

# Upper Nene Valley Gravel Pits Special Protection Area Supplementary Planning Document



Golden plover *Pluvialis apricaria*, Summer Leys Nature Reserve. Photo courtesy Nicholls of the Yard

August 2015

## Statutory status of the Upper Nene Valley Gravel Pits SPA Supplementary Planning Document

This Supplementary Planning Document (SPD) has been prepared under the 2004 Planning and Compulsory Purchase Act (the '2004 Act'). The Upper Nene Valley Gravel Pits Special Protection Area (SPA) SPD is a statutory Local Development Document (LDD). It applies to the four Local Planning Authorities which cover the SPA (South Northamptonshire, Northampton, Wellingborough and East Northamptonshire), but will be adopted by each Local Planning Authority as a statutory SPD.

The SPD was prepared in accordance with the Town and Country Planning (Local Planning) (England) Regulations 2012 (Statutory Instrument 2012 No. 767) (the '2012 Regulations'), which set out the minimum requirements for the preparation of an SPD. It is essential for these requirements to be met in order for this document to be classified as a statutory LDD, thereby supplementing Local Plans.

This SPD will supplement policies within the North Northamptonshire Core Spatial Strategy, adopted June 2008 and West Northamptonshire Joint Core Strategy Local Plan (Part 1), adopted December 2014 (see Appendix 5). The specific preparation process for the Upper Nene Valley Gravel Pits SPA SPD is directed by 2012 Regulations 12-14 and 35. The process also needs to have regard to the relevant Statements of Community Involvement (SCI).

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## 1. Introduction

The Upper Nene Valley Gravel Pits Special Protection Area (SPA)/Ramsar site is legally protected by the Conservation of Habitats and Species Regulations 2010 (the 'Habitats Regulations').

Northamptonshire's main towns are earmarked for major urban growth until at least 2026. This generates particular pressures from built development, demand for public access and recreation opportunities. There is a strong body of evidence that increasing levels of development, even when well outside the boundary of protected sites, can have negative effects on these sites.

In addition to direct threats to the SPA from poorly located or designed development, Natural England considers the SPA to be 'at risk' from increasing recreational disturbance. A difficult balancing act is required to resolve impacts associated with recreation without compromising the ability of people to be outside and enjoying the green spaces near their homes.

This Supplementary Planning Document (SPD) has been produced to help Local Planning Authorities, developers and others ensure that development has no significant effect on the SPA, in accordance with the legal requirements of the Habitats Regulations. The SPD outlines a consistent approach to both consulting Natural England and identifying potential significant effects on the SPA's qualifying features.

### Nature conservation designations in the Upper Nene Valley Gravel Pits area

The Upper Nene Valley Gravel Pits span a number of statutory and non-statutory nature conservation sites which are protected through a range of legal and policy mechanisms (Table 1). Local Planning Authorities and other competent authorities<sup>1</sup> must take these designations into account when carrying out their functions.

**Table 1** Types of nature conservation designations in the Nene Valley

Designation	Protection mechanism	'Level'
Special Protection Area (SPA)	Conservation of Habitats and Species Regulations 2010	<b>Statutory</b>
Wetland of International Importance (Ramsar site)	The same protection is afforded to designated Ramsar sites as to European Sites <sup>2</sup> as a matter of Government policy. <sup>3</sup>	<b>Statutory</b>
Site of Special Scientific Interest (SSSI)	Wildlife and Countryside Act 1981 as amended	<b>Statutory</b>
Local Wildlife Site (LWS)	Local and national planning policy and guidance	<b>Non-statutory</b>

The SPA and Ramsar site boundaries are identical; the qualifying features are only slightly different (see below). All further references to the SPA should therefore be interpreted as including the Ramsar site.

The SSSI includes an additional 20ha of land at Earls Barton Carr and Ringstead Gravel Pits.

Further information regarding these sites can be found in Appendix 1. In particular, please note that while the SPA's qualifying features are present in the non-breeding season, the features of interest of the SSSI and non-statutory sites may be present at any time of year.

Copies of citations for the SPA and Ramsar sites can be found at [www.jncc.gov.uk](http://www.jncc.gov.uk) and for SSSI at <http://designatedsites.naturalengland.org.uk/SiteSearch.aspx>.

Further information on Local Wildlife Sites can be obtained from the Wildlife Trust.<sup>4</sup>

1 In England, any Minister of the Crown (as defined in the Ministers of the Crown Act 1975(1)), government department, statutory undertaker, public body of any description or person holding a public office; and any person exercising any function of such a person.

2 Special Protection Areas (SPA) and Special Areas for Conservation (SAC), designated under the Birds Directive and Habitats Directive, respectively.

3 Communities and Local Government. 2012. National Planning Policy Framework, paragraph 118.

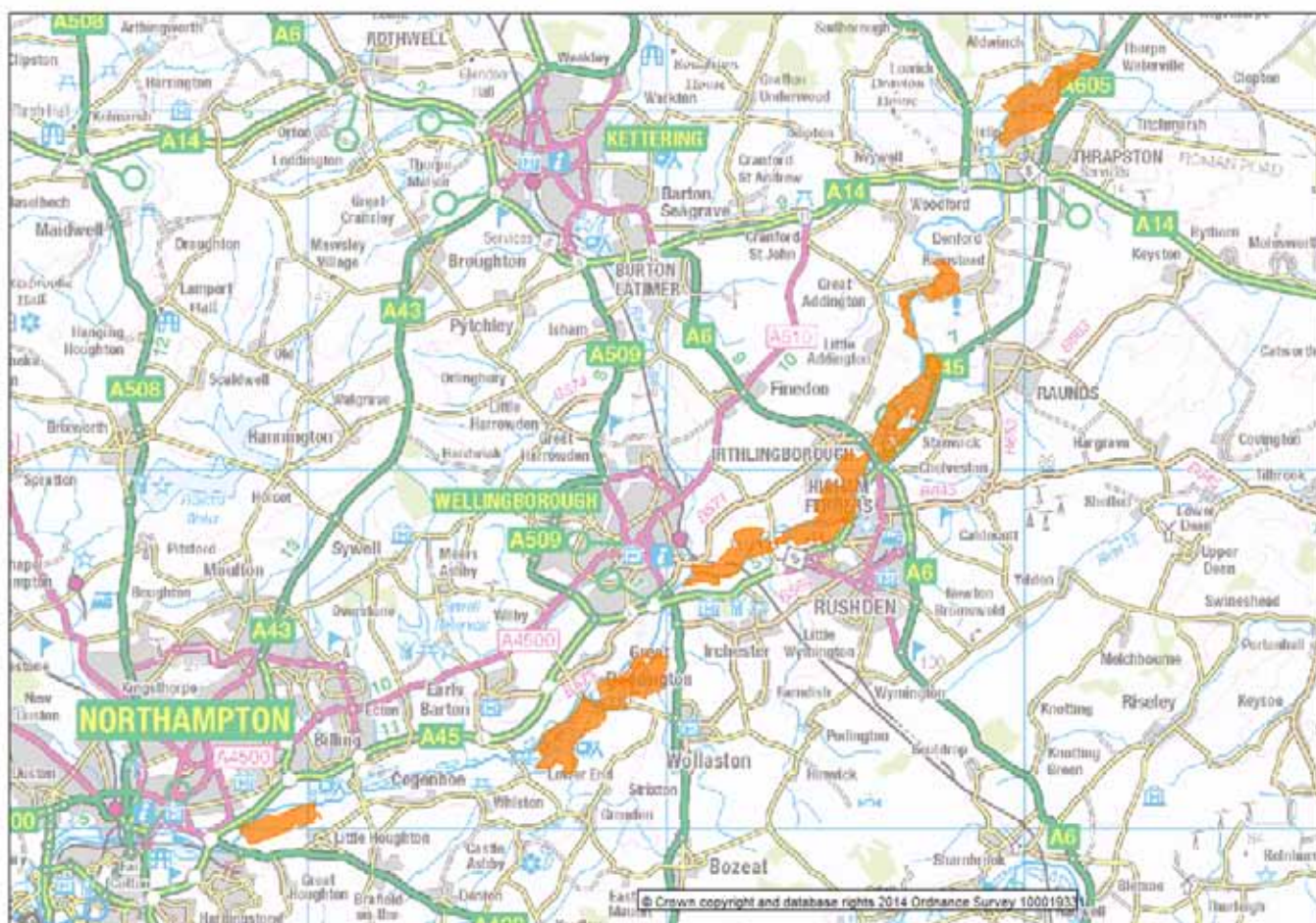
4 The Wildlife Trust BCN, Lings House, Lings Way, Lings, Northampton NN3 8BE. Tel: 01604 405285 Email: [northamptonshire@wildlifebcn.org](mailto:northamptonshire@wildlifebcn.org) Web: [www.wildlifebcn.org](http://www.wildlifebcn.org).



