

Thames Basin Heaths Special Protection Area

Briefing Note for Applicants

1. What is the Special Protection Area?

The Thames Basin Heaths Special Protection Area (SPA) is a network of heathland sites which are designated for their ability to provide a habitat for the internationally important bird species of woodlark, nightjar and Dartford warbler.

2. Where is the designated area?

The Thames Basin Heaths SPA covers over 8,000 hectares of land in Surrey, Hampshire and Berkshire; scattered across 11 Local Authorities. The SPA comprises 13 separate areas designated as Sites of Special Scientific Interest (SSSI), a national designation for wildlife.

The SPA within Bracknell Forest covers over 1,300 hectares and includes Crowthorne Woods, Wildmoor Heath, Broadmoor Bottom and Broadmoor to Bagshot Heaths and Woods (the area surrounding the Look Out Discovery Centre).

3. What is the legal framework?

The Conservation of Habitats and Species 2010 (as amended), commonly referred to as the Habitats Regulations, is UK legislation which aims to protect areas classified under the European Communities Directives *79/409/EEC 1979 on the Conservation of Wild Birds* (the Birds Directive) and *92/43/EEC on the Conservation of Natural and Semi-Natural Habitats and of Wild Fauna and Flora* (the Habitats Directive). The area of heathland within Bracknell Forest was designated as a proposed SPA in 2000, and then given full SPA status in March 2005.

Under the Habitats Regulations, any competent authority e.g. Bracknell Forest Council has a duty to ensure that all the activities they regulate will have no adverse effect on the integrity of the SPA. Regulation 61 of the Habitats Regulations requires the Council to assess the possible effects of the various proposals, including planning applications, on the SPA.

4. In theory, what does this legislation mean for planning?

The SPA designation is a serious constraint that must have proper consideration during the plan-making and application processes. Under the Habitats Regulations, no plan or project which may affect a European site can be undertaken unless it can be shown that there will be no adverse impact on the integrity of that site, either alone or in-combination with other plans or projects. If it cannot be demonstrated there is no adverse impact then the project cannot go ahead, unless there are no alternative solutions and imperative reasons of overriding public interest.

The development may go ahead if suitable mitigation measures are proposed, which satisfy the local authority, in agreement with Natural England, that any adverse impacts will be removed. Certain information on the proposal and any mitigation measures will be requested from the applicant to enable the Council to carry out a Habitats Regulations

Assessment (HRA). The purpose of the HRA is to ascertain, in view of the site's conservation objectives, whether the application would lead to an adverse impact on the integrity of the SPA, either alone or in-combination (after taking into account the mitigation measures proposed).

If significant effects are identified, then the project should be subject to an assessment of its implications on the SPA, in view of the site's conservation objectives. This is known as an Appropriate Assessment and the Habitats Regulations require the Council to carry this out on a case-by-case basis, in agreement with Natural England. See point 8. below.

Regulation 61(2) allows the decision-maker, i.e. the Council, to ask the applicant to provide information that may reasonably be required for the purposes of the Appropriate Assessment. In the absence of such information, the Council may not be able to conclude there will be no adverse effect; therefore, in this case, the application would be refused.

The Appropriate Assessment will use the information presented by the applicant, together with Natural England's comments, to identify the effects of the proposal on the SPA, and consider the extent to which any mitigating measures are likely to avoid, reduce or ameliorate adverse effects. In the absence of a compelling case that there will be no harm to the SPA, then the Precautionary Principle requires that the Council, in determining a planning application, rely on Natural England's consultation response that there would be harm. The planning authority would then have a duty to refuse the application. **The Council shall agree to the project only after having ascertained that it will not adversely affect the integrity of the site.**

The Council has an approved strategy for avoiding harm to the SPA. Natural England has agreed that if the plans are implemented as stated in the SPA Avoidance and Mitigation Strategy, with certain monitoring requirements, they will ***stop objecting to consultations on housing applications in those areas of the Borough which have mitigation in line with the avoidance strategy.*** Prospective applicants can make contributions towards the implementation of this strategy which will avoid harm to the SPA, as well as negate the requirement for additional information to inform an Appropriate Assessment.

