

EXAMINATION OF THE CITY OF YORK LOCAL PLAN 2017-2033

STATEMENT OF COMMON GROUND

Between

**CITY OF YORK COUNCIL
NATURAL ENGLAND
DEFENCE INFRASTRUCTURE ORGANISATION**

19 July 2022

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1. Introduction

- 1.1 This Statement of Common Ground (SoCG) has been prepared by City of York Council (CYC), Natural England (NE) and Defence Infrastructure Organisation (DIO). Its purpose is to summarise for the Inspectors matters that are agreed between the parties. The SOCG focuses on matters and issues relating to the allocation of Queen Elizabeth Barracks (QEB) for housing and the implications of that for the integrity of the adjacent Strensall Common Special Area of Conservation (SAC).
- 1.2 Strensall Common SAC and lies predominantly to the east of the village of Strensall. The vast majority of the SAC sits to the east and south-east of the road that is variously named Strensall Road, Ox Carr Lane, Flaxton Road, and Lords Moor Lane. There is also a smaller section lying to the north of the road. The entirety the SAC lying to the south of the road is owned by the Secretary of State for Defence. Various maps are provided in Appendix 1. We return to these later in this Statement.
- 1.3 This SOCG does not deal with matters relating to (i) Imphal Barracks (proposed allocation ST36); (ii) Towthorpe Lines (proposed allocation E18); or (iii) Green Belt matters, where there are issues between the parties in respect of both QEB and Imphal Barracks.

2. Matters Agreed

Background

- 2.1 In November 2016, the Ministry of Defence (MoD) announced its intention to vacate and dispose of three MoD sites in York: Queen Elizabeth Barracks (QEB), Towthorpe Lines and Imphal Barracks.
- 2.2 Shortly after the 2016 announcement, DIO opened a dialogue with CYC on the suitability and availability of its York assets for development.
- 2.3 All three sites were tested for suitability by CYC through the SHLAA (SD049A) and Employment Land Review [SD063]. Subsequently, all three were included and consulted on as site allocations in the Pre-Publication (Regulation 18) draft Local Plan (2017) and Publication draft (Regulation 19) Local Plan (2018). The sites were tested through the Sustainability Appraisal and Habitats Regulations Assessment ('HRA') produced at each stage.
- 2.4 Technical submissions and representations by the DIO were received to Pre-Submission Consultation (2017) and public consultation (2018), which, for ST35 and H59 dealt with the deliverability of housing and site capacity. As part of the technical work, the DIO also submitted

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an HRA for QEB based upon their concept masterplan (as published) for the site.

- 2.5 CYC submitted their Local Plan and associated supporting documents, including the HRA, on 25 May 2018. In the Plan as submitted, two parcels of land at QEB are allocated for housing development (Sites ST35 and H59), Imphal Barracks is allocated for housing development (Site ST36) and Towthorpe Lines is allocated for employment development (Site E18). The CYC HRA (2018) [CD012] was prepared in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) and took account of the European Court of Justice Case 'People Over Wind'¹ ensuring that any mitigation was considered through an Appropriate Assessment.
- 2.6 The HRA concluded that, with mitigation, there were not likely to be adverse effects on the integrity of European Sites (see regulation 8 of the 2017 Regulations), alone or in-combination, as a result of the submitted Local Plan, because, on the basis of evidence available at the time, it was believed that the identified impacts could be successfully mitigated.
- 2.7 On 4 June 2018, Natural England² wrote to CYC, welcoming the production of an HRA and setting out their outstanding concerns in relation to the HRA. These included:
- a) Recreational Pressure at Strensall Common SAC - Insufficient evidence provided regarding recreational disturbance at Strensall Common SAC to back up a conclusion of no adverse effects on integrity and an expectation of a robust and comprehensive visitor assessment to be provided as evidence;
 - b) Air Quality at Strensall Common SAC - The level of detail provided to conclude air quality impacts in relation to Strensall Common (SAC) was insufficient and further detail was required.
- 2.8 In response to this letter, in July 2018 CYC commissioned independent consultants, Footprint Ecology, to undertake visitor surveys for Strensall Common SAC³. CYC also commissioned consultants, Waterman Environment and Infrastructure Ltd, to prepare an air quality assessment to determine air quality impacts on designated nature conservation sites in the authority as a result of the development in the Local Plan.
- 2.9 Natural England endorsed the visitor survey methodologies through consultation in July 2018. CYC also shared the methodology with the DIO in August 2018 and received a response acknowledging the method, with comments on the survey timings. Natural England commented

¹ Case C/323-17 People Over Wind'

² EX/CYC/1

³ In HRA Appendices EX/CYC/45a

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on the results of the visitor surveys in their letter dated 18th February 2019⁴.

2.10 Following the completion of the Footprint surveys, the HRA and conclusions in the submitted HRA were revisited by CYC's HRA consultants Waterman.

2.11 As with the 2018 HRA, the 2019 HRA [EX/CYC/14c] concluded, following appropriate assessment, that likely significant effects could not be ruled out for Policies SS19/ST35, H59 and E18 due to recreational pressure. The 2019 HRA stated as follows:

“Upon further scrutiny or by the addition of mitigation measures, it was found that adverse effects on the integrity of all the European sites could be ruled out completely for all these issues except one - the impact of recreational pressure at Strensall Common SAC. Whilst the HRA found that the addition of mitigation measures to Policy E18 would be sufficient to remove the threat of an adverse effect on the integrity of the site, this was not the case with Policies SS19/ST35 and H59. Here, it was found that uncertainty surrounding the effectiveness of the mitigation measures proposed meant that an adverse effect on the integrity could not be ruled out. Given the absence of other mitigation measures, the only option was to remove Policies SS19/ST35 and H59 from the Plan.

Should these measures be adopted in full, the Council would be able to ascertain that adverse effects on the integrity of the European sites can be avoided.”

2.12 Consequently, the Council consulted on the proposed removal of site allocations ST35 and H59 in the Proposed Modifications Consultation (10 June to 22 July 2019) - PM13, PM14, PM18 & PM19 in EX/CYC/20. DIO submitted Representations in response to that consultation in July 2019.

2.13 In November 2019, DIO submitted a Hearing Statement on Matter 1 of the Inspectors' MIQs. This was accompanied by a Visitor Survey Report produced by PCP, Information to Support a Habitat Regulations Assessment and a Report on Mitigation Measures⁵.