## 2. The Upper Nene Valley Gravel Pits Special Protection Area

The SPA was formally classified by the UK Government in 2011. It covers 1358 hectares in four local authorities in Northamptonshire (Figure 1). It is a composite site comprising 20 separate blocks of land and water fragmented by roads and other features, and located adjacent or close to urban areas.

**Figure 1** Location of the Upper Nene Valley Gravel Pits SPA (in orange)



The site qualifies under **article 4.1** of Directive 2009/147/EC as it is used regularly by 1% or more of the Great Britain populations of the following species listed in Annex I in any season:

Annex 1 species	Count and season	Period	% of GB population
Bittern <i>Botaurus stellaris</i>	2 individuals – wintering	5 year peak mean 1999/2000 – 2003/04	2.0%
Golden plover <i>Pluvialis apricaria</i>	5,790 individuals – wintering	5 year peak mean 1999/2000 – 2003/04	2.3%

The site qualifies under **article 4.2** of Directive 2009/147/EC, and under Criterion 6 for the identification of Wetlands of International Importance, as it is used regularly by 1% or more of the biogeographical populations of the following regularly occurring migratory species (other than those listed in Annex I) in any season:

Migratory species	Count and season	Period	% of subspecies/ population
Gadwall <i>Anas strepera</i>	773 individuals – wintering	5 year peak mean 1999/2000 – 2003/04	2.0% <i>strepera</i> , NW Europe (breeding)

The site qualifies under **article 4.2** of Directive 2009/147/EC, and under Criterion 5 for the identification of Wetlands of International Importance, as it is used regularly by over 20,000 waterbirds (waterbirds as defined by the Ramsar Convention) in any season:

In the non-breeding season, the area regularly supports 23,821 individual waterbirds (5 year peak mean 1999/2000 – 2003/04), including wigeon *Anas penelope*, gadwall *Anas strepera*, mallard *Anas platyrhynchos*, shoveler *Anas clypeata*, pochard *Aythya farina*, tufted duck *Aythya fuligula*, great crested grebe *Podiceps cristatus*, cormorant *Phalacrocorax carbo*, bittern *Botaurus stellaris*, golden plover *Pluvialis apricaria*, lapwing *Vanellus vanellus* and coot *Fulica atra*.<sup>5</sup>

The site further qualifies under **Criterion 6** for the identification of Wetlands of International Importance because it regularly supports 1% of the individuals in the populations of the following species or subspecies of waterbird in any season:<sup>6</sup>

Species	Count and season	Period	% of subspecies/ population
Mute swan <i>Cygnus olor</i>	629 individuals – wintering	5 year peak mean 1999/2000 – 2003/04	1.7% Britain

### Potential threats to the SPA

In addition to direct threats to the SPA from poorly located or designed development, Natural England considers the SPA to be ‘at risk’ from increasing recreational disturbance. Northamptonshire’s main towns are earmarked for major urban growth until at least 2026. A 2012/13 study of visitor and access patterns across the SPA showed very clearly that visit rates to the SPA tend to increase with proximity to residential areas.<sup>7</sup> Most visits are made by people who live within 3km of the SPA, who visit very frequently for relatively short periods of time.

Access by people and dogs can be a significant cause of disturbance in some parts of the SPA. The site is also subject to a range of recreational activities including fishing and watersports. Demand for access and recreational activities (both formal and informal) within the Nene Valley is increasing along with disturbance to the birds for which the SPA is designated.

Disturbance effects are cumulative. Without mitigation, any net increase in the number of residential units near the SPA has the potential to increase the significance of the effect by increasing the number of visits to the European Site. Those visitors may increase levels of disturbance to the wintering waterbirds or the habitats they depend on.

The Habitats Regulations require that the effects of plans and projects be considered in combination with effects arising from other plans and projects.

### 3. Consultation: when and how to engage with Natural England

Natural England must be consulted regarding proposals that could affect the Upper Nene Valley Gravel Pits SPA. Early consultation is both advisable and beneficial: it allows potential impacts to be identified at an early stage, survey works undertaken and mitigation agreed where necessary.

Natural England has developed specific consultation zones for the SPA (Appendix 4). These clarify for local planning authorities and other competent authorities when to consult with Natural England about potential impacts on the SPA. *Applications that fall outside the consultation zones may still require consultation with Natural England for other reasons, e.g. Environmental Impact Assessment applications.*

Table 2 presents a summary of when to consult Natural England. Similar criteria (known as Impact Risk Zones) have been published for all SSSIs in England. They can be viewed at the MAGIC website [www.magic.gov.uk](http://www.magic.gov.uk) or downloaded from the Natural England website.<sup>8</sup>

5 Natural England. 2011. Citation for Upper Nene Valley Gravel Pits Special Protection Area Site Code: UK9020296. Peterborough: Natural England

6 Joint Nature Conservation Committee. 2011. Information Sheet on Ramsar Wetlands (RIS): Upper Nene Valley Gravel Pits. Peterborough: Joint Nature Conservation Committee.

7 Liley D, Floyd L, Cruickshanks K, Fearnley H. 2014. Visitor access study of the Upper Nene Valley Gravel Pits SPA. Footprint Ecology: unpublished report for the Nene Valley NIA Partnership. Available at <http://www.nenevalleynia.org/wp-content/uploads/2014/08/Footprint-Ecology-Upper-Nene-Valley-Gravel-Pits-SPA-Visitor-Survey-screenres.pdf>. Accessed 3 December 2014.

8 Natural England. 2014. Dataset Downloads: GIS Digital Boundary Datasets [ONLINE]. Available at [http://www.gis.naturalengland.org.uk/pubs/gis/GIS\\_register.asp](http://www.gis.naturalengland.org.uk/pubs/gis/GIS_register.asp). Accessed 18 November 2014.

