

DRAFT - Thames Basin Heaths Delivery Framework

Updated following October 2008 Board meeting and 5 Nov LPA Officer meeting

1. Aim

1. The aim of this Delivery Framework is to set out the Thames Basin Heaths Joint Strategic Partnership Board's recommendations to local authorities within the vicinity of the **Special Protection Area (SPA)** of measures that can enable the delivery of housing in the vicinity of the SPA without that development having a significant effect on the SPA as a whole.

2. Objectives

- 2.1 The objectives of the Delivery Framework are:
 - i. To recommend a consistent approach to the protection of the SPA from the impacts of residential development.
 - ii. To recommend the type and extent of residential development that may have a significant impact alone or in combination on the SPA.
 - iii. To recommend key criteria for the delivery of avoidance measures.
- 2.2 The Delivery Framework will be accompanied by a programme of actions for the local and collective delivery and implementation of avoidance measures and a clear strategy for monitoring the SPA.

3. Key Principles

- 3.1 The following key principles summarise the overarching context for the recommendations within this Delivery Framework.
 - 3.1.1 All net new residential development - when considered either alone or in combination with other plans and projects - is likely to have a significant effect on the SPA and should therefore provide or contribute to the provision of avoidance measures.
 - 3.1.2 Development can provide - or make a contribution to the provision of - measures to ensure that they have no likely significant impact on the SPA. In doing so, residential development will not have to undergo a full habitats regulations assessment.¹ The option remains for developers to undertake a

¹ This principle has been established through the High Court Judgement of J Sullivan in Hart DC v SoS for Communities and Local Government [2008]. **However adopting the**

habitats regulations screening assessment and where necessary a full ~~AA~~ **appropriate assessment** to demonstrate that a proposal will not adversely affect the integrity of the SPA.

- 3.1.3 A three prong approach to avoiding likely significant impact on the SPA is appropriate², however this framework focuses on the two prongs of SANG (**suitable alternative natural greenspace**) and Access Management, which the Board considers are the most appropriate forms of avoidance in the immediate term.³
- 3.1.4 This framework sets out the Board's recommended approach to the provision of avoidance measures, but it is acknowledged that there may be exceptional circumstances where local circumstances or evidence base, or the detail of the proposed new residential development, may justify greater local specificity in applying these principles. The Board has no formal control on the planning decisions which are to be made in respect of the Thames Basin nor does it set any formal planning policy.
- 3.1.5 Local authorities should refer to this delivery framework in the preparation of local or joint mini-plans, SPDs and/or DPDs; and should ensure that appropriate references are made to the provision of SPA impact avoidance measures in their LDF and supporting implementation documents in line with policy within the South East Plan. In developing mini-plans, SPDs or DPDs in relation to the SPA, local authorities should satisfy themselves as to whether the document requires ~~an appropriate assessment~~ **Habitats Regulations Assessment** or should be subject to **Strategic Environmental Assessment**.
- 3.1.6 A key objective of this framework is to recommend consistent standards for the application and provision of avoidance measures. However, as a strategic document it cannot address every foreseeable circumstance. There may be some exceptional circumstances where local authorities consider that a more or less prescriptive approach needs to be taken in the light of the individual circumstances and local evidence- these should be carefully justified.
- 3.1.7 The Joint Strategic Partnership Board will retain an overview of local authority mini-plans, SPDs and DPDs, and will seek to ensure

framework approach does not negate the need to undertake a Habitats Regulations Assessment (see para 3.1.5)

² That is, focusing on (i) provision of suitable alternative natural greenspace (SANG), (ii) access management; and (iii) habitat management)

³ In the longer term, habitat management may be taken to be an avoidance measure; however, the focus in the short term must be improving the quality of the SPA to favourable condition status. This is a duty of SPA landowners which falls outside the development control system.

that a consistent approach is being applied and sufficient avoidance measures are being provided.

4. What development is covered?

- 4.1 This section describes the location, type and scale of development to which it is recommended the Delivery Framework be applied.

Location

- 4.2 The avoidance measures recommended in the Delivery Framework should be applied within a 'Zone of Influence' defined as the area from 400m from the **perimeter of the SPA** (measured as the crow flies to **nearest part of** the ~~primary point of access on the~~ curtilage of the dwelling) to 5km from the perimeter of the SPA, (measured as the crow flies from the primary point of access to the curtilage of the dwelling).⁴
- 4.3 In exceptional circumstances it may be appropriate for local authorities to modify the extent of this zone to take account of physical obstructions to cat, or human movement or access.
- 4.4 Applications for large scale development proposals beyond the zone of influence should be assessed on an individual basis. Where appropriate a full **appropriate** assessment may be required to ascertain whether the proposal could have a significant impact on the SPA.⁵
- 4.5 Within 400m of the SPA measured as the crow flies from the SPA perimeter to the point of access on the curtilage of the dwellings) the impact of net new residential development on the SPA is likely to be such that it is not possible to conclude no likely significant effect on the SPA. There should therefore be a presumption against development within this zone – an AA will be needed to demonstrate that any development will not have an adverse effect on the SPA and/or the acceptability of any

