2 Bill[11]. At that time Hillingdon Council, together with HS2 and HOAC, recognised it was not an appropriate location for the proposed relocation due to its ecological importance.

We note that there is an agreement dated 17 August 2017 between Hillingdon Council, HS2 and the Secretary of State which states: "the Council will therefore, use reasonable endeavours, working together with the Association, to within three years from the date of their Agreement design and implement a scheme for the relocation of HOAC to Denham Quarry or such other suitable site or sites to be agreed with HS2 Ltd, the Association and the relevant local authorities at a cost of no greater than £26.5 million."

As the ASA notes (p19), planning permission was granted for an alternative site at Denham Quarry in 2016, but this did not proceed because, it is stated, of ownership and access issues and infilling of the lakes.

[11] Now the High Speed Rail (London-West Midlands) Act 2017

However, Hillingdon Council has some serious questions to answer:

- Why does it now consider Broadwater Lake a suitable location, having previously ruled it out due to its ecological importance, and contrary to the finding of the Parliamentary Select Committee?
- Why has the Council taken until November 2023 to submit a further planning application when it was required by the Secretary of State to design and implement a scheme by 17 August 2020?
- Why, when the Council was instructed to relocate HOAC to “Denham Quarry or such suitable site or sites”, has it not considered splitting the HOAC activities across more than site?

Herts and Middlesex Wildlife Trust has always been clear that we sympathise with HOAC's position and are not at odds with their members or the many people who enjoy outdoor activities on and off the water. However, it remains the case that Broadwater Lake is not the right place for such a development. Hillingdon Council has been slow in securing a suitable alternative site and needs to be more flexible in its requirements.

Community consultation

The Statement of Community Involvement (ref A230225) is both misleading and inaccurate. Community consultation on the proposal was flawed. Engagement with stakeholders, such as Herts and Middlesex Wildlife Trust, was belated and inadequate.

The document covers the public consultation on the development proposal prior to submission of the planning application. However, this entailed a single event which took place on 22 February 2023 between 3pm and 7pm in Harefield library. The event was promoted to HOAC and BSC and the comments quoted therein therefore naturally focus on the HOAC and BSC users, rather than all relevant parties such as the members of the Herts and Middlesex Wildlife Trust.

Table 1 lists public comments from the event, which include “concern that the Mid Colne SSSI team were not consulted.” The Council’s response is that there was “early engagement with Natural England, Canal River Trust, Greater London Authority, Wildlife Trust, Environment Agency”. This is incorrect, as there was no early engagement with the Herts and Middlesex Wildlife Trust. The Trust only found out about the Council’s proposals by chance in October 2022 and in response made repeated requests for a meeting with the Council so that we could discuss their development proposal, expressing our serious concerns about the impact on the SSSI this would have. We telephoned, left answerphone messages, emailed and spoke in person to the Council’s project team and consultants, and councillors, and yet the Council did not meet with the Trust until April 2023.

Annex A: Disturbance issues

Birds can perceive humans and human activity as predators and respond accordingly. The response may disrupt behaviour, causing birds to take flight and avoid areas of valuable resources (e.g. food or nesting sites) and therefore human disturbance can have significant adverse effects. Migrating birds are particularly sensitive to reduced feeding opportunities because it is critical for them to increase energy reserves to complete their migration, and in Spring, to initiate breeding.

Some general conclusions from disturbance studies:

- Waterbirds: flushing distance tends to increase with body size and with flock size.
- Migrants (waterfowl, herons, egrets and shorebirds) tend to be more sensitive than resident birds.
- Migrant ducks are more sensitive to disturbance when they first arrive at a site.
- Quarry species have longer flushing distances than similar species which are not shot.
- On waterbodies, water based activities cause the most disturbance. In general, fast moving, highly visible, noisy and irregular activities are more likely to be disturbing.
- Most bird species are more likely to be susceptible to disturbance at the time they settle to breed.

Disturbance by different activities:

In general, fast moving, highly visible, noisy and irregular activities are more likely to be disturbing. Boats cause birds to flush when they approach too closely. Set-back distances need to take into account the most sensitive stage in the annual cycle.

Boats deviating from established routes have been shown to cause a greater response than those in more predictable locations. Motor boats have been found to be particularly disturbing because of the speed and noise associated with them, but windsurfing and kayaking although quieter have the potential to be highly disturbing because they can occur in areas which are inaccessible to other types of visitor, and are otherwise ‘sanctuaries’.

Flight and alert distances:

Using flight or flushing distances to determine the size of buffer zones is likely to result in an underestimate of the areas that need spatial protection from disturbance, as disturbance impacts such as increased vigilance and therefore reduced feeding occur well before flight. Alert distances are therefore a more measure to help plan reserve infrastructure to minimise disturbance impacts. However, many studies use flight distances as a measure of disturbance as they are easier to measure.

Flight distances for each species vary widely between studies, probably due to other factors such as varying levels of habituation. Birds may also respond differently depending on the number of people present in a group. Flushing distance also varies with the time of the year for the same species in the same place.

The flushing response of birds to disturbance is also known to vary with their body condition, with birds in poor condition less likely to flush, as feeding is more important than avoiding the perceived risk. The energetic cost of flight has been shown to be 17 times greater than the basal metabolic rate in Woodcock, a significant cost. Birds may also be less likely to leave high-quality feeding

patches. Migrating birds which have depleted their body resources may therefore be less likely to flush, but may still be experiencing stress as a result of disturbance.

Rodgers & Smith (1997) calculated buffer distances that minimize disturbance to foraging and loafing birds based on experimental flushing distances for 16 species of waders and shorebirds and recommended 100m as an adequate buffer against pedestrians. In one U.S.A study a general buffer of 100 meters for wading bird colonies and 180 meters for mixed tern colonies was recommended.