Please send consultation requests to by email (preferred) to [consultations@naturalengland.org.uk](mailto:consultations@naturalengland.org.uk). Otherwise correspondence should be sent by post to:

Natural England  
 Consultation Service  
 Hornbeam House  
 Electra Way  
 Crewe Business Park  
 Crewe  
 Cheshire  
 CW1 6GJ

**Table 2 Consultation zones for the Upper Nene Valley Gravel Pits SPA/Ramsar site**

Type of plan or project	Consultation with Natural England
Spatial/community development plan guidance or strategy relating to Northamptonshire/ Nene Valley e.g. Core Strategy, Local Plan, Development Plan Document, Minerals and Waste Local Plan, Rights of Way Improvement Plan, Neighbourhood Plan	All plans
Environmental permits e.g. land drainage consent, applications under the Integrated Pollution Prevention and Control Directive, fisheries related/EA Strategic Plans	<p><b>Land drainage consent:</b> within SPA or on River Nene between Northampton and Thorpe Waterville</p> <p><b>Fisheries:</b> all applications within SPA</p> <p><b>Water discharge/abstraction:</b> all applications which may affect the SPA</p> <p><b>EA CAMS/Flood Management Plan/Nene Navigation Plans:</b> all within Nene catchment</p>
<b>Development Management</b>	
Within SPA/Ramsar	All applications
0 – 50 metres	All applications except householder applications
0km-2km of SPA/Ramsar	<ul style="list-style-type: none"> <li>• All planning applications with a new/additional footprint outside existing settlements</li> <li>• Large commercial / industrial development with internal floor space &gt; 1000m<sup>2</sup></li> <li>• Quarry applications</li> <li>• All proposals that would alter accessibility in or around the SPA (e.g. new or reduced public car parking, new cycle tracks or pedestrian routes)</li> <li>• All proposals likely to generate significant noise (e.g. clay pigeon shoot)</li> </ul>
0km-3km of SPA/Ramsar	All applications with net gain in residential units
0km-5km of SPA/Ramsar	<ul style="list-style-type: none"> <li>• Infrastructure including road, rail, pylons, pipelines (except routine maintenance)</li> </ul>
0km-10km of SPA/Ramsar	<ul style="list-style-type: none"> <li>• Airports</li> <li>• Solar development over 0.5ha</li> <li>• Pig and poultry units</li> <li>• Any industrial development including combustion sources which could cause air pollution</li> <li>• Landfill and other waste management including composting</li> <li>• Discharge to surface water or ground</li> <li>• All wind farms/turbines except:               <ul style="list-style-type: none"> <li>• Building mounted turbines</li> <li>• Single turbines less than 15m</li> </ul> </li> </ul>

## 4. Significant effects on the Upper Nene Valley Gravel Pits SPA

### Habitats Regulations Assessment

The Habitats Regulations include a stringent assessment process (Habitats Regulations Assessment (HRA)) which competent authorities must follow when considering plans or projects that could have significant effects on European Sites, either individually or in combination with other plans or projects.<sup>9, 10</sup>

The relevant competent authority (Table 3) will be able to advise whether HRA will be needed. Applicants may be required to provide additional information or carry out survey work before an assessment of a proposal can be made.

**Table 3** Competent authorities for plans and projects related to the Upper Nene Valley Gravel Pits SPA

Example of plan/project	Competent authority
Proposal to change habitat management or to introduce a new recreational activity, <i>e.g.</i> sailing, fishing (where no planning consent is required)	Natural England
Land drainage consent; consents for discharge, abstraction, fish stocking	Environment Agency
Proposals requiring planning consent	Local Authority
National infrastructure projects	The relevant Government department

Significant adverse effects can arise from any of the following causes, alone or in combination with the effects of other plans or projects:

- **Physical loss of habitats within the SPA** through conversion to other land uses
- **Fragmentation of habitats within the SPA**, which isolates waterbirds in small habitat patches and impedes waterbird movement through the site
- **Loss of usable habitat within the SPA** in which the physical extent of habitat remains, yet factors like disturbance or visual barriers reduce the amount of habitat that is actually suitable for waterbirds
- **Loss of supporting habitat** adjacent to or outside the SPA
- **Increased disturbance to waterbirds** from human activity (*e.g.* recreational uses), domestic pets, noise, light and other factors that cause birds to spend less time feeding and more energy avoiding the disturbance, compromising long term survival
- **Changes in ecological condition**, *e.g.* due to lack of management, ecological succession or deteriorating water quality, which render the habitat unsuitable for waterbirds
- **Direct waterbird mortality**, *e.g.* from collision with structures.

Applicants who are unsure whether their proposal could have a significant effect on the SPA are advised to contact Natural England as early as possible.

### Appropriate Assessment

Assessing a proposal's impact is a complex process.<sup>11, 12</sup> The effects of development will vary from lake to lake, and similar proposals may have different effects on different lakes. The effects of a proposal must be considered in relation to both individual parts of the SPA and the entire SPA.

9 Refer to European Commission. 2001. Assessment of plans and projects significantly affecting Natura 2000 Sites: methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC. Luxembourg: Office for Official Publications of the European Communities.

10 Refer to Tyldesley D. 2009. The Habitats Regulations Assessment of Local Development Documents, revised draft guidance for Natural England

11 Refer to Dodd AM, Cleary BE, Dawkins JS, Byron HJ, Palframan LJ, Williams GM. 2007. The Appropriate Assessment of spatial plans in England: a guide to why, when and how to do it. Sandy, Bedfordshire: RSPB

12 Refer to Scott Wilson, Levett-Therivel Sustainability Consultants, Treweek Environmental Consultants and Land Use Planning. 2006. Appropriate Assessment of plans [ONLINE]. Available at <http://www.levett-therivel.co.uk/AA.pdf>. Accessed 15 December 2014.



Where it is shown that there will be an adverse effect on site integrity or where the possibility of an adverse effect on site integrity cannot be ruled out, appropriate avoidance or mitigation measures must be incorporated into the proposals. Where avoidance is not possible, and where (despite mitigation measures) the risk of an adverse effect on site integrity cannot be ruled out, plans and projects can only be permitted if:

- There are no alternative solutions
- There are imperative reasons of overriding public interest why the plan or project must proceed
- Habitat compensation is provided, and
- Approval is given by the Secretary of State.

Applicants are advised that most plans and projects are very unlikely to be able to demonstrate that they meet all of these requirements.

### **Recreational disturbance**

Recreational disturbance is the most significant threat to the Upper Nene Valley Gravel Pits SPA. Research shows that disturbance from human recreational activities in wetlands can cause problems for wildlife.<sup>13</sup> Detailed local studies of the effects of visitor behaviour on bird behaviour and numbers have shown that people and dogs can disturb the SPA's birds as they feed and roost.<sup>14</sup>

Birds react to disturbance in different ways. They will often fly, walk or run away, which uses valuable energy. They may also simply lift their heads and watch, or become vigilant to potential danger. All of these behaviours interrupt the birds' feeding. Birds' responses to disturbance can vary with factors like species, weather conditions, type of disturbance, the health and previous experiences of individual birds, and their ability to compensate for the disturbance (e.g. by feeding at night). Effects of disturbance can therefore be subtle and difficult to assess.

Birds will avoid areas that are continually disturbed. Unfortunately these are sometimes the best feeding areas. Repeated disturbance can also cause stress and loss of energy, which affects the birds' health and breeding potential. In extreme cases it can lead to their death.

All parts of the SPA receive equal protection and are equally important, although some are more or less sensitive to disturbance. Therefore the same proposal may require a different type or degree of mitigation depending on the location.

There are a number of factors which influence sensitivity. All of these must be considered when assessing a proposal's impact:

### ***Distribution of birds***

The distribution of bird species varies across the SPA. Some species like tufted duck are spread evenly at low numbers across the whole site whereas other species like golden plover, shoveler and bittern are concentrated in certain locations. Similarly, a large percentage of the overall assemblage may be present in a small number of lakes. All notified species present on a lake must be considered for any planning application.

A proposal affecting a lake with a widely distributed species is likely to have less impact than the same proposal on a lake with a large concentration of a single species.

### ***Seasonality***

Some lakes are of interest for their wintering birds only and have little or no breeding bird interest. Others are important for their breeding bird and wintering interest. On lakes that are only of interest for wintering birds, it may be that a proposed use can be permitted during the summer (subject to there being no significant impact on the features of interest of the Upper Nene Valley Gravel Pits SSSI). Applicants should check to find out whether the

13 For example, see Kirby J, Davidson N, Giles N, Myrfyn O and Spray C. 2004. Waterbirds and Wetland Recreation Handbook – a Review of Issues and Management Practice. Slimbridge: The Wildfowl and Wetlands Trust.