5. In practice, what does this legislation mean for planning?

Natural England, the government agency responsible for the promotion of wildlife, has identified that recreational pressure, especially dog-walking, will be the predominant significant adverse impact on the bird species for which the SPA is designated. Woodlark and nightjar are ground-nesting birds and therefore particularly sensitive to predation from dogs and cats. Evidence has been presented to support the notion that increased urbanisation around the SPA can be linked to increased predation of the birds.

As a result, a Thames Basin Heaths SPA Delivery Framework <http://www.bracknell-forest.gov.uk/thames-basin-heaths-spa-delivery-framework.pdf> was agreed in 2009, which aims to ensure the Habitats Regulations are implemented by local authorities, and that any new residential development mitigates against additional recreational pressure. Bracknell Forest Council has adopted its own guidance in accordance with the Framework - Bracknell Forest Council Thames Basin Heaths SPA Avoidance and Mitigation Supplementary Planning Document <http://www.bracknell-forest.gov.uk/spa>

<http://www.bracknell-forest.gov.uk/thames-basin-heaths-spa-avoidance-and-mitigation-spd.pdf>

It has been identified that an adverse impact on the integrity of the SPA is likely to result from any residential planning applications within 5 kilometres from the SPA which result in a net increase in housing, and therefore an increase in population. For larger residential developments, this may also apply within 5-7km of the SPA. Whilst 1 net additional dwelling alone may not lead to a significant adverse impact, in combination with the other small developments occurring across the SPA area the cumulative effect could be significant. There is a presumption against residential development within 400m of the SPA.

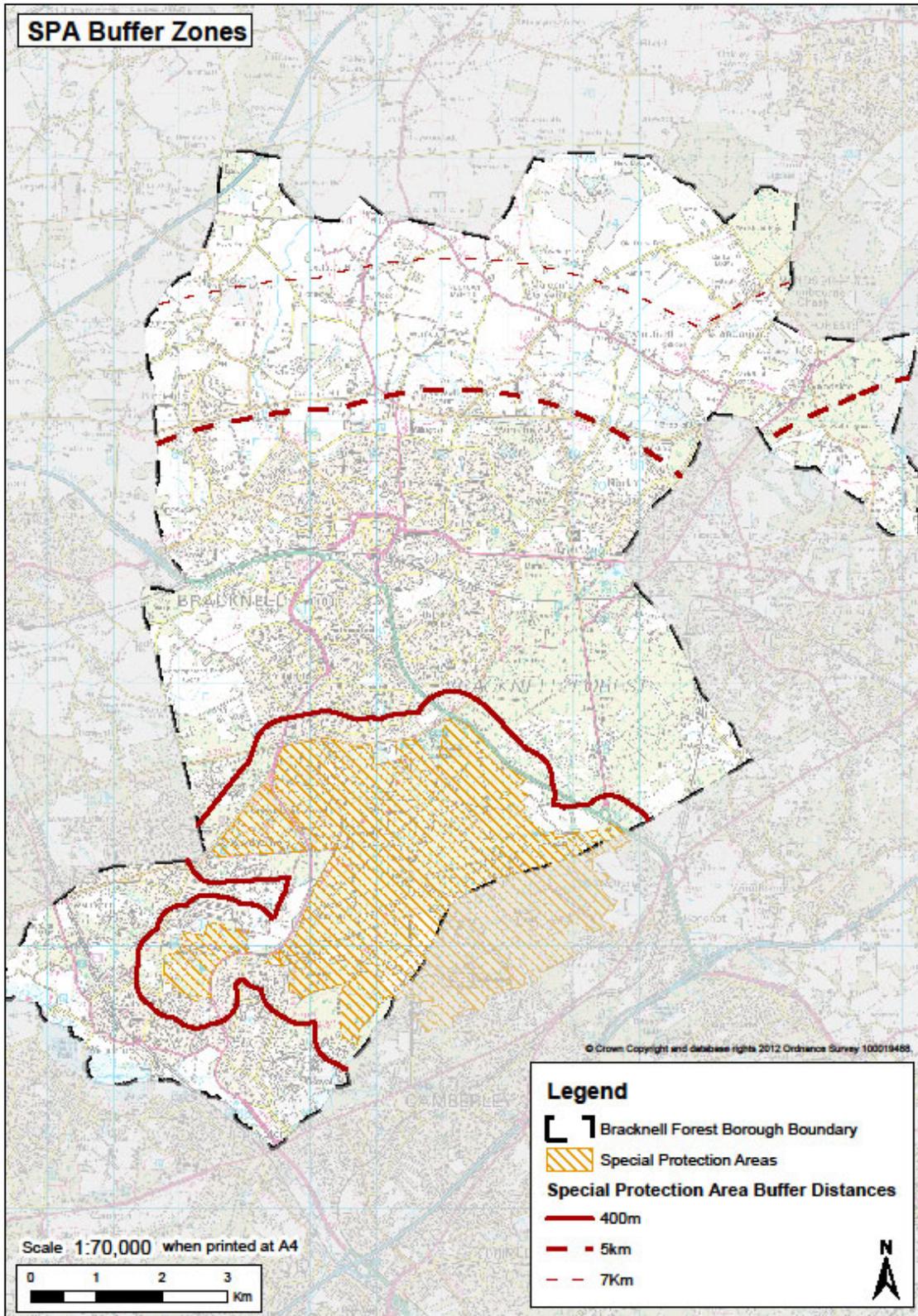
The mitigation measures Natural England believes are able to mitigate against this impact are based on:

- the provision of suitable alternative natural greenspace (SANG), which makes available an alternative site for new residents to use for recreational purposes, instead of the SPA.
- a contribution towards Strategic Access Management and Monitoring (SAMM) to ensure that access management implemented in one area of the SPA does not simply displace visitors onto another part of the SPA.

Developers with prospective applications for non-residential developments should refer to section 2.3 of the Supplementary Planning Document as these are dealt with on a case by case basis.

6. Which parts of Bracknell Forest are affected?

The map below shows the SPA located in Bracknell Forest and the 400m, 5km and 7km buffer zones. The location of a proposed development will affect whether it can be granted planning permission on SPA grounds and whether it needs to provide avoidance mitigation measures.



7. Exceptions to Permitted Development

Permitted development which is likely to be affected by the Thames Basin Heaths SPA is that which results in a net increase in dwellings, as in the following instances:

- a) The recent changes to the GPDO (the Order) introduced by the *Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013* inserts into Part 3, a new Class J which now allows the change of use of a building and any land within its curtilage to a use falling within Class C3 (dwelling houses) from a use within Class B1(a) (offices) without the need for planning permission. This will apply for a period of three years, between 30 May 2013 and 30 May 2016.
- b) Similar provisions set out in Part 3, Class F of the 1995 Order allow, the creation of up to two flats above a shop or Class A2 use (Finance and Professional Services) without planning permission subject to limitations.
- c) The change of use of a dwelling into a House in Multiple Occupation (HMO) (*Communities and Local Government Circular 08/2010 Changes to Planning Regulations For Dwellinghouses and Houses in Multiple Occupation November 2010*) where it results in a net increase in dwellings

It is a condition of the consent given by the General Permitted Development Order that any development which is likely to have a significant effect upon a Special Protection Area cannot proceed unless the Council has given written approval under the Habitats Regulations 2010. A Prior Approval Notice does **NOT** constitute approval under the Habitats Regulations. Therefore, before a development can proceed the owners of the land may need to enter into Section 106 planning obligations in a form approved by the Council.