2.14 At the stage one hearings held in December 2019 the Council agreed to submit a number of additional documents, as set out in document EX/CYC/33, including a further revised HRA. The revised HRA, dated October 2020 was issued to the Inspectors in Dec 2020: EX/CYC/45 (main report) and EX/CYC/45a (Appendices C-J). Insofar as relevant, this concluded as follows:

“Overall, this HRA found that likely significant effects could be ruled out alone for the vast majority of policies which could therefore be excluded from any further scrutiny. However,

⁴ EX/CYC/14d

⁵ Contained as Appendix 1 in EX/HS/M1/LR/4

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likely significant effects could not be ruled out alone for the following policies: SS13/ST15, SS18/ST33, SS19/ST35, E18, H59(A), SS9/ST7, SS10/ST8, SS11/ST9, SS12/ST14, SS15/ST17 & SS17/ST32, and H1a(A), H1b(A), H3(A), H7(A), H22(A), H23(A), H31(A), H46(A), H55(A), H56(A), H58(A), SH1 and H1 in terms of a range of effects on one or more of Strensall Common, Skipwith Common, the Lower Derwent Valley and the River Derwent.

Regarding Policies SS19/ST35, E18 and H59(A), likely significant effects could not be ruled out because of anticipated increases in recreational pressure (including urban-edge effects), effects on wetland features from construction and the effect of air pollution on the adjacent Strensall Common SAC.

Also, likely significant effects could not be ruled out alone for Policies SS9/ST7, SS10/ST8, SS11/ST9, SS12/ST14, SS15/ST17 & SS17/ST32, and H1a(A), H1b(A), H3(A), H7(A), H22(A), H23(A), H31(A), H46(A), H55(A), H56(A), H58(A), SH1 and H1 because of anticipated increases in recreational pressure on Strensall Common SAC.

Upon further scrutiny or by the addition of mitigation measures, the appropriate assessment found that adverse effects on the integrity of all the European sites could be ruled out for all of these issues except one - the impact of recreational pressure and urban-edge effects at Strensall Common SAC.

In doing so, the appropriate assessment found that the addition of mitigation measures to E18, SS9/ST7, SS10/ST8, SS11/ST9 and SS12/ST14 would be sufficient to remove the threat of an adverse effect on the integrity of the site from these policies.

In terms of SS15/ST17 & SS17/ST32, and H1a(A), H1b(A), H3(A), H7(A), H22(A), H23(A), H31(A), H46(A), H55(A), H56(A), H58(A) and SH1, adverse effects could be ruled out without the need for mitigation

This was not the case with Policies SS19/ST35 and H59(A). Given reasonable scientific doubt concerning the effectiveness of possible mitigation measures at locations in such close proximity to the SAC, it was not possible to be certain that adverse effects could be avoided. The only remaining option, therefore, is to remove Policies SS19/SS19/ST35 and H59(A) from the Plan.”

In terms of Policy H1(P), mitigation in the form of amendments to the wording of Policy GI2 were considered adequate to avoid an adverse effect on the integrity of Strensall Common.

Should these measures be adopted in full, the Council would be able to ascertain that adverse effects on the integrity of the European sites can be avoided.”

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- 2.15 CYC consulted on further Proposed Modifications (EX/CYC/58), and additional evidence base documents, including the revised HRA (dated October 2020) on 25 May 2021. The consultation period ran 7 July 2021. DIO submitted representations at this stage (EX/CYC/66c No.345) as did NE (EX/CYC/66d No.383).
- 2.16 DIOs representations included a Shadow HRA produced by Capita. Appended to the Shadow HRA is a Mitigation Strategy Masterplan Report.

The Reason for the Proposed Deletion of the QEB Allocations

- 2.17 CYC is proposing that sites SS19/ST35 and H59 are deleted from the Local Plan because, in consultation with Natural England, it believes that if these sites were to be developed with housing, it could not rule out the potential for the proposals to have an adverse effect on the integrity of the SAC due to increased recreational pressure and urban edge effects. Sites SS19/ST35 and H59 are otherwise deliverable housing sites.

The SAC and its Qualifying Features

- 2.18 The SAC the covers 569ha.
- 2.19 Attached at **Appendix 1** are a series of Plans showing the boundaries of the SAC, the SSSI, the extent of MODs ownership, the land subject to the Strensall Common Act and the land currently subject to Bylaws created under the Strensall Common Act.
- 2.20 The Annex I habitats that are a primary reason for the designation of the SAC are described as follows:

4010 Northern Atlantic wet heaths with Erica tetralix

Strensall Common, together with Skipwith Common, is an example of acidic lowland heath in northern England. The wet element is well-represented by M16 Erica tetralix – Sphagnum compactum wet heath, although its extent has been reduced by drainage. It is a noted locality for marsh gentian Gentiana pneumonanthe, narrow buckler-fern Dryopteris carthusiana and long-leaved sundew Drosera intermedia.

4030 European dry heaths

*Strensall Common, with Skipwith Common, is one of only two extensive areas of open heathland remaining in the Vale of York. There is a complex mosaic of **4010 Northern Atlantic wet heaths with Erica tetralix** and dry heath elements. The H9 Calluna*

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vulgaris – *Deschampsia flexuosa* dry heath is noted for petty whin *Genista anglica* and bird's-foot *Ornithopus perpusillus*.

- 2.21 There are no Annex I habitats present that are qualifying features but are not a primary reason for the designation of the site.
- 2.22 There are no Annex II species that are either a primary reason for the designation of the site or present as a qualifying feature but not a primary reason for the site's designation.
- 2.23 Typical species found within the SAC are characteristic species associated with the wet and dry heath. In addition to those referenced above these include: pillwort *Pilularia globulifera*, dark bordered beauty moth *Epione vesperaria*, and pond mud snail *Omphiscola glabra*.

Condition Assessment

- 2.24 When NE assessed the condition of the SAC in 2011, parts of it were in favourable condition and parts of it were in unfavourable / recovering condition.
- 2.25 NE re-assessed the condition of the SAC in 2021 (March 2021 based on field survey undertaken in October 2020) and has found all units to be in favourable condition.

NEs Site Improvement Plan (2014)

- 2.26 NE produced a Site Improvement Plan for the SAC in 2014. This described the SAC as follows:

“Strensall Common SAC supports one of the largest areas of lowland heath in northern England. Extensive areas of both wet and dry heath occur and form a complex habitat mosaic with grassland, woodlands and ponds. The site has a diverse bird population with breeding curlew and woodlark. The site is noted for its population of marsh gentians. The site is renowned for its invertebrates and is the only site in England for the dark bordered beauty moth.”