14 Brayshaw RS. 2010. Survey work to support the Appropriate Assessment for the West Northamptonshire Joint Core Strategy, Element 2: Field surveys (recreational, disturbance and bird behaviour). Report to the West Northamptonshire Joint Planning Unit. Project number UK18-15188. Available at <http://www.westnorthamptonshirejpu.org/connect.ti/website/view?objectId=2757328>. Accessed 8 December 2014.

lake supports significant post-breeding (August – September) flocks of gadwall or shoveler, which may require use restrictions during these months. Some specific surveys may be required.

### **Screening**

The degree of screening around a lake influences the impact of visual disturbance. On a heavily screened lake (*e.g.* Higham Ferrers), visual disturbance will be limited to all or part of that lake. Disturbance may affect a larger area in a more open area like Irthlingborough Lakes and Meadows. Screening can be used to minimise visual impact but needs to be balanced with the habitat needs (*e.g.* sight lines for take off) of the birds using the site.

### **Species' tolerance of disturbance**

It is important to understand how various species react to disturbance. Some species like coot, mute swan and tufted duck are normally quite tolerant of disturbance. Others like shoveler, wigeon and golden plover are more sensitive. These tolerances are largely reflected in how species distribute themselves around the site.

A proposal on a lake with tolerant species is likely to have less of an impact than the same proposal on a lake with species sensitive to disturbance. Most types of disturbance are indiscriminate in their effects. Any mitigation must therefore be designed to meet the needs of the least tolerant species present on site.

### **Collecting information/surveys**

Surveys may be needed to enable a proposal's impacts to be assessed. These include (but are not limited to):

- Desk study, scoping and Phase I habitat surveys
- Specific species population counts (selected locations only)
- Wintering bird survey
- Breeding bird survey
- Access/disturbance survey: an assessment of existing public access levels and its effects on birds under a range of conditions
- Flight line/vantage point surveys (wind turbine proposals and large-scale developments only)
- Other protected species survey
- Surveys of land outside the SPA but which ecologically is functionally linked to the European site (*e.g.* farmland that provides off-site feeding habitat for birds which only use the SPA for roosting)
- Fish survey (fish stocking proposals only)

Prescribed survey methodologies are presented in Appendix 2. Not all of the above surveys will be required in every instance. Natural England should be consulted at the earliest opportunity to agree the full scope of surveys to be undertaken.

Applicants are advised that in many cases survey work will take around 12 months, as wintering bird surveys will be required in addition to any protected species surveys. This should be taken into account when planning surveys and application submission dates.

The competent authority will not be able to carry out an Appropriate Assessment, and therefore the application cannot be determined if it does not include sufficient evidence. The application will not be determined until the necessary survey information is provided. Failure to provide the necessary information may result in refusal.

Once surveys have been completed, the results should be discussed with Natural England so the next steps can be determined.

### **Outline applications: additional information required**

Outline planning applications do not typically include the amount of detail needed to evaluate potential effects on the SPA. For this reason, outline applications should include some information which would normally only be required of a full application. This includes:

Residential and institutional applications:

- A statement of the maximum number of units proposed
- Proposed greenspace provision: its extent, location, connections to other nearby greenspaces, and indicative information regarding its design and function, for example whether it will provide a safe and attractive place for people to exercise dogs, and
- Existing and proposed links to the SPA footpath/Rights of Way network, including permissive Rights of Way and commonly used pedestrian routes/access points, even where these have not been classified as Rights of Way.

Industrial applications:

- Building height and distance from SPA
- Proposed external surface materials, and
- Viewpoint photographs from ground level (i.e. birds' perspective) – locations to be agreed with Natural England.

## 5. Mitigating significant effects

Within the Upper Nene Valley Gravel Pits SPA it will be very difficult to implement mitigation for proposals causing physical loss or fragmentation of habitats. Please note that providing new habitat outside the SPA boundary (even adjacent to it) is considered compensation, not mitigation. Likewise, following a European Court of Justice ruling, habitat creation inside the SPA boundary cannot be considered mitigation.<sup>15</sup> In rare circumstances, habitat enhancement inside the SPA may offer mitigation, but all such proposals must be discussed with Natural England at the earliest possible stage. Under the HRA process, compensation for damage can only be considered — and the plan or project approved — if it can first be shown that there are no alternative solutions and there are also imperative reasons of overriding public interest. Such cases are rare.

It may be possible to mitigate other types of impact like loss of usable habitat, changes in ecological condition or increased disturbance to waterbirds.

Mitigation measures on the Upper Nene Valley Gravel Pits SPA will often include the following:

- Management of recreational activities
- Access/visitor management
- Habitat management

Mitigation will be considered on a case by case basis, and a mitigation plan may contain a combination of mitigation measures. Appendix 3 presents some of the measures which may be considered depending on the situation. Mitigation measures will only be acceptable where 1) there is a reasonable certainty they will be successful and 2) they are in place and created in time to prevent the anticipated adverse effect arising. In some cases proposals for monitoring and reporting on the performance of mitigation measures may be required.

As well as impacts relating to the SPA, a proposal may have separate adverse impacts on the Upper Nene Valley Gravel Pits SSSI, Local Wildlife Sites, protected species and on priority habitats and species. These impacts will also need to be mitigated. Applicants should refer to the Northamptonshire Biodiversity SPD for more information on addressing biodiversity within developments.

The mitigation scheme should be an integral part of any plan or project. Natural England should be consulted at the earliest opportunity, following an initial ecological evaluation. The mitigation scheme should be developed alongside the plan or project, and be available at the consultation stage. Where an Appropriate Assessment shows that a plan or project — with mitigation — is still likely to have a significant adverse effect on site integrity, the Competent Authority may be obliged to refuse the application.



Female tufted duck *Aythya fuligula*, Summer Leys Nature Reserve. Photo courtesy Nicholls of the Yard

15 Case C-521/12 TC Briels and Others v Minister van Infrastructuur en Milieu [2014], Opinion of E Sharpston.

## Glossary

**Appropriate Assessment:** part of a Habitats Regulations Assessment, the consideration of the impact on the integrity of a European site of a plan or project, either alone or in combination with other plans or projects, with respect to the Site's structure and function and its conservation objectives.

**Competent authority:** any body that has the power to undertake or give any consent, permission or other authorisation for a plan or project.

**Environmental Impact Assessment (EIA):** a process of evaluating the likely environmental impacts of a proposed project or development, taking into account interrelated socio-economic, cultural and human health impacts, both beneficial and adverse. In EU member states the EIA process is governed by the EIA Directive (85/337/ECC) as amended.

**European Protected Species:** species of plants and animals — not including birds — listed in annexes II and IV of the EU Habitats Directive and protected by law throughout the European Union. Bird species receive separate protection under the Birds Directive.

**European Site:** one of two types of European statutory nature conservation designations. Special Protection Areas (SPA) are classified under Council Directive 2009/147/EC on the conservation of wild birds (this is the codified version of Council Directive 79/409/EEC as amended). This is generally known as the Birds Directive and protects rare, threatened or vulnerable birds listed in Annex I of the Directive. Special Areas of Conservation (SAC) are classified under Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora (known as the Habitats Directive) which protects habitats (annex I) and species (annex II) of the Directive. The entire suite of European Sites is known as the Natura 2000 Network. Northamptonshire's only European Site is the Upper Nene Valley Gravel Pits SPA.

**Habitat fragmentation:** the process by which habitat loss results in the division of larger, continuous habitats into smaller, more isolated remnants. Fragmentation disrupts ecological processes, isolates species populations and leads to reduced species richness (i.e. reduced biodiversity).

**Habitats Regulations Assessment (HRA):** required under Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora (The Habitats Directive), the process of determining likely significant effects and (where appropriate) assessing adverse impacts on the integrity of a European Site.

**Mitigation:** measures that aim to reduce and/or minimise the risk of an impact on wildlife, for example changes to timing, engineering design or technique. Depending on the kind of impact and the location of the development, mitigation may be necessary outside the site boundary.

