



# **Bracknell Forest Borough Local Development Framework**

**Core Strategy Examination**

**Topic Paper TP05**

**Thames Basin Heaths Special  
Protection Area**

**April 2007**

## **Topic Paper TP05**

### **Title: Thames Basin Heaths Special Protection Area**

#### **1. Introduction**

1.1 This Topic Paper is one of eight produced by Bracknell Forest Borough Council to assist the Public Examination into the LDF Core Strategy, which will commence on 25<sup>th</sup> June 2007.

1.2 This Thames Basin Heaths Special Protection Area Topic Paper covers the following policies of the Core Strategy:

*CS14 - Thames Basin Heaths Special Protection Area*

1.3 The Council is preparing the following for Examination:

- **The Council's Self Assessment Statement (OD004)**

This is available on the Council's website at [www.bracknell-forest.gov.uk/ldf](http://www.bracknell-forest.gov.uk/ldf)

- **The Topic Papers**

These cover procedural and conformity matters, the main Core Strategy themes and the Thames Basin Heaths Special Protection Area. These will be available on the Council's website and in the Examination Library.

- **Written Statements responding to the Matters and Issues for Examination**

These will provide a detailed response to the separate Matters and Issues which will be identified by the Inspector as the basis for the debate at the Examination (and responding to specific points raised by representations to the submitted Core Strategy). These Statements will rely as far as possible on cross-referencing to the other documents listed above. These Statements will be available on the Council's website no later than 24<sup>th</sup> May 2007.

- **Statements of Common Ground**

These will provide an agreed statement between the Council and specific representors on their representations. These Statements will be available on the website by the 24<sup>th</sup> May 2007.

1.4 Each Topic Paper is structured to provide:

- A broad summary of the submission representations and the changes sought; and,
- The broad basis of the Council's case in relation to the representations on this topic including the approach taken by the Borough Council, its conformity with national and regional guidance, and the evidence on which that approach is based.

- 1.5 Document references in ***bold italics*** relate to documents held within the Public Examination Core Document Library. In general evidence is based on the following sources:
- Specific studies prepared to address issues to be covered in the LDF;
  - Comments received from consultation responses;
  - Information and guidance provided by the Sustainability Appraisal; and,
  - Existing national, regional and local policies and strategies such as national planning policy statements or the Sustainable Community Plan (***LD009***).
- 1.6 Procedural and Conformity Matters relating to the Core Strategy are dealt with in a separate Topic Paper 'Topic Paper TP01 – Procedural and Conformity Matters' (***TP001***).
- 1.7 This Topic Paper covers **Policy CS14 - Thames Basin Heaths Special Protection Area** within the Core Strategy. Whilst most topic papers follow a theme of the Core Strategy, it was felt it would be helpful to set out specific information on the Thames Basin Heaths SPA.

## **2. Background**

- 2.1 The Thames Basin Heaths Special Protection Area (SPA) is a site designated to protect three important bird species. During a Habitats Regulations screening exercise the Council concluded, in consultation with Natural England, that the level and distribution of housing allocated within the Core Strategy DPD was likely to have a significant effect on the integrity of the SPA. As a result, an Appropriate Assessment was carried out to assess the implications of the effects of the plan for the site's conservation objectives. This Appropriate Assessment is detailed within the ***SPA Technical Background Document to the Core Strategy DPD*** (October 2006) (***ITS002***).
- 2.2 An Avoidance and Mitigation Strategy was prepared, alongside the Appropriate Assessment, to enable it to be ascertained that the plan would not adversely affect the integrity of the site. The Appropriate Assessment identified the need for a specific policy relating to the SPA in order to ensure that the consideration of potential significant adverse effects are addressed at a strategic level.
- 2.3 Policy CS14 directly links to the ***Sustainable Community Plan (LD006)*** Priority 2: Protecting and enhancing the environment. Specifically, it relates to 2(b) increase biodiversity and 2(e) reduce impact of local development on the natural environment. This is achieved by mitigating against the impact of development on the protected bird species.
- 2.4 The Core Strategy Vision recognises the importance of maintaining the integrity of the SPA, whilst allowing sustainable development to take place, and Policy CS14 links specifically to Spatial Objective I: To maintain and improve the built and natural environment, and to mitigate the effects of new development upon the natural and historic environment.