- 2.27 The Plan Summary identified three 'Priority & Issues'. These were categorised as either 'pressures' or 'threats' and, for each, the Plan identified 'measures' that NE considered should be taken to address the Priority or Issue. It stated as follows:

Priority & Issue	Pressure or Threat	Feature(s) affected	Measure	Delivery Bodies
Public Access / Disturbance	Pressure	H4010 Wet heathland with cross-leaved heath, H4030 European dry heaths	Wardening is considered the best way to tackle	Natural England, Yorkshire Wildlife Trust,

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Priority & Issue	Pressure or Threat	Feature(s) affected	Measure	Delivery Bodies
			irresponsible recreational use	Defence Infrastructure Organisation (DIO)
Inappropriate Scrub Control	Threat	H4010 Wet heathland with cross-leaved heath, H4030 European dry heaths	Ongoing scrub clearance through agri-environment scheme	Natural England, Agreement holder(s)
Air Pollution: impact of atmospheric nitrogen deposition	Pressure	H4010 Wet heathland with cross-leaved heath, H4030 European dry heaths	Site Nitrogen Action Plan	Natural England

2.28 The Plan then included a second Table which was headed 'Issues and Actions'. The introduction to this read as follows:

"This table outlines the prioritised issues that are currently impacting or threatening the condition of the features, and the outstanding actions required to address them. It also shows, where possible, the estimated cost of the action and the delivery bodies whose involvement will be required to implement the action. Lead delivery bodies will be responsible for coordinating the implementation of the action, but not necessarily funding it. Delivery partners will need to support the lead delivery body in implementing the action. In the process of developing the SIPs Natural England has approached the delivery bodies to seek agreement on the actions and their roles in delivering them, although in some cases these discussions have not yet been concluded. Other interested parties, including landowners and managers, will be involved as the detailed actions are agreed and delivered. Funding options are indicated as potential (but not necessarily agreed or secured) sources to fund the actions."

2.29 In the Table, under the sub-heading Public Access / Disturbance, the Plan stated:

"Strensall is a largely open access site, with large numbers of the public visiting, many with dogs. This affects ability of site to be managed with current tenant farmer losing stock each year to dog attacks. This has the knock on effect of threatening future agricultural management. If site was unable to be grazed this would adversely affect the wet and dry heath communities."

2.30 It then listed three actions to address public access/disturbance and for each of these estimated the cost of implementation, timescales and a Delivery Body Lead. The three actions were:

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appointment of a range warden (£30,000); the preparation of an access strategy to tackle / reduce disturbance (£15,000) and the provision of signage and education awareness (£20,000). Actions were also identified for scrub control and air quality.

The Footprint and PCP Visitor Surveys

- 2.31 The approach that Footprint and PCP each took to conducting their surveys of the use of the SAC was appropriate. DIO was consulted on the Footprint methodology before the Footprint surveys were undertaken and DIO had no objection to it.
- 2.32 The Footprint and PCP studies are typical of the types of surveys undertaken to inform HRA and work on mitigation measures required to manage the effects of the use of European and other sites for recreation. As with all such studies, the Footprint and PCP work has its limitations given that the studies are based on a relatively small sample of interviews and counts and represent only a snapshot of how the Common was being used when the surveys were undertaken. However, they contain the only data that the parties have on visitor numbers and how visitors use the SAC for recreation.

Threats and Incidents within the SAC

- 2.33 None of the parties possess, or are aware of there being, a complete record of 'incidents⁶' that have occurred within the SAC over recent years. However, attached at **Appendix 2** is a list of incidents recorded by the Strensall Training Area Conservation Group. The Parties are agreed that this may or may not catalogue all of the incidents that have occurred in the period 2011 to 2021 but the Parties are agreed that this indicates that incidents have occurred that are of concern to CYC and NE.
- 2.34 In addition, a number of threats to the SAC were identified by NE when it compiled its 2021 Condition Assessment. These were: scrub encroachment, grazing management, recreational disturbance and accidental fire.

The Effect of Developing the QEB and Other Sites

- 2.35 People that live close to the SAC are more likely to use it for recreation than people that live further away.
- 2.36 Redeveloping Sites SS19/ST35 and H59 with housing is likely to result in there being more visits

⁶ Incidents are taken to be events or actions with the potential to harm the SAC/SSSI habitats or species or harm the ability to positively manage such features, that have been noted by NE and / or the Strensall Training Area Conservation Group as matters of concern. The significance of these events or actions is a matter of dispute between CYC/NE and DIO

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to the SAC by local people for recreational purposes.

2.37 The Footprint Ecology (FE) Survey commissioned by CYC and the PCP (PCP) Survey commissioned by DIO have generated slightly different results. However, drawing on Table 7 of the 2020 HRA (unless stated otherwise) the results of the studies indicate that:

- a) either 90% (FE) or 77% (PCP) of existing users travel less than 7.5km to visit the Common⁷;
- b) either 15% (FE) or 40.6% (PCP) of existing users travel more than 5km to visit the Common⁸;
- c) either 23% (FE) or 18% (PCP) of existing users travel less than 500m to visit the Common⁹;
- d) either 67% (FE) or 69% (PCP) of visitors arrived by car¹⁰ - the median distance travelled by visitors using a car to get to the SAC was 4.6km (FE) or 5.1km (PCP)¹¹ and the median distance travelled by those making a short visit from home was 2.4km (FE) or 2.5km (PCP);
- e) it is estimated that either 22 or 34 people enter the Common per hour and either 73% (FE) or 71% (PCP) of visitors stay for about an hour¹²;
- f) 32% (FE and PCP) of people interviewed visit the Common every day¹³;
- g) 73% (FE) or 72% (PCP) of visitors surveyed were walking dogs¹⁴;
- h) predictions were made from the FE and PCP data to give estimates of future visitor use (EX/CYC/45 Appendix D, page 14 (PDF page 198)). Using the average from the two surveys the HRA identifies that visits to the Common would increase by 23.2% if sites ST35, H59, ST7, ST8, ST9, ST14, ST17 and H46 were to be built out (this is all proposed allocations within 5.5km of the SAC)¹⁵ with ST35 accounting for 13.4% of this and H59 accounting for 1.2%. This forecast suggests that visits to the Common would increase by 14.6% if only ST35 and H59 were to be built out within 5.5km of the Common¹⁶ and that visits to the Common would increase by 8.6% if all proposed allocations within 5.5km save ST35 and H59 were to be built out¹⁷ and if only Site H59 were to be built out, visits to the Common would increase by 1.2%¹⁸.

2.38 Taking the data at (e) and combining it with the forecasts at (f) suggests that the development of ST35 and H59 would result in between approximately 3 and 5 additional people visiting the SAC per hour.