**Non-statutory nature conservation site:** an area of land designated for its nature conservation value but which does not receive statutory protection. Some non-statutory sites may however receive a degree of protection under national or local policy. In Northamptonshire these sites include Local Wildlife Sites (LWS), Local Geological Sites (LGS), Potential Wildlife Sites (PWS) and Protected Wildflower Verges (PWV).

**Ramsar site:** a wetland of international importance, designated under the Convention on Wetlands of International Importance, especially as Waterfowl Habitat (known as the Ramsar Convention after the Iranian city where it was drawn up and adopted in 1971). As a matter of policy, Ramsar sites in the UK are protected as European Sites. The Upper Nene Valley Gravel Pits SPA is also a Ramsar site.

**Statutory nature conservation site:** an area of land which receives some form of statutory protection for its nature conservation value. In Northamptonshire these include Special Protection Areas (SPA), National Nature Reserves (NNR), Sites of Special Scientific Interest (SSSI) and Local Nature Reserves (LNR).

**Supporting habitat:** an area of habitat outside the boundaries of a European site but which is of fundamental importance for the overall survival of the population(s) for which the European site was designated. Supporting habitat tends to be associated with sites designated for highly mobile species (e.g. bats, birds) that are not physically restricted to the European site boundaries.



## Appendix 1 Description of the Upper Nene Valley Gravel Pits

In 2005, 1,370ha of Northamptonshire's Nene Valley was first notified as a Site of Special Scientific Interest (SSSI). Much of the land was subsequently classified as a Special Protection Area (SPA) and Ramsar site. The area comprises a chain of exhausted sand and gravel pits, extending for approximately 35km along the alluvial deposits of the River Nene floodplain from Clifford Hill on the southern outskirts of Northampton, downstream to Thorpe Waterville north of Thrapston.

The Upper Nene Valley Gravel Pits SPA was designated under the EC Birds Directive (Council Directive 79/409/EEC) for its wintering habitat for wildfowl and wading birds (in particular bittern, gadwall and golden plover) and its assemblage of over 20,000 non-breeding waterbirds. These are known as the site's 'qualifying features'.

In England & Wales, SPAs are protected through the provisions of the Conservation of Habitats and Species Regulations 2010, often referred to as the 'Habitats Regulations' or 'Habs Regs'. The Habitats Regulations protect rare or vulnerable wildlife in the European Union and help safeguard characteristic European biodiversity within a sustainable development framework. They also provide a stringent assessment process (Habitats Regulations Assessment or HRA) to be used when considering plans or projects that may have significant effects on European Sites.

The SPA and Ramsar site boundaries are identical. The SSSI includes an additional 20ha of land at Earls Barton Carr and Ringstead Gravel Pits.

### Interest features

Notified features for each of the three designations are slightly different and are presented in Table 4. Please note that while the features of interest of the SPA are all wintering birds that occur in the non-breeding season (generally, from October to March), the SSSI encompasses features of interest — including wintering birds, breeding birds and an example of wet woodland — that may be present at any time of year.

**Table 4 Notified features of the Upper Nene Valley Gravel Pits SSSI, SPA and Ramsar site**

Notified feature	Designation		
	SSSI	SPA	RAMSAR
>20,000 Non-breeding waterbirds	Y	Y	Y
Aggregations of breeding birds: grey heron <i>Ardea cinerea</i>	Y		
Aggregations of non-breeding birds: bittern <i>Botaurus stellaris</i>	Y	Y	
Aggregations of non-breeding birds: coot <i>Fulica atra</i>	Y	*	
Aggregations of non-breeding birds: cormorant <i>Phalacrocorax carbo</i>	Y	*	
Aggregations of non-breeding birds: gadwall <i>Anas strepera</i>	Y	Y	Y
Aggregations of non-breeding birds: golden plover <i>Pluvialis apricaria</i>	Y	Y	
Aggregations of non-breeding birds: great crested grebe <i>Podiceps cristatus</i>	Y	*	
Aggregations of non-breeding birds: mute swan <i>Cygnus olor</i>	Y	*	Y
Aggregations of non-breeding birds: pochard <i>Aythya farina</i>	Y	*	
Aggregations of non-breeding birds: shoveler <i>Anas clypeata</i>	Y	*	
Aggregations of non-breeding birds: tufted duck <i>Aythya fuligula</i>	Y	*	
Aggregations of non-breeding birds: wigeon <i>Anas penelope</i>	Y	*	
Assemblages of breeding birds: lowland open waters and their margins	Y		
W6: <i>Alnus glutinosa</i> – <i>Urtica dioica</i> woodland	Y		

\* Species which are not SPA features in their own right but form a named part of the 20,000 wintering waterbird assemblage and should be taken into account when carrying out a Habitats Regulations Assessment

## Conservation objectives

The European Site conservation objectives for the SPA are to:

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 upon 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.*<sup>16</sup>



Stanwick Lakes. Photo by Alex Donohue

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<sup>16</sup> Natural England. 2014. European Site Objectives for Upper Nene Valley Gravel Pits Special Protection Area Site Code: UK9020296. Peterborough: Natural England.

## Appendix 2 Survey guidelines for the Upper Nene Valley Gravel Pits SPA

### Introduction

This section provides guidance on the requirements and methodology for survey work to be undertaken to determine the effects of a plan or project and allow the competent authority to carry out an Appropriate Assessment. It is important to follow the guidelines closely. In certain cases a plan or project may need to be considered in combination with others: surveys therefore need to be done to the same standard and using the same methodologies.

This appendix sets out the main surveys that may be required, but it is not exhaustive and not every survey may be required in each instance. Natural England should be consulted at the earliest opportunity to agree the full scope of surveys to be undertaken.

Where a plan or project is not directly connected with, or necessary to site management for nature conservation purposes, and is likely to have a significant effect on the features of interest of the site, an Appropriate Assessment of the impacts of those proposals is required. This will apply to:

- Proposals entirely new to the SPA and occurring within the SPA boundary
- Proposals involving existing activities occurring elsewhere in the SPA, but new to the specific location within the SPA boundary
- Variation of an activity currently occurring at a specific location *e.g.* increased intensity/duration
- Proposals outside the SPA that may impact on the site, *e.g.* housing development, wind farm (see Table 2)
- Proposals within the SPA that are not connected with nature conservation management and do not require planning consent, but are listed within the SSSI notification package as an Operation Requiring the Consent of Natural England.

### Survey methodologies

#### Desk study, scoping and Phase I surveys

An extended Phase I ecological survey should be carried out to provide a high level assessment of the ecological interest of the area and its surroundings.

#### Methodology

- Undertake a desk study to identify all relevant statutory and non-statutory nature conservation sites and features of ecological significance that may be affected by the project proposal.
- Undertake a habitat survey of the site in accordance with JNCC Phase I Habitat Survey methodology.<sup>17</sup>
- Identify the presence of protected species and species/habitats of conservation importance, within the site and surrounding it, and provide recommendations for further survey work.

#### Wintering birds

More than 20,000 migratory waterbirds use the Upper Nene Valley Gravel Pits SPA during the non-breeding period. Population surveys are required to determine the numbers, distribution and behaviour (feeding, roosting) of birds within the part of the site that could be affected by the plan or proposal.

Although some Wetland Bird Survey (WeBS) data are available for the Upper Nene Valley Gravel Pits SPA not all pits are counted regularly. Wintering bird surveys are still required to supplement WeBS data.

#### Methodology

- Counts should use the standard Wetland Bird Survey methodology<sup>18</sup> and be undertaken at two- to three-weekly intervals throughout the defined survey period. Surveys should be at least 10 days and no more than 21 days apart.

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17 Joint Nature Conservation Committee. 2010. Handbook for Phase 1 Habitat Survey – a technique for environmental audit. Peterborough: Joint Nature Conservation Committee. Available at <http://jncc.defra.gov.uk/page-2468>.