### 3. Summary of Key Issues raised at Submission

A summary of the broad issues raised at submission is set out below:

- The evidence base upon which the 400m and 5km zones are based is unsound and inclusion of these distances in the Core Strategy is too prescriptive. Travel distance should be used as opposed to straight line distance to the SPA;
- The causal link between housing and harm to the SPA has not been supported by evidence or tested;
- Concern that the measures within the Avoidance and Mitigation Strategy will not remove all adverse effects on the SPA;
- There are conflicting responses relating to the 400m zone. Some respondents feel that policy should be amended to preclude any development whatsoever within the 400m, whereas others feel that the 'presumption against development' is too prescriptive as they believe mitigation measures can remove adverse effects within this zone;
- Land North of Whitegrove and Quelm Park should be able to mitigate the impact of development in this area through various measures;
- Natural England and GOSE should endorse the approach to avoidance and mitigation;
- It should be clarified how the approach will reflect the outcome of the South East Plan; therefore the Avoidance and Mitigation Strategy should be viewed as a short term approach which will be subject to review; and,
- Avoidance and mitigation measures must be implemented prior to occupation.

### 4. Context

- 4.1 All Core Strategy policies are influenced by national legislation, national policy statements and guidance, and regional policy. It is not the intention to provide a detailed justification of each; however, the following paragraphs identify the key elements which are considered relevant to the Core Strategy Policy CS14 covered in this Topic Paper.

#### National

- 4.2 The legislative framework for policy CS14 relates to the UK Habitats Regulations<sup>1</sup>, which are transposed from the EU Habitats Directive. A European Court of Justice (ECJ) Judgement in 2006<sup>2</sup> required that the Habitats Regulations be modified to properly assess the impacts of land use plans<sup>3</sup> on Natura 2000 sites, such as the Thames Basin Heaths SPA. As a screening exercise identified that the Core Strategy DPD could have a significant effect on the SPA, an Appropriate Assessment was necessary. Avoidance and mitigation measures must then be secured in order to conclude no adverse effect on the integrity of the SPA.
- 4.3 Planning Policy Statement 9: **(ND010) Biodiversity and Geological Conservation** and the accompanying Circular 06/2005: *Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the*

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<sup>1</sup> Conservation (Habitats & c.) Regulations, 1994

<sup>2</sup> Judgement C-6/04 of the European Court of Justice, 20 October 2005.

<sup>3</sup> Land-use plans refer to Regional Spatial Strategies, transitional plans and Local Development Documents (both Development Plan Documents and Supplementary Planning Documents).

*Planning System (ND022)* stress that plan policies should aim to maintain, and enhance, restore or add to biodiversity by giving appropriate weight to designated sites of international importance and protected species. However, both of these documents contain guidance for Appropriate Assessment which predates the ECJ judgement.

- 4.4 PPS9 and Circular 05/2006 state that since international sites enjoy statutory protection, specific policies in respect of these sites should not be included in Local Development Documents. However, Policy CS14 does not aim to duplicate this statutory protection for the SPA, but sets out the local circumstances which are likely to result in a significant effect and the framework for implementing measures to avoid and mitigate potential adverse effects.

### **Regional**

- 4.5 Policy CS14 is consistent with policies in Regional Planning Guidance Note 9 (*ND010*) which state that priority should be given to protecting areas designated at international level for their intrinsic nature conservation value (Policy E1) and that the Region's biodiversity should be maintained and enhanced with positive action (Policy E2).
- 4.6 Full account has also been taken of the emerging South East Plan (*RD001*) in relation to the level of detail appropriate in the Core Strategy. South East Plan submission policies WCBV9 and LF11 recognise that within the LDFs of relevant local authorities policies are necessary that refer to the need to avoid or mitigate any potential adverse effects on the SPA.

