

APPENDIX C

WAVERLEY BOROUGH COUNCIL

EXECUTIVE 29 SEPTEMBER 2009

Title:

DRAFT THAMES BASIN HEATHS SPECIAL PROTECTION AREA AVOIDANCE STRATEGY

[Portfolio Holder for planning: Cllr Richard Gates]

[Wards Affected: All Farnham wards]

Summary and purpose:

This report sets out the background on the SPA, the legal issues and (as Annexes) the outcome of the public consultation, together with the report from Jed Griffiths, an independent planning consultant, on potential alternative SANG.

The Planning Policy SIG considered this report at its meeting on 11th September 2009.

How this report relates to the Council's Corporate Priorities:

The environmental implications of the Avoidance Strategy are that it shows how the mitigation open space needed to compensate for new development in Farnham can be provided.

Equality and Diversity Implications:

No implications.

Resource/Value for Money implications:

The Avoidance Strategy sets out the requirement for Section 106 Agreements on new dwellings within the Farnham area. The funding is used to improve Farnham Park through enhancing and monitoring its role as a Suitable Alternative Natural Greenspace (SANG). This approach has offered considerable value for money, as the works to the Park have been very beneficial.

Legal Implications:

The Legal Section of the Council completes Section 106 Agreements with Developers. A robust Avoidance Strategy is required to ensure compliance with the Habitat Regulations.

Background

1. The Thames Basin Heaths (TBH), an internationally designated Special Protection Area (SPA), is fragmented by urban development. The SPA lies very close to the north side of Farnham. The cumulative effect of further residential development up to five kilometres from these protected heaths will have a significant adverse effect on the heaths and in particular, on three rare

species of birds – nightjar, Dartford warbler and woodlark. Avoidance and/or mitigation measures are required to avoid a situation arising from European legislation in which local authorities in the area will not be able to grant planning permission for further residential development. In response, Natural England produced a Thames Basin Heaths Delivery Plan in 2006.

2. A key element in the plan was for Councils to identify Suitable Accessible Natural Green Space (SANG) for people to go to, which has similar feel of open natural space as the Special Protection Area. Developers who want to build housing in Farnham can provide their own SANGS or sign a Section 106 Agreement and pay a tariff towards the maintenance and improvement of SANGS.
3. SANGS are part of a three-pronged approach to safeguarding the Special Protection Area devised by Natural England, which also includes access management measures to affect the behaviour of visitors and habitat management measures to carry out conservation objectives for the Special Protection Area.
4. The Council produced an Interim Miniplan in April 2007. The approach adopted by the Council was to identify Farnham Park as SANG. The Interim Miniplan explained the approach, set out the tariff and the improvements that the funding would produce.
5. When the interim Miniplan was approved by the Council in April 2007, it assumed a SANG capacity of 10.9 hectares.
6. Natural England had confirmed during the preparation of the Interim Miniplan that 85 hectares of Farnham Park qualified as SANG. The view of the Council's Leisure Department at that time was that the Park was being used at 50% capacity. Taking into account, a precautionary approach an assumption of 75% user capacity was made yielding SANG capacity of 21.25 ha. This figure was subsequently reduced further to 10.9 to take account of limitations in the levels of car parking available to visitors.
7. By early 2009, almost all the available SANG had been taken by planning applications (including East Street), such that no further housing could be granted planning permission in Farnham. As a result, Executive on 7th February agreed that a review of the Interim Miniplan be commenced, together with public consultation.

The Legal Position

8. The SPA was classified in March 2005 for nightjar, woodlark and Dartford warbler¹. The site is protected by the Conservation (Natural Habitats) Regulations 1994, commonly referred to as the Habitats Regulations. The Habitats Regulations transpose the European Community's Directives

¹ The site qualifies because it is regularly used by 1% of more often Great Britain population of birds listed in Annex 1 of the Directive 79/409 on the Conservation of Wild Birds, commonly called the Birds Directive.

79/409/EEC 1979 on the Conservation of Wild Birds and 92/43/EEC on the Conservation of Natural and Semi-Natural Habitats and of Wild Fauna and Flora into UK legislation. These Directives are commonly referred to as the Birds Directive and Habitats Directive respectively. Authorities responsible for issuing permissions or authorisations that may affect a site protected by the Habitats Regulations are called competent authorities. Local planning authorities are the competent authorities for planning applications affecting the SPA.

9. A proposal for new residential development, whether a single new dwelling or many and whether a conversion or a new building is a 'plan or project' to which the Habitats Regulations apply². The Regulations must be applied by the Council when considering whether to grant planning permission and by the Secretary of State when he or an Inspector is delegated to make the decision on the Minister's behalf in considering an appeal against a refusal of planning permission.
10. Regulations 48 to 53 of the Habitats Regulations established a set of procedures for decision making by competent authorities with explicit reference to planning permission.
11. In essence, the Habitats Regulations require all plans or projects with the potential to affect an SPA and not directly connected with and necessary to their management for nature conservation to be assessed. Those that are likely to have a significant effect on the site, alone or in combination with other plans or projects must be subject to a more detailed assessment in order to ascertain if the proposal would adversely affect the integrity of the site.
12. Developments can provide - or make a contribution to the provision of - measures to ensure that they have no likely significant effect on the SPA. If they do so residential development will not have to undergo an appropriate assessment³. The option remains for developers to undertake a Habitats Regulations screening assessment and where necessary, a full appropriate assessment to demonstrate that a proposal will not adversely affect the integrity of the SPA.

Public Consultation on the Avoidance Strategy

13. Attached as Annexe 1 is an overview of the key issues raised by the consultation while Annexe 2 summarises all representations received.

Potential SANG sites

14. Assessment of potential SANG sites has been undertaken by Jed Griffiths, planning consultant, and his report is attached at Annexe 3.

². The Conservation (Natural Habitats&) Regulations 1994 Regulation 48(1).

³. This principle has been established through the High Court Judgement of J Sullivan in Hart DC v SoS for Communities and Local Government (2008)

Planning Policy SIG

The Planning Policy SIG, at its meeting on 11th September 2009, considered the report and was content with the course of action recommended below.

Recommendation

That the Executive is invited to consider and comment on Annexes 1,2 and 3 prior to further consideration of this matter at the Executive on 1st December 2009.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

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Annex 1 Key issues arising from the consultation

Annex 2 Summary of all responses

Annexe 3 Report on potential alternative SANG