18 British Trust for Ornithology. Date unknown. WeBS: Core Counts Methods [ONLINE]. <http://www.bto.org/volunteer-surveys/webs/taking-part/core-counts-methods>. Accessed 10 October 2014.

- Counts should be recorded on a pit-by-pit basis to allow comparison with existing data. Standard count units, corresponding to WeBS sectors, will be supplied by Natural England.
- Counts should be undertaken from the beginning of September to the end of March, and a minimum of one winter's counts will be required. Counts may be undertaken over the course of one winter period, e.g. September 2009 – March 2010 (preferred option), or over one calendar year, e.g. January – March 2010 and September – December 2010.
- Additional August counts may be required in areas where there are known to be significant post-breeding flocks of species like gadwall, great-crested grebe and shoveler. This will be advised in advance on a case by case basis.
- Brief details of any recreational disturbance incidents should be recorded, including date, location, type of disturbance and response of birds to the disturbance, in accordance with WeBS methodology.

Any variation from the above must be agreed with Natural England before surveys begin.

### **Breeding birds**

The Upper Nene Valley Gravel Pits SSSI supports more than 27 species defined as breeding birds of open water and marginal wetland vegetation. Many other species of high conservation concern also occur. Surveys are required to estimate breeding bird numbers and distribution.

### Methodology

- A general breeding bird survey using a modified version of the Common Bird Census methodology<sup>19</sup> should be undertaken. This should consist of not less than four visits during the period April to July (one visit per month, ideally on or around the middle of the month).
- Surveys should be carried out in good weather, between dawn and 1100 hours or (where necessary) in the three hours prior to dusk.
- Applicants are encouraged to record all bird species. However, special attention should be paid to recording the numbers, distribution and breeding status<sup>20</sup> of those waterbird species included in the Guidelines for Selection for Biological SSSIs<sup>21</sup> and which form the basis for the nationally important breeding bird assemblage found in the Upper Nene Valley Gravel Pits SSSI.<sup>22</sup>
- In addition to these species, similar details should be recorded for turtle dove, oystercatcher, lapwing, sand martin, little egret and cormorant, where these are present.
- See Gilbert et al. (1998)<sup>23</sup> for further information on methodologies.
- Additional species/group surveys, e.g. dabbling and diving ducks, and waders, may also be required. See Gilbert et al. (1998) for further information on methodologies.
- Brief details of any recreational disturbance incidents should be recorded, including date, location, type of disturbance and response of birds to the disturbance, in accordance with WeBS methodology.

For context and comparison, 2003 and 2013/14 breeding bird survey results are available from Natural England for any lake in the Upper Nene Valley Gravel Pits SSSI.

19 Available at: British Trust for Ornithology. 2009. Common Birds Census [ONLINE]. <http://www.bto.org/survey/complete/cbc.htm>. Accessed 10 October 2014.

20 Refer to British Trust for Ornithology. Date unknown. Breeding Status Codes [ONLINE]. <http://www.bto.org/sites/default/files/u36/downloads/breedingcodes.pdf>. Accessed 2 December 2014.

21 Under the JNCC Guidelines for Selection of Biological SSSIs. Please note that these guidelines are under revision. Details are available at: [JNCC] Joint Nature Conservation Committee. 2014. Guidelines for selection of biological SSSIs [ONLINE]. <http://jncc.defra.gov.uk/page-2303>. Accessed 2 December 2014.

22 See Table 28, 'Breeding bird assemblages of different habitats: lowland open waters and their margins' in: JNCC. 2014. Guidelines for Selection of Biological SSSIs. Chapter 14: Birds [ONLINE]. Available at <http://jncc.defra.gov.uk/page-2303>. Accessed 2 December 2014.

23 Gilbert G, Gibbons DW, Evans J. 1998. Bird Monitoring Methods: a manual of techniques for key UK species. Sandy: RSPB.



## Access/disturbance

Wintering and breeding birds using the SPA can suffer considerably as a result of disturbance from visitor access and recreational activities. An assessment of the type, source and intensity of disturbance, and the birds' response to it, is required to establish the current disturbance levels and evaluate the impact of increased levels of access and disturbance.

This survey is additional to the disturbance incident recording within the breeding and wintering bird surveys.

### Methodology: wintering birds

- Map all rights of way, permissive and informal paths and record their usage. This will include the frequency, type and time of use.
- Surveys should be undertaken between October and March, and a minimum of one winter's survey work will be required. Surveys may be undertaken across the course of one winter period, *e.g.* October 2009 – March 2010, or across one calendar year, *e.g.* January – March 2010 and October – December 2010.
- As a general rule, the interval between survey visits should not exceed 10 days; however the specific frequency and total number of survey hours should be agreed with Natural England before surveys begin. Surveys should be undertaken on a variety of days and times, *e.g.* dawn, dusk, daytime, weekends and when known recreational activities (*e.g.* shooting) occur.

On each visit:

- Record the type, and map the location of ALL recreational activities (potential disturbance incidents), *e.g.* sailing, walking (with or without dogs, and whether they are on/off lead).
- For each occurrence of recreational activity, record whether or not birds are disturbed.
- Where disturbance occurs, record the following:
  - Species/approximate number of birds affected
  - Approximate distance from birds to source of disturbance
  - Response of birds to disturbance, *e.g.* heads-up, stop feeding, swim away from disturbance, fly off, circle around and return immediately, fly off and return later (in which case also note duration of absence)
  - Incidents where recreational activity occurs, but the birds are not disturbed, should also be recorded.
  - Record the weather conditions (*e.g.* temperature, icing conditions)

### Methodology: breeding birds

- Where an area is also identified as being of importance for breeding birds, an additional 80 survey hours are likely to be required from April through mid June, to identify any additional seasonal disturbance.

## Species-specific surveys within the SPA

This principally applies to golden plover *Pluvialis apricaria*, but may also be required for other species that feed or roost in large flocks. The Upper Nene Valley Gravel Pits SPA is of European importance for wintering golden plover. They currently roost at three key locations within the SPA and feed on surrounding grassland and arable land, often outside the SPA. Standard wintering bird population surveys often fail to pick up peak numbers of roosting birds. During the peak wintering period additional golden plover roost surveys may therefore be required at key roost sites, currently Clifford Hill, Earls Barton and Stanwick Gravel Pits.

### Methodology

- Counts of roosting golden plover should be undertaken on a fortnightly basis during afternoon/early evening between November and early March
- Natural England should be consulted to agree the survey methodologies for other species.

## Species-specific surveys outside the SPA

Some species, principally golden plover *Pluvialis apricaria* and lapwing *Vanellus vanellus* spend a proportion of their time away from the SPA feeding or roosting on surrounding agricultural land or the River Nene. Ensuring that key areas are not affected by developments occurring outside the SPA is paramount. Specific species surveys may therefore be required outside the SPA boundaries.

This will only apply to proposals with a zone of influence extending outside the SPA and which could lead to the loss of feeding grounds, e.g. housing or industrial development on or near areas favoured by particular species (see Table 2).

### Methodology

The exact methodology will be agreed with the applicant in advance but is likely to include the following:

- Collation of existing species records in the area
- Desk-based assessments using agreed parameters to identify the suitability of individual fields to support target species based on specific habitat preferences.
- Field surveys to locate feeding birds.

### **Flight line/vantage point surveys**

Vantage point surveys may be required for proposals to erect large or tall structures next to the SPA (e.g. wind turbines, tall buildings) that could interfere with birds' flight paths or sight lines.

The following documents set out methodologies relating to flight line and vantage point bird surveys in more detail:

- Scottish Natural Heritage. 2005. Survey methods for use in assessing the impacts of onshore wind farms on bird communities. Inverness: Scottish Natural Heritage.<sup>24</sup>
- Scottish Natural Heritage. 2000. Windfarms and birds: calculating a theoretical collision risk assuming no avoiding action. Inverness: Scottish Natural Heritage.<sup>25</sup>
- Natural England. 2009. Assessing the effects of onshore wind farms on birds. Natural England Technical Information Note TIN069. Peterborough: Natural England.