### **5. Council Approach**

- 5.1 In addition to national and regional policy the development of the approach towards protecting the SPA has been informed by:
- Consultation during the preparation process, including ongoing dialogue with Natural England, the RSPB and the Wildlife Trust;
  - Joint working with other Local Authorities affected by the SPA;
  - Background Studies; and,
  - Appropriate Assessment.

### **Issues and Options**

- 5.2 At **Issues and Options** stage question 6 of the 'Your Views' (*OD009*) questionnaire related to whether the Borough Council should continue to protect sites of nature conservation; 85% of respondents strongly agreed with this statement. Question 27 asked if the Borough Council should protect areas which have a high nature conservation value; 82% of respondents strongly agreed with this statement. In addition, Natural England (then English Nature) commented that the Core Strategy must make specific reference to the Thames Basin Heaths SPA and, in relation to consultation on the Initial Sustainability Appraisal Report, they referred to the need for mitigation measures for new housing within 5km of the SPA.

## Preferred Options

- 5.3 As a result of these responses, a policy relating to the SPA was drafted and consulted upon during the **Preferred Options** Regulation 26 (**BP010**) stage. This raised 8 comments, 2 supports and 7 objections. These highlighted the need for an Appropriate Assessment to be carried out in line with emerging guidance and put forward that appropriate mitigation should also be identified. Other respondents requested that the impact of the SPA should be balanced with other planning needs. As a result of these responses an Appropriate Assessment and Avoidance and Mitigation Strategy were prepared. The aim of Policy CS14 is therefore to provide protection for the SPA, whilst meeting the sustainable development needs of the Borough.

## Background Studies

- 5.4 In 2005, Natural England (then English Nature) started to advise Local Planning Authorities that any net increase in residential dwellings within a 5 kilometre straight-line distance of the boundary of the SPA was likely to have a significant effect on the integrity of the site, in-combination with other development. In support of this a *draft Delivery Plan* was produced (first draft dated 10 July 2005, second draft dated 26 May 2006) which set out the evidence relating to the urban impacts on the SPA. This included a series of English Nature Research Reports, which highlighted recreational pressure as having an impact on the ecology of the heathlands. Reference was also made to a literature review by Underhill-Day (2005) which provides a summary of evidence relating to impacts of urbanisation on lowland heathland, with particular reference to heathland birds. In addition, Part 2 of the *Template Supplementary Planning Document*, produced by Natural England on 28 April 2006, provided a summary of all potential impacts on the SPA. The **SPA Technical Background Document to the Core Strategy DPD (ITS002)** does not aim to replicate this substantial evidence base linking urban impacts and bird populations, but makes reference to the relevant documents throughout and in particular within sections 14.12 and 14.13.
- 5.5 Sections 3.3 and 3.4 of the *draft Delivery Plan* and sections 5.32 to 5.34 of the Thames Basin Heaths *Template SPD* summarise the research relating to visitor use of the Thames Basin Heaths SPA. This provides evidence for the use of a specific zone 5km from the boundary of the SPA, within which residential development is likely to have a significant effect. In addition to this data, the Council collected local visitor survey information to increase understanding of visitor patterns within a local context. The data arising from these surveys is presented within section 14.12 of the **SPA Technical Background Document (ITS002)**.
- 5.6 When assessing the suitability of alternative areas of open space, all to act as alternatives to using the SPA, the Council carried out surveys of potential open spaces. The full analysis is included within Section 20 and Appendix 8 of the **SPA Technical Background Document (ITS002)**, but in summary this included an assessment of quality (site habitats), accessibility (footpaths, parking, entrances), restrictions (ownership, legislation) and current visitor use (*Open Spaces Study Parks and Open Spaces Users Survey* by Leisure-net, 2006). The suitability of these areas as alternative open space, subject to enhancements to be identified through specific open space management

plans, was agreed by Natural England during site visits on 12 December 2006.