⁷ EX/CYC/45 HRA page 82 'Postcodes within 7.5km';

⁸ CYC/45 HRA page 82 '% of visitors travelling more than 5km'

⁹ EX/CYC/45 HRA page 82 'Postcodes within 500m';

¹⁰ EX/CYC/45 HRA page 74 para 4.2.50 9th bullet;

¹¹ EX/CYC/45 HRA page 74 para 4.2.50 11th bullet;

¹² EX/CYC/45 HRA page 74 para 4.2.50 7th bullet and Page 83 'Estimate of total people entering site per hour'

¹³ EX/CYC/45 HRA page 74 para 4.2.50 6th bullet;

¹⁴ EX/CYC/45 HRA page 74 para 4.2.50 5th bullet

¹⁵ EX/CYC/45 HRA page 111 table below para 4.2.265

¹⁶ EX/CYC/45 HRA page 112 para 4.2.266

¹⁷ EX/CYC/45 HRA page 112 para 4.2.266

¹⁸ EX/CYC/45 HRA page 111 table below para 4.2.265

Mitigation Measures

2.39 DIO is proposing the following in connection with the redevelopment of the QEB sites:

Within Strensall Common SAC:

- wardening
- Enhanced signage / visitor information
- Site infrastructure review and enhancement programme
- Making of new Bylaws

Within / Adjacent to QEB

- Layout and Design – use of housing layout and green buffers to separate homes from the SAC
- Open Space Provision – provision of 12.35ha of public open space on site and an additional 4ha of natural Alternative Greenspace adjacent, all segregated from the SAC
- Boundary and Edge Treatments – use of fencing, planting, bunds and SUDS features to prevent indiscriminate access to the SAC by residents of QEB
- Access and movement – a total of 3.3km of on site leisure / walking routes with access to the SAC only permitted through existing Howard Road entrance or via the Scott Moncrieff car parks.

Habitat Regulations Assessment

DEFRA

2.40 Defra¹⁹ state:

- a) you must consult the relevant Statutory Nature Conservation Body (SNCB) at the appropriate assessment stage of the HRA process, but you can ask for advice at any stage in the process. You must consider the advice you get and include it in your HRA, if relevant. If you disagree with the advice, you should record it in your assessment and explain why.
- b) you must consult the relevant SNCB and you should send them a copy of your draft appropriate assessment. You must consider the advice you get back. You should only disagree with the advice if you have a good reason.

¹⁹ <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

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- c) you should keep a record of your final appropriate assessment, particularly if you're not following the SNCB's advice. You may need it as evidence if, for example, there's an appeal or freedom of information request.

2.41 The 2020 HRA (EX-CYC-45) identifies the correct legal authorities governing the preparation of HRAs and the correct tests to be applied. The key legal provisions are as follows:

- a) the HRA process employs the precautionary principle and Regulation 105 of The Conservation of Habitats and Species Regulations 2017 (as amended) provides that (1) where a plan is 'likely to have a significant effect' on a European site.....the plan-making authority.....must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives; and (4) 'must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site';
- b) the plan-making authority can be satisfied that the plan will not adversely effect the integrity of the European site, where no reasonable scientific doubt remains as to the absence of such effects;
- c) the necessary certainty cannot be construed as meaning absolute certainty - the competent authorities must take a decision having assessed all the relevant information which is set out in particular in the appropriate assessment. The conclusion of this assessment is, of necessity, subjective in nature. Therefore, the competent authorities can, from their point of view, be certain that there will be no adverse effects even though, from an objective point of view, there is no absolute certainty;
- d) because the integrity test incorporates the application of the precautionary principle as a matter of law, and because plan assessments are, by their nature, less precise than project assessments, it is important for the assessment process to eliminate the prospect of adverse effects on site integrity in so far as that is possible at the level of specificity inherent in the nature and purpose of the particular plan;
- e) the integrity of the site involves its constitutive characteristics and ecological functions. The decision as to whether it is adversely affected should focus on and be limited to the habitats and species for which the site has been designated and the site's conservation objectives

Case Law

2.42 Precautionary principle: The CJEU in *Landelijke Vereniging tot Behoud van de Waddenzee v Staatssecretaris Van Landbouw, Natuurbeheer en Visserij* (C127-02) [2005] 2 CMLR 31 ("the

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Waddenzee case)”

- 2.43 The HRA process applies the precautionary principle and Regulation 105 ensures that where a plan is ‘likely to have a significant effect’, it can only be adopted if the competent authority can ascertain (following an appropriate assessment) that it ‘will not adversely affect the integrity of the European site’. It means that the absence of harm to a high degree of certainty must be demonstrated before a plan can be adopted. This is made clear in the Waddenzee judgement:

where doubt remains as to the absence of adverse effects ... the competent authority will have to refuse authorisation (Para 57); and

That is the case where no reasonable scientific doubt remains as to the absence of such effects (Para 59, emphasis added).

- 2.44 This approach has been followed in many subsequent CJEU cases and was applied by the Supreme Court in *Champion v North Norfolk DC*.

Reasonable scientific doubt, certainty and integrity

- 2.45 The legal principle to be applied to the standard to be met in appropriate assessment was most recently stated by the Court of Justice in *Holohan v. An Bord Pleanála (C-461/17) [2019] PTSR 1054*:

“33. Under article 6(3) of the Habitats Directive, an appropriate assessment of the implications of a plan or project for the site concerned implies that, before the plan or project is approved, all the aspects of the plan or project which can, either individually or in combination with other plans or projects, affect the conservation objectives of that site must be identified, in the light of the best scientific knowledge in the field. The competent national authorities are to authorise an activity on the protected site only if they have made certain that it will not adversely affect the integrity of that site. That is so when there is no reasonable scientific doubt as to the absence of such effects: *Lesoochránárske zoskupenie VLK v Obvodný úrad Trenčín (Case C-243/15) EU:C:2016:838*, para 42 and the case law cited.

34. The assessment carried out under that provision may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of dispelling all reasonable scientific doubt as to the effects of the proposed works on the protected area concerned: *Grace v An Bord Pleanála (ESB Wind Developments intervening) (Case C-164/17) [2019] PTSR 266*, para 39 and the case law cited.”