Developers should contact Natural England at the earliest opportunity to discuss scoping proposals for these surveys; this will depend on the location of the proposal and distance from the SPA.

### **Protected species**

Additional surveys should be undertaken where the extended Phase I survey highlights the potential presence of protected species. The methodology for these surveys should follow the current best practice guidelines for that species. The species/groups most likely to be encountered within the Upper Nene Valley Gravel Pits SPA include bats, great crested newt, badger, water vole, reptiles and otter.

### **Fish survey**

Movement and stocking of fish is authorised by the Environment Agency under Section 30 of the Salmon and Freshwater Fisheries Act 1975. If undertaken in an ecologically sustainable way, fishing and nature conservation can be compatible. However, overstocking of fish, especially carp and bream, can lead to a change in water quality, which impacts on the aquatic plants and invertebrates that are a key food source for breeding and wintering birds within the SPA.

Applications to stock fish within the SPA should provide evidence of the current composition of fish populations within the lake. The Environment Agency can provide detailed advice on the most appropriate methods to obtain this information.

### **Survey results**

Survey results should be discussed with Natural England who will determine if any additional work is required. If the surveys show that a plan or project is likely to result in an adverse impact on the SPA's features of interest, measures will be required to prevent the impact.

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24 Available at [http://www.snh.org.uk/pdfs/strategy/renewable/bird\\_survey.pdf?bcsi\\_scan\\_9eae6dc6cc4b0eb5=0&bcsi\\_scan\\_filename=bird\\_survey.pdf](http://www.snh.org.uk/pdfs/strategy/renewable/bird_survey.pdf?bcsi_scan_9eae6dc6cc4b0eb5=0&bcsi_scan_filename=bird_survey.pdf). Accessed 10 October 2014.

25 Available at <http://www.snh.org.uk/pdfs/strategy/renewable/COLLIS.pdf>. Accessed 10 October 2014.

### Appendix 3 Some options to mitigate disturbance to birds in the Upper Nene Valley Gravel Pits SPA

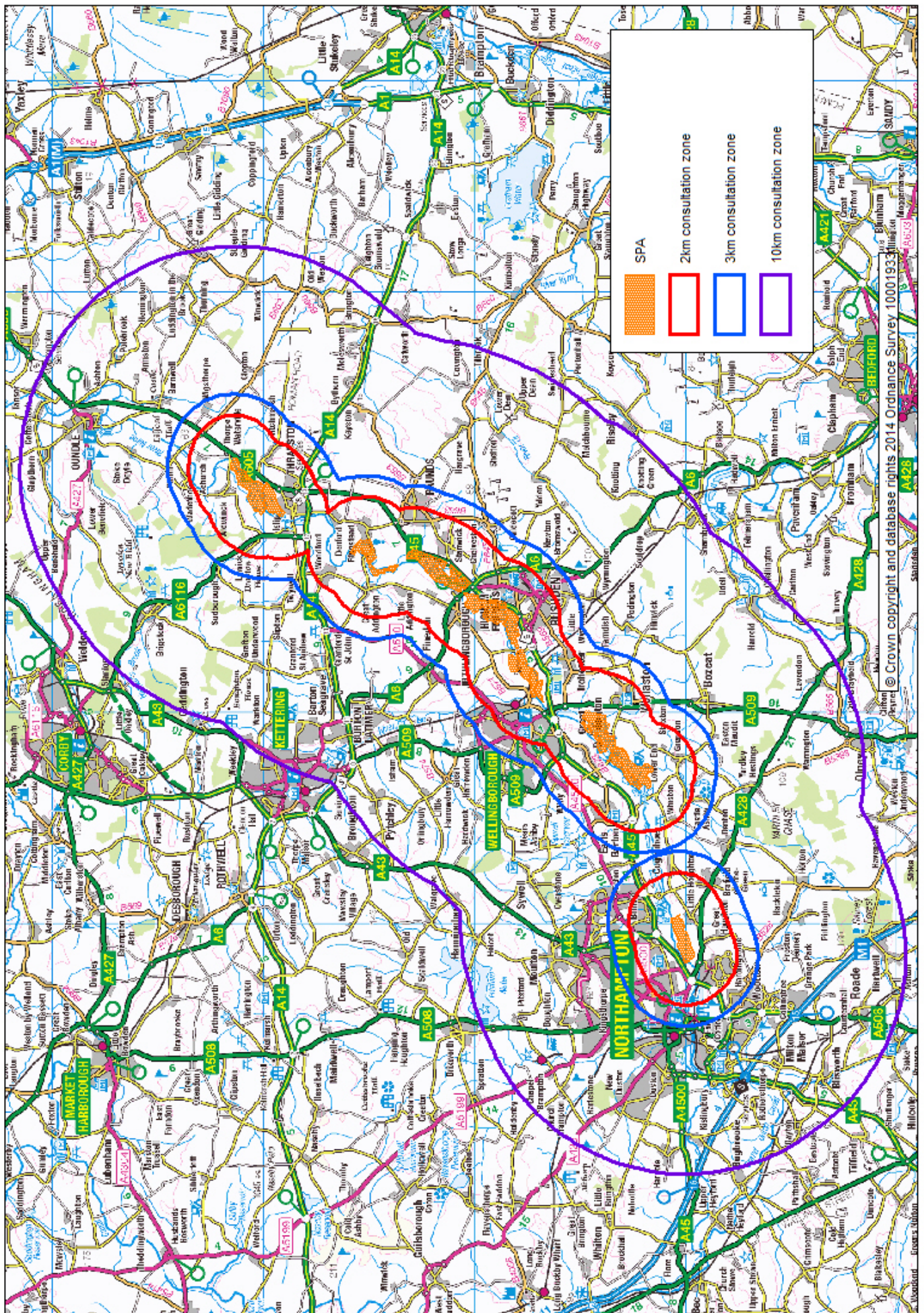
(Based on: Liley D, Floyd L, Cruickshanks K, Fearnley H. 2014. Visitor access study of the Upper Nene Valley Gravel Pits SPA. Footprint Ecology: unpublished report for the Nene Valley NIA Partnership.)

The list of mitigation options presented below is not necessarily exhaustive. Proposals for other mitigation measures will be considered on their own merits. The options presented here are not mutually exclusive and in most cases a package of measures tailored to the particular plan or project under consideration will offer the best solution. Mitigation measures should be discussed with Natural England and the competent authority at an early stage in the HRA process.

	Management option	Description
<b>1. Habitat management</b>		
1a	Habitat management	Habitat management may help mitigate adverse effects if it can be shown that the management will result in real and significant habitat enhancements. Measures could (for example) include enhancing habitats in areas away from the recreation pressure (see zoning). Habitat enhancement may create new feeding or roosting sites or help increase the amount of natural food available. Equally, habitat management in areas subject to disturbance may help mitigate localised impacts.
<b>2. Planning and off-site measures</b>		
2a	Locate development away from the SPA	Much recreational use of sites is local, for example from people living within a short drive or walk of sites. Focussing development away from nature conservation sites is a way to reduce the long term future pressures of increased recreation from development.
2b	Management of visitor flows and access on adjacent land (outside European site)	Planting, screening, careful routing, provision of access infrastructure (boardwalks, marked paths, steps etc) around the periphery and outside European sites can influence how people access sites.
2c	Provision of new greenspace sites where access is promoted and encouraged	New green infrastructure, sited away from designated sites, has the potential to draw users away from designated sites. Such sites need to be tailored to provide a viable and attractive alternative destination, matching the draw of the relevant designated site or providing a near equivalent recreational experience in a more convenient location.
2d	Enhance access in areas away from designated sites	At a strategic level it is possible to encourage people to change access patterns by enhancing access provision at less sensitive sites and not enhancing provision at sensitive locations. People can be encouraged to visit specific locations through the provision of attractions/facilities such as toilets, food, improved walking surfaces, hides, etc. Demand can be managed through modification of parking fees and parking capacities, restriction of on-road parking, wardening etc. As such there are parallels with 3e and the approach is similar to 2c.
<b>3. On-site access management</b>		
3a	Restrict/prevent access to some areas within the site	Potential to restrict access at particular locations (roost sites). Temporary fencing, barriers, diversions etc. are all possible.
3b	Provide dedicated fenced dog exercise areas	Allowing dogs off lead etc. in particular locations that are not sensitive for nature conservation or other reasons may increase their attractiveness for dog walkers. Links to 2d.
3c	Zoning (spatial or temporal)	Designated areas for particular activities. Often zones are set out in a code of conduct and prevention of use for the areas outside the zones is enforced through by-laws. We refer to zoning therefore as positive spaces where users are welcomed, as opposed to the exclusion zones described in 3a. Zoning can be spatial or temporal (for example zones may operate during particular times, such as the over-wintering period).