### **Appropriate Assessment**

- 5.7 Policy CS14 was developed alongside the **SPA Technical Background Document (ITS002)**, which included an Appropriate Assessment and Avoidance and Mitigation Strategy. This document was produced with considerable input from Natural England, the Royal Society for the Protection of Birds (RSPB) and Berks, Bucks and Oxon Wildlife Trust (BBOWT). Two workshops were held with these organisations, including attendance from the Government Office of the South East (GOSE), to discuss the scope and content of the Appropriate Assessment. In addition, there were three consultation stages on the document; at screening stage, draft document stage and submission consultation. In addition, the Council, Natural England and BBOWT spent a day visiting alternative open space to assess suitability. The majority of consultation comments were incorporated into the Submission version of the **SPA Technical Background Document (ITS002)** with full details of consultation provided within Appendix 11.
- 5.8 The Appropriate Assessment concluded no adverse effect arising from the Submission Core Strategy. This was on the basis of avoidance and mitigation measures which include:
- (i) A more comprehensive policy specific to the Thames Basin Heaths SPA (i.e. policy CS14); and
  - (ii) A mechanism to deliver measures within the Avoidance and Mitigation Strategy, such as enhancements to open space.

### **Submission**

- 5.9 A summary of the issues raised at the Preferred Options consultation and the Council's response can be found in the **Statement of Compliance (LD004)** and a summary of these key issues can be found in section 5.3 of this Topic Paper. These responses and the findings from the **Final Sustainability Appraisal Report (BP001)** informed Submission Policy CS14. This Submission Policy builds on Preferred Options Policy E4 by providing further detail on the type and location of development likely to have a significant effect on the integrity of the SPA. In addition, the **SPA Technical Background Document (ITS002)** was produced as a supporting background document to the Core Strategy as a result of comments at the Preferred Options consultation stage, and this also informed Submission Policy CS14.
- 5.10 The SPA Implementation Strategy referred to in Section 5.8(ii) above was agreed and issued for consultation in November 2006 as part of the Limiting the Impact of Development Supplementary Planning Document (LID2). Following this, appropriate changes have been made to the Strategy and this is now due to be considered for adoption by the Council's Executive on 29 May 2007. The adoption of the SPA Implementation Strategy will set in place a mechanism to accept financial contributions on a per dwelling basis towards avoidance and mitigation measures detailed within the **SPA Technical Background Document (ITS002)**.

## 6. Implementation and Monitoring

- 6.1 Policy CS14 makes reference to contributions towards avoidance and mitigation measures '*in line with the SPA Technical Background Document*'; Section 29 of the **Technical Background Document (ITS002)** sets out the monitoring and review requirements. A set of indicators is specified for inclusion within the Annual Monitoring Report and there is the requirement to review the **SPA Technical Background Document (ITS002)** every 5 years to ensure the measures are effective and supported by the most up-to-date evidence base. In addition, the SPA Implementation Strategy (which will be part of the Limiting the Impact of Development SPD), and associated open space management plans, will be reviewed every 3 years, or sooner if evidence emerges or monitoring results indicate that a more urgent review is required.
- 6.2 This requirement for regular review allows for flexibility in the implementation of the policy to take on board emerging evidence and changing circumstances in the light of monitoring information collected.
- 6.3 Further to the Council's monitoring, Natural England will be monitoring implementation of all open space works and capacity in relation to new development.

## 7. Conclusion

- 7.1 The Council considers that this policy and its contribution to the overall Core Strategy is sound as it:
- Reflects national legislation and guidance on spatial planning set out in national planning policy (PPS9) and is in conformity with the emerging SE Plan (Test 4);
  - Identifies an approach which is consistent with the approaches and plans of adjoining authorities (Test 6);
  - Is supported by appropriate and robust evidence base (Test 7);
  - Includes clear monitoring and implementation mechanisms within the **SPA Technical Background Document (ITS002)** and SPA Implementation Strategy (Test 8);
  - Includes flexibility within the overall strategy, to the extent that the Habitats Regulations allow (Test 9).
- 7.2 Therefore, the Council feels this approach is sound and consistent with the emerging South East Plan, the Core Strategy Vision and the Habitats Regulations. Furthermore, it is based upon a robust evidence base, endorsed by Natural England and is supported by an emerging Implementation Strategy. As a result, the Council believes no changes are necessary to make the plan sound. Minor factual changes may be put to the Inspector for her consideration for purposes of clarity. Where relevant these will be identified within the Written Statements and/or Statements of Common Ground.