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- 2.46 There is no requirement for absolute certainty as Lord Carnwath pointed out in the *Champion* case at [41] citing Advocate General Kokott in *Waddenzee*:

“41. ... All that is required is that, in a case where the authority has found there to be a risk of significant adverse effects to a protected site, there should be an “appropriate assessment”. “Appropriate” is not a technical term. It indicates no more than that the assessment should be appropriate to the task in hand: that task being to satisfy the responsible authority that the project “will not adversely affect the integrity of the site concerned” taking account of the matters set in the article. As the court itself indicated in Waddenzee the context implies a high standard of investigation. However, as Advocate General Kokott said in Waddenzee [2005] All ER (EC) 353 , para 107:

“the necessary certainty cannot be construed as meaning absolute certainty since that is almost impossible to attain. Instead, it is clear from the second sentence of article 6(3) of the Habitats Directive that the competent authorities must take a decision having assessed all the relevant information which is set out in particular in the appropriate assessment. The conclusion of this assessment is, of necessity, subjective in nature. Therefore, the competent authorities can, from their point of view, be certain that there will be no adverse effects even though, from an objective point of view, there is no absolute certainty.

In short, no special procedure is prescribed, and, while a high standard of investigation is demanded, the issue ultimately rests on the judgment of the authority.”

- 2.47 See also *R (Wyatt) v Fareham BC & Natural England* [2022] Env. L.R. 7 at [30]-[35] (appeal judgement pending) where Jay J. held applying *Morge*:

“35. Fifthly, it is clear from the scheme of the Habitats Regulations, the application of common sense and authority that competent authorities must give condign weight to the expert advice of Natural England, and if minded to deviate from that advice furnish cogent reasons for doing so: see, in particular, Baroness Hale JSC in R. (on the application of Morge) v Hampshire CC [2011] 1 W.L.R. 268 at [45].”

- 2.48 See also reg.105(2) of the Habitats Regulations.

- 2.49 For case law references, see:

R (Champion) v. North Norfolk District Council [2015] 1 WLR 3170 at para. 41

Compton Parish Council v. Guildford Borough Council [2020] JpL 61 at paragraph 207.

Sweetman v An Bord Pleanala (Case C-258/11) [2014] PTSR 1092

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People Over Wind v Coillte Teoranta (C-323/17) [2018] PTSR 1668

Holohan v. An Bord Pleanála (C-461/17) [2019] PTSR 1054

R (Morge) v Hampshire CC [2011] 1 WLR 268 at [45].

R (Wyatt) v Fareham BC & Natural England [2022] Env. L.R. 7 at [30]-[35]

2.50 In *Sweetman v An Bord Pleanála* the CJEU approached “integrity” in the following terms at [39]:

‘the lasting preservation of the constitutive characteristics of the site ... whose preservation was the objective justifying the designation of that site’

2.51 Further, in the *Holohan* case, Advocate General Kokott considered the issue of “integrity” in her Opinion at [27]:


“AG27. Where a plan or project is likely to undermine the protected site’s conservation objectives, it must be considered to be likely to have a significant effect on that site. 11 In order for the integrity of a site as a natural habitat not to be adversely affected for the purposes of the second sentence of art.6(3) of the Habitats Directive, the site needs to be maintained at a favourable conservation status. This entails the lasting preservation of the constitutive characteristics of the site concerned that are connected to the presence of a natural habitat type whose preservation was the objective justifying the designation of that site in the list of sites of Community interest, in accordance with the directive. The same must apply, mutatis mutandis, to protected species.”

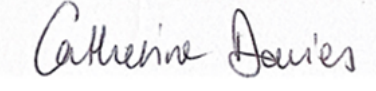
2.52 The Court held at [35]:

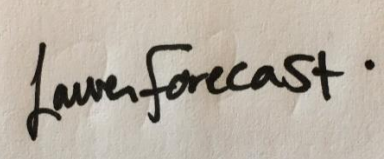
“35. In order for the integrity of a site as a natural habitat not to be adversely affected for the purposes of the second sentence of art.6(3) of the Habitats Directive , the site needs to be preserved at a favourable conservation status; this entails the lasting preservation of the constitutive characteristics of the site concerned that are connected to the presence of a natural habitat type whose preservation was the objective justifying the designation of that site in the list of sites of Community importance, in accordance with that directive (judgment of 17 April 2018, Commission v Poland (Białowieża Forest), C–441/17, EU:C:2018:255 , at [116] and the case-law cited).”

2.53 The CYC HRA (Oct 2020) HRA screening exercise correctly identifies the matters to be taken forward to appropriate assessment and it carries out such an appropriate assessment.

Endorsement

City of York Council		
Name and Position	Signature	Date
Neil Ferris Corporate Director of Place		15 Jul 2022

DIO		
Name and Position	Signature	Date
Catherine Davies DIO Head of Estates		15 Jul 2022

Natural England		
Name and Position	Signature	Date
Lauren Forecast, Team Leader		19.07.22