8. How can a development provide avoidance and mitigation measure which will enable it to proceed?

The approved strategy (Bracknell Forest Council Thames Basin Heaths SPA Avoidance and Mitigation Supplementary Planning Document, March 2012) sets out how adverse effects of new housing can be removed by putting in place certain measures. This replaces the previous strategy in the Limiting the Impact of Development SPD (Section 11 and Appendix C). These include works to areas of open space towards which residential development pays a contribution, in order to avoid impacts on the SPA. Larger developments will need to provide their own areas of suitable alternative open space (SANGS). All relevant developments will be required to pay a contribution towards Strategic Access Management and Monitoring (SAMM) measures in order to manage and monitor visitors on the SPA.

The table below summarises the contributions and / or actions required.

Summary of SPA Avoidance and Mitigation Strategy

	Size of Dwelling (bedrooms)	SANG Contribution (per dwelling)	SAMM Contribution (per dwelling)	Total Tariff ^{1,2} (per dwelling)
RESIDENTIAL DEVELOPMENT³				
Net increase in residential dwellings within 400m of SPA	Presumption against net increase in residential development.			n/a
Net increase in residential dwellings located between 400m and 5km of the SPA (net increase of less than 109 dwellings)	1	£1,350	£399	£1,749
	2	£1,770	£526	£2,296
	3	£2,400	£711	£3,111
	4	£2,730	£807	£3,537
	5+	£3,550	£1,052	£4,602
Large residential developments⁴ located between 400m and 5km of the SPA (net increase of 109 dwellings or more)	1	Provision of a bespoke SANG in accordance with the Avoidance and Mitigation SPD and the Habitats Regulations and in agreement with NE and BFC.	£399	Costs of bespoke SANG + 'per bedroom' SAMM contributions (dependent on housing mix)
	2		£526	
	3		£711	
	4		£807	
	5+		£1,052	
Net increase of	Subject to Habitats Regulations Assessment, in order to establish			

¹ Unless screening under the Conservation of Habitats and Species Regulations 2010 Regulation 61(1) concludes no significant effect on the integrity of the SPA.

² SANG and SAMM should ordinarily be applied unless it can be demonstrated that, through any other package of avoidance and mitigation measures put forward, the development will lead to no significant adverse effects on the integrity of the SPA in accordance with the Conservation of Habitats and Species Regulations 2010. In accordance with this legislation, the local authority must adopt a precautionary approach and any avoidance and mitigation measures must be agreed in advance with the Council and Natural England.

³ Including new build, redevelopment, mixed use schemes, changes of use, conversions, affordable housing, planning applications for approval of reserved matters (where no avoidance or mitigation measures have been secured at outline stage) (including flats, apartments and houses).

⁴ Comprehensive development (or part thereof) including, but not limited to, sites identified by Policies CS3, CS4 and CS5 in the Council's Core Strategy DPD, urban extensions agreed through the adoption of the Site Allocations Local Plan (e.g. Policies SA4, 5, 6, 7, 8, 9) and other major sites.

	Size of Dwelling (bedrooms)	SANG Contribution (per dwelling)	SAMM Contribution (per dwelling)	Total Tariff^{1,2} (per dwelling)
more than 50 residential dwellings located between 5 - 7km of the SPA		likely significant effect on the SPA. May be required to provide appropriate mitigation. Considered on a case by case basis in agreement with NE.		
C2 Nursing Homes within 400m of the SPA		<p>Considered on a case by case basis at the planning application stage, in agreement with Natural England. Avoidance and mitigation measures could include:</p> <ul style="list-style-type: none"> • A workable pet covenant enforceable by the accommodation management company / organisation which precludes the keeping of cat and dogs on the premises; with the exception of assisted living dogs • That the use class of the property is limited to that of C2, and the occupants will only be of limited mobility and thus will not access the Thames Basin Heaths SPA • Measures are put in place to ensure that the car park cannot be made available to the general public 		
C2 Nursing Homes between 400m and 5km of the SPA		<p>Considered on a case by case basis at the planning application stage, in agreement with Natural England. Avoidance and mitigation measures could include:</p> <ul style="list-style-type: none"> • That the use class of the property is limited to that of C2, and the occupants will only be of limited mobility and thus will not access the Thames Basin Heaths SPA 		
NON RESIDENTIAL DEVELOPMENT				
Non-residential development		Subject to Habitats Regulations Assessment in order to establish likely significant effect on the SPA. May be required to provide appropriate avoidance and mitigation measures. Considered on a case by case basis in agreement with NE.		