⁴ The South East Plan Technical Assessor's ('the Assessor') recommended that a zone of influence should be defined on the basis of travel distance. A travel distance approach was trialled by LAs, however this approach led to increased confusion and uncertainty. The Board therefore recommends that in the interests of certainty and clarity the Zone of Influence of the Delivery Framework approach to provision of avoidance measures is based on a 5km linear distance.

⁵ This is in line with the general requirements of the Habitats Regulations and reflects the approach proposed by the Assessor, **who recommended that between 5 and 7km from the edge of the SPA residential developments of over 50 houses should be assessed and may be required to provide appropriate mitigation.** It is recommended that such cases be considered on a case by case basis.

avoidance measures provided⁶. In exceptional circumstances the 400m distance may be modified by local authorities to take account of physical obstructions to cat movement and human access.

Type of development covered

4.6 The avoidance measures recommended in the Delivery Framework should be sought in relation to the following types of development:

- i) Proposals for 1 or more net new dwelling unit falling within Use Class C3 (residential development).⁷
- ii) Proposals for 1 or more net new units of staff residential accommodation falling within Use Class C1 and C2.⁸

except large residential development proposals which, due to their scale and potential impact and ability to offer their own alternative avoidance measures, should be considered by local authorities on a case-by-case basis. The numerical definition of 'large development proposals', and the ability of large schemes to provide their own avoidance measures, will vary depending on the particular locality of the proposals.

4.7 Small-scale residential developments - whilst unlikely to have an individual impact on the SPA - are likely to have an effect on the SPA in combination with other residential developments, therefore should provide a contribution towards the provision of avoidance measures. ~~The Delivery Framework recommends some flexibility in the provision of SANG for development of less than 10 net new dwellings (see para 5.12).~~⁹

⁶ The Assessor recommended the retention of a 400m zone in which no development should be allowed unless it could be demonstrated that it would not lead to further recreational use of the SPA or have any other significant effect on its integrity.

⁷ See footnote 8

⁸ The principal impact on the SPA being dealt with in this framework is that resulting from recreational pressure and urbanisation impacts associated with residential development (eg cat predation). On this basis it is recommended that the delivery framework approach generally be applied to all net new development which provides permanent accommodation. It is recommended that other C1 and C2 uses are assessed on a case by case basis.

⁹ ~~The Assessor recommended that only new residential development of 10 dwellings or more would have an impact on the SPA. The Board considers that this approach fails to recognise the longer term cumulative effect of small scale developments, however accepts his conclusion that *individually* developments of less than 10 dwellings will not have a significant impact on the SPA. Thus this Delivery Framework recommends a more flexible approach to the provision of SANG in relation to smaller developments. The threshold of 10 is identified on the basis of the definition of major development in the GDPO 1995.~~

- 4.8 The recommendations within this Delivery Framework apply only to net new residential development. It is considered that replacement dwellings will not generally lead to increased recreational pressure therefore will have no likely significant effect on the SPA.
- 4.9 All other applications for planning permission for developments in the vicinity of the SPA will should be screened to assess whether they will have a likely significant impact (individually or in combination with other plans or projects) and where necessary a full habitats regulations assessment should be undertaken.
- 4.10 The recommendations in this framework apply to applications for full or outline planning permission. Reserved matters, discharge of conditions or amendments to existing planning consents should be considered on an individual basis by local authorities.

5. Avoidance measures

- 5.1 This section describes the measures recommended by the Board to avoid any likely significant effect of development on the SPA. The suite of avoidance measures should be provided for in order that it can function in perpetuity¹⁰.

SANG (Suitable Alternative Natural Greenspace)

- 5.2 The provision of alternative recreational land to attract new residents away from the SPA is a key part of the three pronged approach set out above (para 3.13).
- 5.3 SANG should be delivered by local authorities or groups of local authorities and funded by developer contributions. To meet the requirements of the Habitats Regulations, SANG must be provided in perpetuity.
- 5.4 Joint working between authorities to provide SANG may be appropriate when:
- i) A LPA alone is not able to provide sufficient SANG land to meet its local need.
 - ii) The catchment of a SANG extends into a neighbouring authority.

¹⁰ The Board recommends that perpetuity be defined as a period of 99 years minimum from the completion of the development. In reality, contributions should be calculated on the basis of the period within which payments will effectively provide for 'perpetuity'.