Appendix 1

Plans

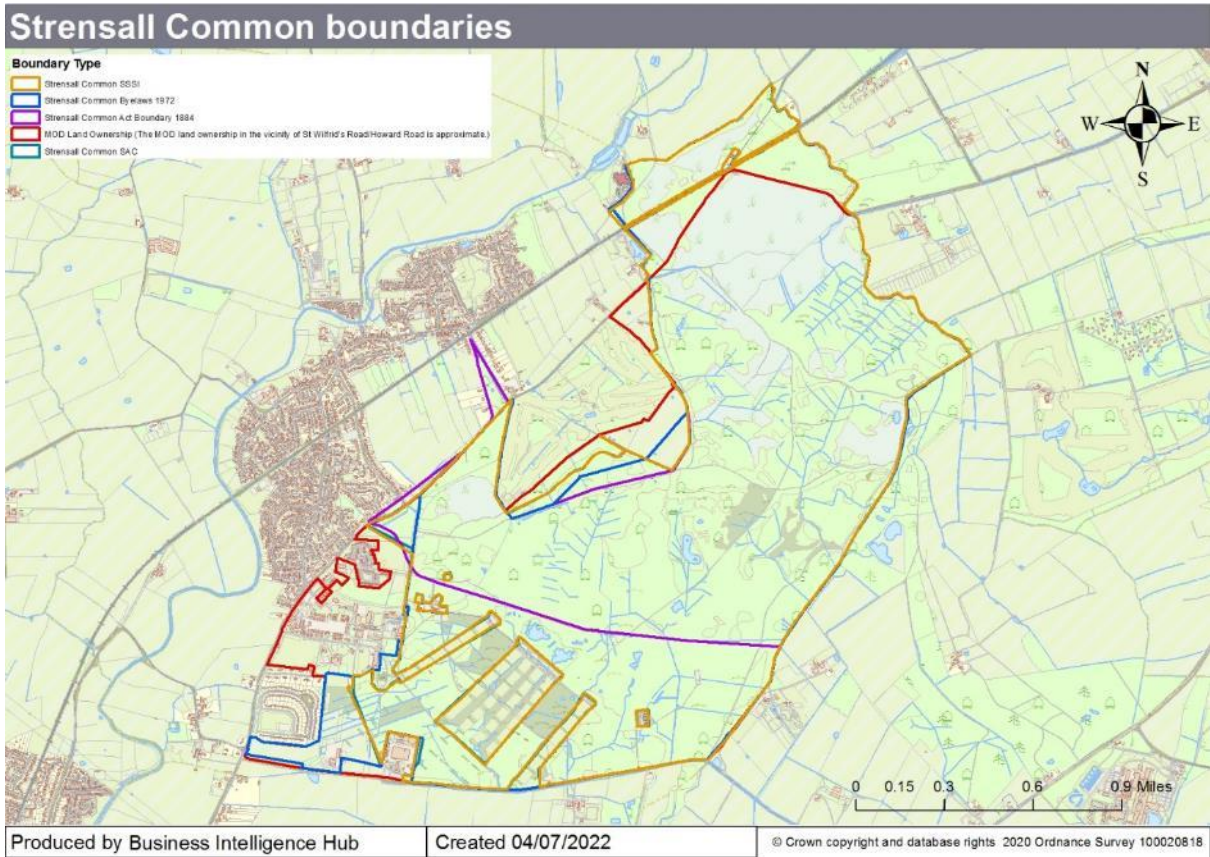
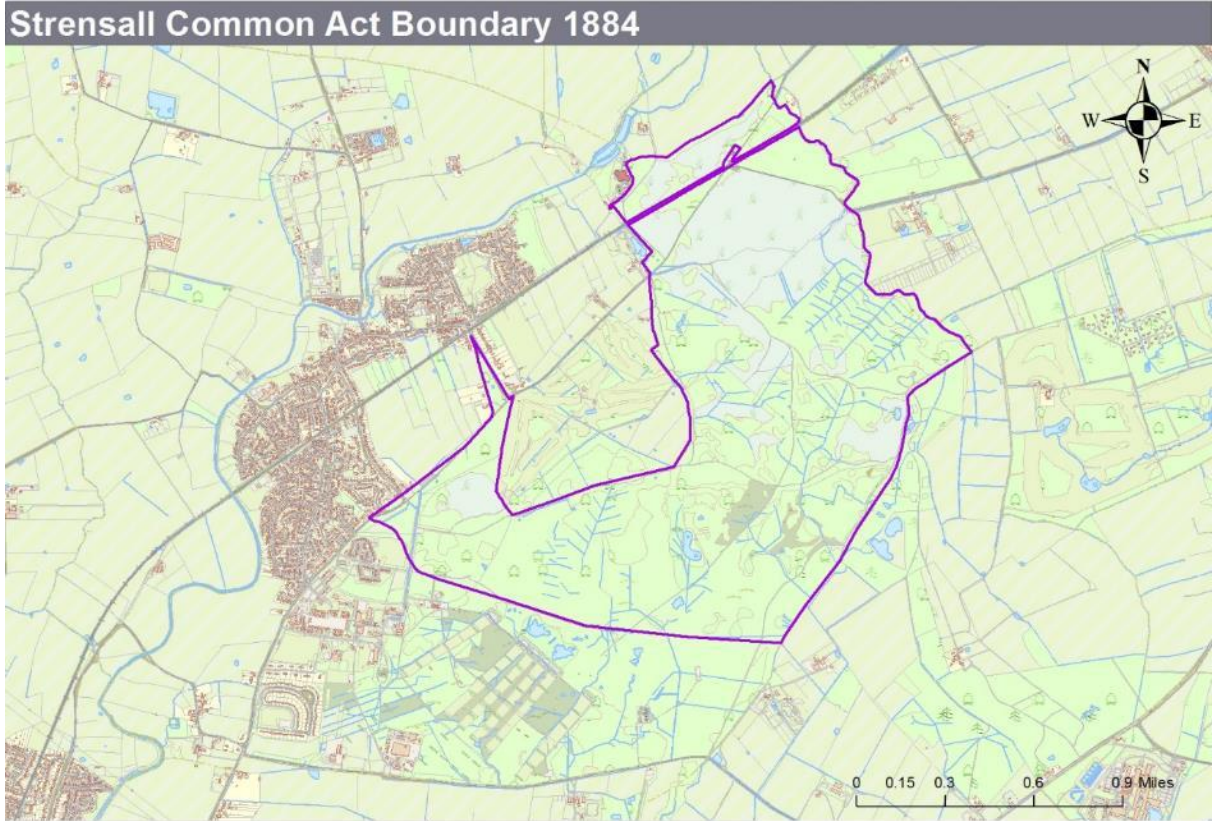
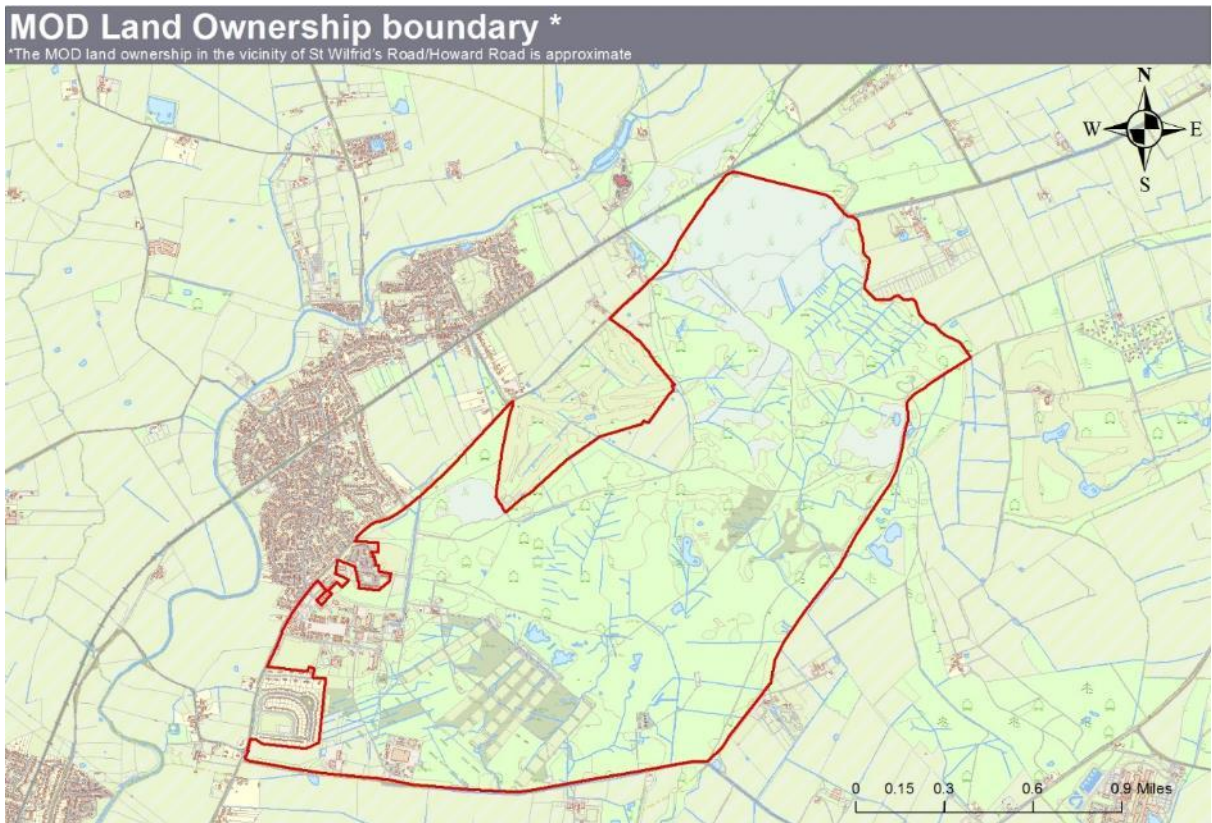