9. Information required for Appropriate Assessment

Natural England has set out the scope for an Appropriate Assessment. Therefore, to enable to Council to carry out a comprehensive Appropriate Assessment, the following information needs to be submitted by the applicant in addition to the planning application. This is in accordance with Regulations 61(2) and 61(3) of the Habitats Regulations.

Description of the new development

- Location - to include distance from the SPA and a map of the site in relation to the SPA.

- Projected number of additional residents as a result of the development at an average of 2.31 persons per dwelling as set out in the Bracknell Forest Council Thames Basin Heaths SPA Technical Background Document to the Core Strategy DPD.
- Types of residents and dwellings proposed.
- Likelihood of dogs being kept by the residents, with reference to development type and location.
- Future proofing - likelihood of change of use or other changes likely to affect the SPA.
- Any phasing (which may potentially affect phasing of mitigation).

Factors likely to affect the level of use of the SPA by new residents

- Accessibility to the SPA from the development by various transport modes – bike, car, public transport etc.
- Existing alternative open space close to the development.

Mitigation

- The developer should provide detailed information on any mitigation measures that they can provide to offset any significant impacts. This could include:
 - The provision of new semi-natural open space (SANGs) in the locality;
 - Improving attractiveness and capacity of existing semi-natural open space;
 - Improving rights of access across land;
 - Restrictions on the type of residential use, affecting the type or behaviour of residents and the likelihood that they will keep pets, giving consideration to enforceability.

Any potential mitigation is likely to cover a range of issues and it will not be possible to mitigate solely by use of a conditioned agreement on the planning application prohibiting dog or cat ownership. This covers a small part of the impact and will not mitigate against other recreational uses such as walking, cycling and jogging.

The Council strongly recommends that any negotiations concerning mitigation measures are carried out in discussion with Natural England and any other relevant third party, for example the Council or landowners, prior to the application being registered.

Further Information

- Policy NRM6 of the South East Plan <http://www.bracknell-forest.gov.uk/developmentplan>
- Bracknell Forest Council Core Strategy <http://www.bracknell-forest.gov.uk/developmentplan>
- Bracknell Forest Council Thames Basin Heaths SPA Technical Background Document to the Core Strategy DPD <http://www.bracknell-forest.gov.uk/thamesbasinheathsspecialprotectionarea>
- Bracknell Forest Council Thames Basin Heaths SPA Avoidance and Mitigation Supplementary Planning Document <http://www.bracknell-forest.gov.uk/spa>

- HMSO (2010) Statutory Instrument 2010 No. 490. The Conservation of Habitats and Species Regulations 2010
http://www.legislation.gov.uk/uksi/2010/490/pdfs/uksi_20100490_en.pdf
- The Conservation of Habitats and Species (Amendment) Regulations 2012
<http://www.legislation.gov.uk/uksi/2012/1927/contents/made>
- ODPM / DEFRA Circular (ODPM 06/2005, DEFRA 01/2005): Biodiversity and Geological Conservation - Statutory Obligations and their Impact within the Planning System <https://www.gov.uk/government/publications/biodiversity-and-geological-conservation-circular-06-2005>
- ODPM (August 2005) Planning Policy Statement 9 (Biodiversity and Geological Conservation)
<http://www.planningportal.gov.uk/planning/planningpolicyandlegislation/previousenglishpolicy/ppgpps/pps9>
- More information on Natural England's approach to this initiative and links to other research reports can be found online at:
<http://www.naturalengland.org.uk/ourwork/conservation/designatedareas/spa/default.aspx>