- iii) There is the opportunity to add value and/or capacity to individual SANG by developing a network of SANGs across boundaries.

5.5 ~~The following~~ Opportunities for cross boundary working should be explored **by local authorities** .:

- ~~i) The current Blackwater Valley Partnership 'sub area', comprising Bracknell Forest, Guildford, Hart, Rushmoor, Surrey Heath, Waverley and Wokingham.~~
- ~~ii) Runnymede and Windsor and Maidenhead.~~
- ~~iii) Woking, Guildford and Elmbridge.~~

~~Additional opportunities for cross boundary working between local authorities may also exist.~~

5.6 SANG provision should be funded by developer contributions, collected at a local or cross authority level; the calculation of costs should take account of acquisition costs, upgrading costs, and maintenance and management costs in perpetuity¹¹. Alternatively SANG may provided by developers for individual developments.

5.7 Sufficient SANG should be provided in advance of housing ~~occupation~~ **completion**¹² to ensure that there is no likely significant effect on the SPA, however, **in exceptional circumstances contributions may need to be pooled to deliver large scale projects**. ~~options for overcoming short term delays in the provision of agreed SANG should be explored by Natural England.~~

5.8 SANG should be provided on new or existing public open space, taking into account the availability of land and its potential for improvement. Where it is proposed to use existing public open space as SANG, the existing patterns and rights of public use must be taken into account and protected. When new land or existing public open space is proposed as SANG, any existing nature conservation interests must be taken into account.

¹¹ The Assessor recommended that only new residential development of 10 dwellings or more would have an impact on the SPA. The Board considers that this approach fails to recognise the longer term cumulative effect of small-scale developments, however accepts his conclusion that *individually* developments of less than 10 dwellings will not have a significant impact on the SPA. Thus this Delivery Framework recommends a more flexible approach to the provision of SANG in relation to smaller developments. The threshold of 10 is identified on the basis of the definition of major development in the GDPO 1995. **See footnote 9**

¹² Completion should be defined as when an *individual* dwelling is completed, rather than when a whole development is completed.

- 5.9 SANG should be provided on the basis of at least 8ha per 1,000 population¹³. The average occupancy rate should be assumed to be 2.4 persons per dwelling unless robust local evidence demonstrates otherwise.¹⁴
- 5.10 The size of land suitable for use as SANG will depend on the individual site characteristics and location, including its relationship within a wider accessible open space or network of green infrastructure. The preference should be for SANG to be of at least 2ha in size, and located within a wider open space or network of spaces. Across the affected area, a range of types and sizes of SANG should be provided, offering a range of experiences, including large SANG which have the benefit of being able to act at attractor sites.
- 5.11 The catchment of SANG will depend on the individual site characteristics and location, and their location within a wider green infrastructure network. As a guide, it should be assumed that:
- i) SANG of 2-12ha will have a catchment of 2km
 - ii) SANG of 12-20ha will have a catchment of 4km
 - iii) SANG of 20ha+ will have a catchment of 5km¹⁵
- 5.12 For the purposes of monitoring the available capacity of SANG, developments of less than 10 dwellings do not need to be within a specified distance of SANG provided that a sufficient quantity and quality of SANG land to cater for the consequent increase in population is identified and available in that district or an adjoining district and functional prior to occupation¹⁶. **However, all net new dwellings (including on sites of less than 10 dwellings) will be required to contribute to the provision of avoidance measures.**
- 5.13 ~~However,~~ regard should be had to the cumulative impact of the small development proposals with other anticipated developments in the vicinity – for example where the local authority receives an application for planning permission for development which forms part of a more substantial proposal on the same land or adjoining land.

¹³ Based on the recommendations of the South East Plan Technical Assessor.

¹⁴ Based on the occupancy rate across the 11 affected authorities in 2006.

¹⁵ These catchments are indicative and based on initial research by Natural England as set out in the draft Delivery Plan.

¹⁶ Whilst the Board considers that SANG is not required to cater for the individual impact of small developments (see footnote 8), in order to provide certainty that the overall (cumulative) impact of all small developments on the SPA is avoided, an appropriate level of SANG should be provided within the vicinity of the SPA as a whole.

5.14 In assessing the required quality for new SANG land regard should be had to the guidance published by Natural England.

5.15 The Board will retain an overview of SANG provision to ensure that sufficient SANG is delivered to deliver South East Plan housing allocations.