Figure 1: Plan of Strensall Common boundaries



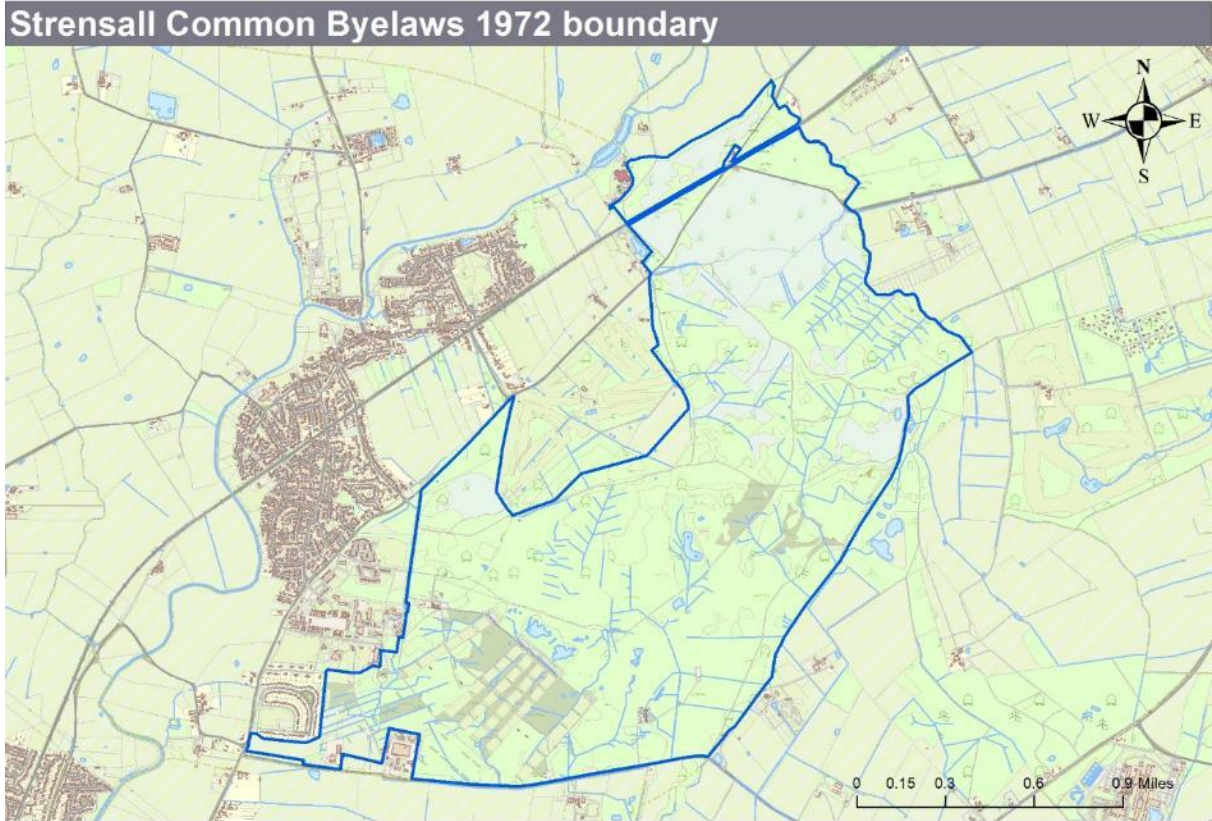
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Figure 2: Plan of Strensall Common Act Boundary 1884