	<b>Management option</b>	<b>Description</b>
3d	Infrastructure to screen, hide or protect the nature conservation interest	Screens, hides, embankments etc. are commonly used to direct visitors along particular routes and screen people from birds or other features vulnerable to disturbance. Such infrastructure can also provide enhanced viewing facilities and opportunities for people to get close to wildlife without causing disturbance. Path design can enhance the extent to which people stray or roam from the path. Boardwalks etc. can protect vulnerable paths.
3e	Management of car parking	Car park spaces can be redistributed around a site, parking closed in some areas, parking fees modified ( <i>e.g.</i> encouraging people not to stay too long) or a permit system instigated to limit car park use.
3f	Path design and management	Surfacing, path clearance and other relatively subtle measures may influence how people move around a site and which routes they select.
<b>4. Education and communication to public/users</b>		
4a	Signs, interpretation and leaflets	Provision of informative and restrictive signs and interpretive boards. Directions to alternative, less sensitive sites. General information on the conservation interest to highlight nature conservation interest/importance.
4b	Codes of conduct	Guidance on how to behave to minimise impacts is promoted at a range of sites, through websites, leaflets, interpretation etc. These are sometimes enforced through by-laws and other control measures (see section 5).
4c	Wardening	In addition to an enforcement role (see 5a below), wardens can provide a valuable educational role, showing visitors wildlife etc.
4d	Provision of information off-site to local residents and users	Local media, newspapers etc. can provide means to highlight conservation importance of sites and encourage responsible access. Educational events, provision of items for local TV/other media. Information can be made available in local shops, tourist centres etc. Potential to promote non-designated sites, for example through web/leaflets listing, for example dog friendly sites. Can include school visits and working with children.
4e	Contact with relevant local clubs	Agreed codes of conduct (see 4b) and self-policing can be set up with individual groups and provide a means of ensuring users are aware of how to act responsibly.
<b>5. Enforcement</b>		
5a	Wardening	Wardens have both educational (see 4c above) and enforcement roles. With respect to the latter, wardens can provide direct contact and intervene when they observe particular activities (such as dogs off the lead). The ability of a warden to control disturbing activities is clearly related to whether control measures are in place and their nature. The more specific and statutory in nature the control, the greater the potential for enforcement by a warden. The Wildlife Trusts do have a volunteer system of community 'walking' wardens in place at some sites in the upper Nene Valley.
5b	Limiting visitor numbers	Visitor numbers capped, for example through tickets, permits or a similar system.







## Appendix 5 Policy background

### ***International and national policy***

The European Union (EU) has two pieces of legislation that deal with the protection of rare species and habitats. These are referred to as the Birds Directive<sup>26</sup> and the Habitats Directive<sup>27</sup>. The Birds Directive identifies rare species of European wild birds that need protection. Member States are required to take special measures to conserve the habitats of certain rare species of birds. In particular each Member State is required to classify the most suitable areas of such habitats as Special Protection Areas (SPA). Even if none of the qualifying species are there, the land must be protected and managed to achieve favourable condition.

The EU legislation was translated into UK legislation as the Habitat Regulations, which were most recently updated in 2010<sup>28</sup>. The Regulations deal with both the impact of developments and of development plans on European sites, which include SPAs. Local authorities are identified as a 'competent authority' for the purposes of determining whether or not a proposed development scheme or development plan document is likely to have a significant effect upon the SPA. The effect of the Regulations is to require Local Planning Authorities to ensure that any proposed development scheme or development plan will not adversely affect the integrity of the SPA.

Development can have direct and indirect impacts on natural resources. Ensuring that new development maintains, enhances, restores or adds to biodiversity is a core principle of UK national planning policy.<sup>29</sup>

The effect of this guidance and legislation together with the Natural Environment and Rural Communities Act 2006 is to impose on local authorities a legal duty of care to protect biodiversity. Where a European site (such as an SPA) could be affected by a plan or project then a Habitats Regulations Assessment (HRA) must be undertaken. An HRA identifies the interest features of the site (*e.g.* birds, plants, animals), what they could be harmed by and assesses whether the proposed plan or project could cause that harm to occur. If at the end of the process local authorities are still not certain that harm, or a 'significant adverse effect on site integrity' will not occur then they are legally obliged not to approve the proposed plan or project, subject to the procedure outlined in Article 6(4) of the EC Habitats Directive regarding imperative reasons of overriding public interest.

### ***Local policy***

**West Northamptonshire Joint Core Strategy (adopted 2014)** relevant policies include:

- BN2 Biodiversity
- BN4 Upper Nene Valley Gravel Pits Special Protection Area
- BN7a Water Supply, Quality and Wastewater Infrastructure
- BN8 The River Nene Strategic River Corridor

**North Northamptonshire Core Spatial Strategy (adopted 2008)** relevant policies include:

- 5 Green Infrastructure
- 13 General Sustainable Development Principles

**North Northamptonshire Joint Core Strategy 2011-2031 (pre-submission version)** relevant policies include:

- 4 Biodiversity
- 19 The Delivery of Green Infrastructure
- 20 The Nene and Ise Valleys
- 33 Rushden East Sustainable Urban Extension
- 35 Nene Valley Farm, Rushden



Mixed flock of golden plover, lapwing and teal. Photo by Colin Wilkinson

26 Council Directive 2009/147/EC on the conservation of wild birds (this is the codified version of Council Directive 79/409/EEC as amended).

27 Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora.

28 The Conservation of Habitats and Species Regulations, 2010.

29 Communities and Local Government. 2012. National Planning Policy Framework, paragraph 17.

**Local plan saved policies** include (this list is not exhaustive and further plans and policy should be considered as they emerge):

South Northamptonshire	Northampton	Wellingborough	East Northamptonshire
EV25 Wildlife Corridors, Rivers and Waterways	E2 Riverside Landscape	G18 Sites of Nature Conservation Value	EN8 Protection of SSSIs, NNRs and LNRs
	E4 Water Environment		EN9 Safeguarding Sites of Local Conservation Interest
	E17 Nature Conservation		
	E18 Sites of Acknowledged Nature Conservation Value		<i>Rural North, Oundle and Thrapston Plan:</i>
	L16 River Valley Policy Area		10 Protection of Local Sites of Conservation Interest and Designation of Local Nature Reserves
			11 Enhancing Biodiversity

Additional local strategies to be considered:

- Northamptonshire Biodiversity Action Plan
- Nene Valley Strategic Plan
- Northamptonshire’s Environmental Character and Green Infrastructure Suite
- Nene Integrated Catchment Management Plan
- Nene Valley Nature Improvement Area



A pair of wigeon *Anas penelope*, one of the SPA’s more sensitive bird species. Photo by Colin Wilkinson