In a Danish study (Bregnballe et al. 2009), Teal and Shoveler abandoned areas within 150m of pedestrians, suggesting that a buffer zone of >150m is required to protect against effective habitat loss caused by human access and the authors recommended 250m to permit undisturbed feeding.

Goodship and Furness in a Disturbance Distances Review, calculated the flight distances for the following species: Mallard - >100m, Shoveler – 100-200m, Gadwall – 100-200m, Wigeon – 100-200m and Goldeneye – 150-800m.

From the Greengage disturbance report: Tuite (1984) performed an extensive analysis of English wildfowl distribution in areas of water recreation. A multiple regression was used to distinguish the effects of physical attribute of the lake, recreation types and the sensitivity of particular species. The species most affected were teal, shoveler and goldeneye. The most tolerant were mute swan, tufted duck, pochard and mallard. Greatest impact was caused by power boating, with coarse fishing, sailing and rowing also important. In some cases, recreational boating could be considered to limit carrying capacity of a waterbody in winter. A study by Platteeuw and Hendens (1997) noted a similar hierarchy of sensitivity of species. Batten (1977) found sailing boats within 450m-750m caused tufted duck and pochard to fly up on a London reservoir. Angling can also provide deleterious visual stimulus, due to visible presence on the bank angling can alter the feeding behaviours, distribution, and cause fly ups (Bell and Austin, 1985).

In conclusion, buffer zones should be a minimum of 100m from shore-based disturbance and 200m from water-based disturbance.

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Annex B: Development plan biodiversity policies

London Plan

Policy G6 Biodiversity and access to nature

A Sites of Importance for Nature Conservation (SINCs) should be protected.

B Boroughs, in developing Development Plans, should:

1) use up-to-date information about the natural environment and the relevant procedures to identify SINCs and ecological corridors to identify coherent ecological networks

2) identify areas of deficiency in access to nature (i.e. areas that are more than 1km walking distance from an accessible Metropolitan or Borough SINC) and seek opportunities to address them

3) support the protection and conservation of priority species and habitats that sit outside the SINC network, and promote opportunities for enhancing them using Biodiversity Action Plans

4) seek opportunities to create other habitats, or features such as artificial nest sites, that are of particular relevance and benefit in an urban context

5) ensure designated sites of European or national nature conservation importance are clearly identified and impacts assessed in accordance with legislative requirements.

C Where harm to a SINC is unavoidable, and where the benefits of the development proposal clearly outweigh the impacts on biodiversity, the following mitigation hierarchy should be applied to minimise development impacts:

1) avoid damaging the significant ecological features of the site

2) minimise the overall spatial impact and mitigate it by improving the quality or management of the rest of the site

3) deliver off-site compensation of better biodiversity value.

D Development proposals should manage impacts on biodiversity and aim to secure net biodiversity gain. This should be informed by the best available ecological information and addressed from the start of the development process.

E Proposals which reduce deficiencies in access to nature should be considered positively

Hillingdon Local Plan

Policy EM7: Biodiversity and Geological Conservation[12]

The Council will review all the Borough grade Sites of Importance for Nature Conservation (SINCs). Deletions, amendments and new designations will be made where appropriate within the Hillingdon

[12] Hillingdon Local Plan Part 1 Strategic Policies, adopted November 2012.

Local Plan: Part 2- Site Specific Allocations Local Development Document. These designations will be based on previous recommendations made in discussions with the Greater London Authority.

Hillingdon's biodiversity and geological conservation will be preserved and enhanced with particular attention given to:

1. The conservation and enhancement of the natural state of:

- Harefield Gravel Pits
- Colne Valley Regional Park
- Fray's Farm Meadows
- Harefield Pit

2. The protection and enhancement of all Sites of Importance for Nature Conservation. Sites with Metropolitan and Borough Grade 1 importance will be protected from any adverse impacts and loss. Borough Grade 2 and Sites of Local Importance will be protected from loss with harmful impacts mitigated through appropriate compensation.

3. The protection and enhancement of populations of protected species as well as priority species and habitats identified within the UK, London and the Hillingdon Biodiversity Action Plans.

4. Appropriate contributions from developers to help enhance Sites of Importance for Nature Conservation in close proximity to development and to deliver/ assist in the delivery of actions within the Biodiversity Action Plan.

5. The provision of biodiversity improvements from all development, where feasible.

6. The provision of green roofs and living walls which contribute to biodiversity and help tackle climate change.

7. The use of sustainable drainage systems that promote ecological connectivity and natural habitats.

Policy DMEI 7: Biodiversity Protection and Enhancement[13]

A) The design and layout of new development should retain and enhance any existing features of biodiversity or geological value within the site. Where loss of a significant existing feature of biodiversity is unavoidable, replacement features of equivalent biodiversity value should be provided on-site. Where development is constrained and cannot provide high quality biodiversity enhancements on-site, then appropriate contributions will be sought to deliver off-site improvements through a legal agreement.

B) If development is proposed on or near to a site considered to have features of ecological or geological value, applicants must submit appropriate surveys and assessments to demonstrate that the proposed development will not have unacceptable effects. The development must provide a positive contribution to the protection and enhancement of the site or feature of ecological value.

C) All development alongside, or that benefits from a frontage on to a main river or the Grand Union Canal will be expected to contribute to additional biodiversity improvements.

[13] Hillingdon Local Plan Part 2 Development Management Policies, adopted January 2020.

D) Proposals that result in significant harm to biodiversity which cannot be avoided, mitigated, or, as a last resort, compensated for, will normally be refused.