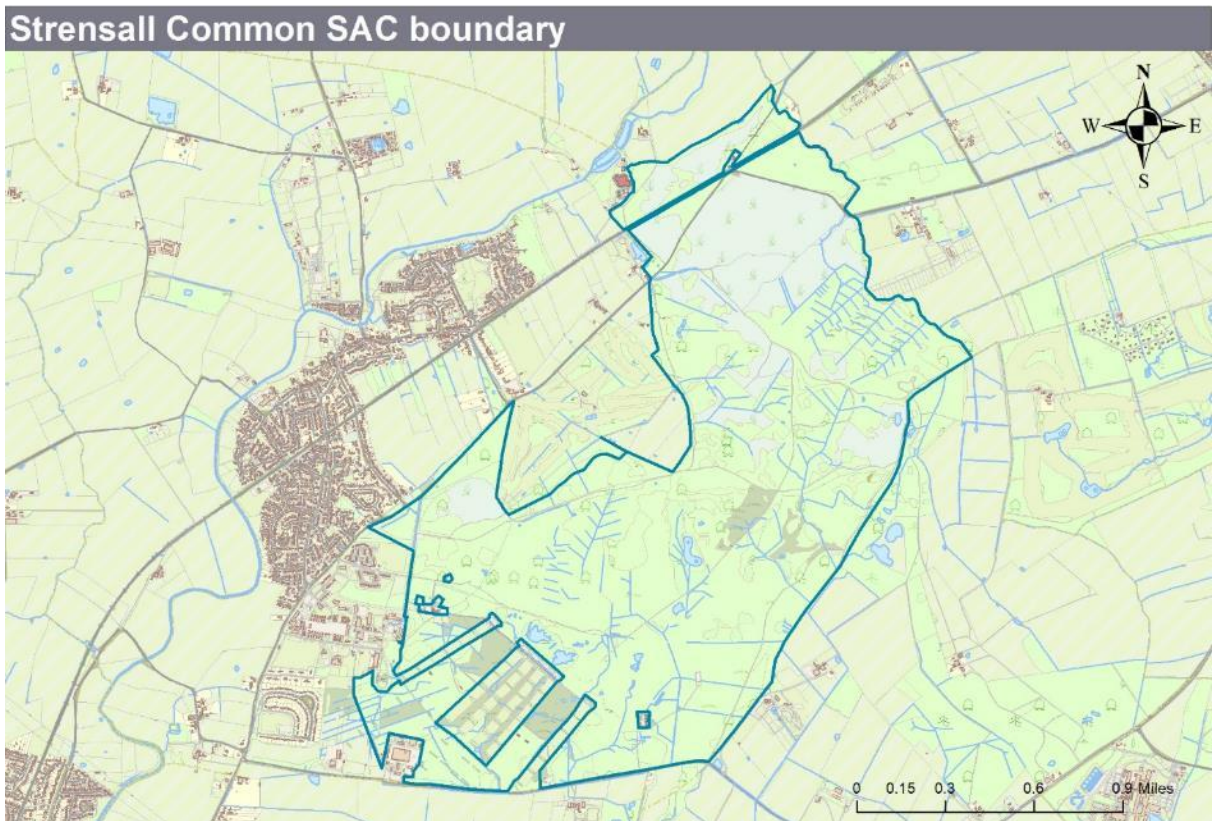
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Figure 3: Plan of MOD Land Ownership boundary



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Figure 4: Plan of Strensall Common Byelaws 1972 boundary



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Figure 5: Plan of Strensall Common SAC boundary

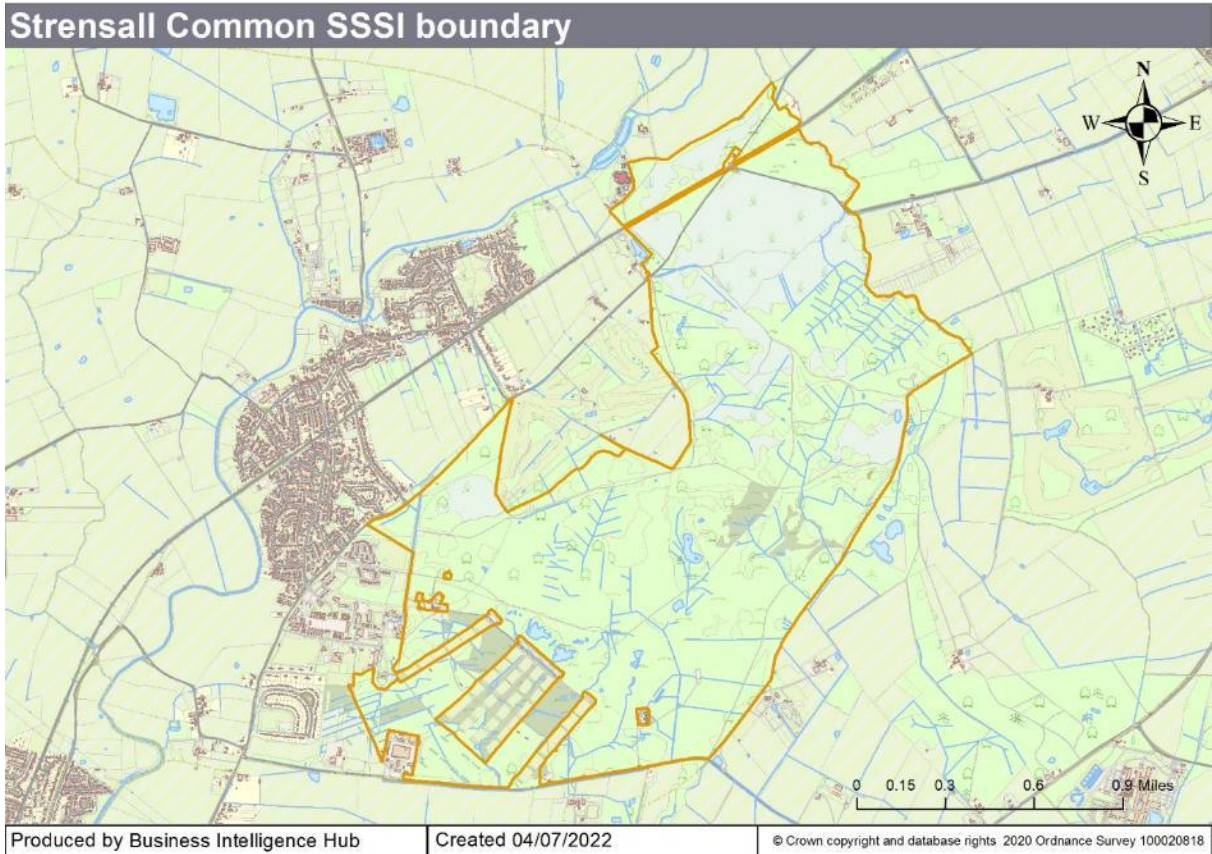


Figure 6: Plan of Strensall Common SSSI boundary

Appendix 2

List of Incidents within the SAC Recorded by NE and / or the Strensall Training Area Conservation Group

OFFICIAL-SENSITIVE

Comments that have been made during meetings of the Strensall Training Area Conservation Group over the last 10 years:

- 2011 – no incidents
- 2012 – incidents of sheep worrying (minutes do not catalogue the number of incidents but words used imply more than one occurrence); minutes also mention sheep theft / poaching but do not quantify or detail;
- 2013 – incident of sheep worrying (minutes do not indicate whether this was a single incident or more than a single incident); minutes also mention a sheep theft;
- 2014 – one incident of poaching (assumed sheep but not specified);
- 2015 – no incidents reported;
- 2016 – no incidents reported;
- 2017 – one fire reported; one report of motorbikes accessing the SAC (location not recorded);
- 2018 – one report of unauthorised vehicles (location not specified); one fire; one reference to various instances of fly tipping (locations not recorded);
- 2019 – a reference to '3 or 4 fires' [Note: NE noted 2 fires in 2019] and 1 incident of sheep worrying;
- 2020 – two fires reported;
- 2021 – report of oil in ditch adjacent to golf course.

OFFICIAL-SENSITIVE