Access Management

5.16 Access management should be delivered by existing landowners and managers and funded by developer contributions, **and provided for in perpetuity.**

5.17 Access management should be coordinated strategically, by Natural England working with local authority and land managers, in line with an overarching strategy for access management on the SPA and SANGs, which should include:

- i) A consistent SPA/SANG message - which may include signs, leaflets, educational material, etc;
- ii) Guidance on access management on the SPA e.g. rangers, seasonal restrictions, campaigns etc;
- iii) Guidance over access management on SANG e.g. provision of attractive facilities

5.18 It should be funded by ensuring that the charge levied on developer contributions includes allowance for these measures being provided. That proportion of the charge relating to the access management measures should be collected at a local level, but pooled for strategic allocation. Alternatively, where a developer is also an SPA and SANG landowner, access management measures may be provided by developers.

5.19 Access management should focus on 'soft' measures - where access restriction is proposed for the purposes of the avoidance of recreational impact, this should be as a last resort, and reasons must be clearly identified and restrictions carried out with legal requirements and provisions to protect existing public or open access rights. Care must also be taken to protect other existing nature conservation interests on the SPA **including SSSI interest features.**

5.20 The JSPB will retain an overview of access management provision to ensure that sufficient measures are being taken to protect the SPA.

6. Monitoring and review

- 6.1 Monitoring should be carried out by local authorities, Natural England and existing landowners and managers. The monitoring work should be funded by ensuring that the charge levied on developer contributions includes an allowance for the cost of this work. That proportion of the charge relating to monitoring should be collected at a local level, but pooled for strategic allocation.
- 6.2 Monitoring should be coordinated strategically, in line with a Monitoring Strategy agreed by the Joint Strategic Partnership Board.
- 6.3 In the short term, monitoring should be taken include work towards improving the evidence base - to be undertaken by Natural England.
- 6.4 Ongoing monitoring should address:
 - i) Habitat condition and bird numbers (an existing NE responsibility).
 - ii) The provision of SANG and housing delivery
 - iii) Access Management
 - iv) Visitor Surveys

7. Review of the delivery framework

- 7.1 The Joint Strategic Partnership Board will review the results of the monitoring work undertaken on an annual basis. Where necessary the Board will consider amendments to the Delivery Framework that are required to address identified problems. Any amendments agreed by the Board in this way should in turn be considered by individual local planning authorities when updating mini-plans, SPDs or DPDs.

**Joint Strategic Partnership Board
October 2008**

GLOSSARY

Term	Definition
AA	See Appropriate Assessment
access management	Measures to limit the damage caused by visitors to the SPA. This can include 'soft' measures, such as education and wardening, or 'hard' measures such as limiting car parking, pathways etc.
the affected authorities / affected area	Those local authorities that surround the SPA, and that wholly or partially fall within 5km of the SPA boundary.
Appropriate Assessment, or AA	Strictly speaking, the second stage in a Habitats Regulations Assessment, but often used to refer to the process of assessing the possible impact of a new development or plan on European sites.
the (Technical) Assessor's report	The report from the Planning Inspector who ran the draft South East Plan Examination in Public Technical Sessions looking at the Natural England draft Delivery Plan.
avoidance measures	Used to refer to the collection of measures that may be used to avoid the negative impact of new development on the SPA; that is, SANG and access management. This definition also sometimes includes monitoring.
the (Joint Strategic Partnership) Board	A forum of elected representatives from the 11 authorities that surround the SPA, and 2 county councils, and advisors from key stakeholder groups including the nature conservation sector and development industry and major landowners
competent authority	A body with responsibility for ensuring that new developments or plans do not have a negative effect on a European site. Local authorities are competent authorities.
Delivery Framework	A set of recommendations from the Board about measures that will help to enable consistent provision of avoidance measures across those local authorities within the vicinity of the SPA.
Habitat management	Measures to improve the quality of the heathland so that the protected bird species are able to live and breed successfully.
Habitat Regulations Assessment	The assessment of the possible impact of a new development or plan on European Sites. Also referred to as an 'Appropriate Assessment'
HRA	See Habitat Regulations Assessment
Joint Strategic Partnership or JSP	A partnership of those local authorities affected by the SPA designation along with a wide range of stakeholders who have an interest in providing housing whilst ensuring the protection of the SPA.
Mini-plan	A short term strategy produced by a local authority planning department to allow development in the vicinity of the SPA to go ahead through the collection of developer contributions to fund the provision of SANG by the local authority.
Draft Delivery Plan	The original avoidance measure framework document published by Natural England in 2006, which sets out the

	principles using SANG and access management to avoidance the impact of new residents on the SPA.
SANG	Suitable Alternative Natural Greenspace – alternative open space similar in character to the SPA provided to attract new residents away from the SPA. Cross boundary SANG has the potential to act as an avoidance measure for more than one authority, or for a different authority to that in which it is located.
SPA	Special Protection Area – a protected habitat designated under European law
TBH	Thames Basin Heaths

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