

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 Regulations 2017, 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 63 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 63(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 <https://www.bracknell-forest.gov.uk/sites/default/files/documents/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 <https://www.bracknell-forest.gov.uk/sites/default/files/documents/thames-basin-heaths-special-protection-area-supplementary-planning-document.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:

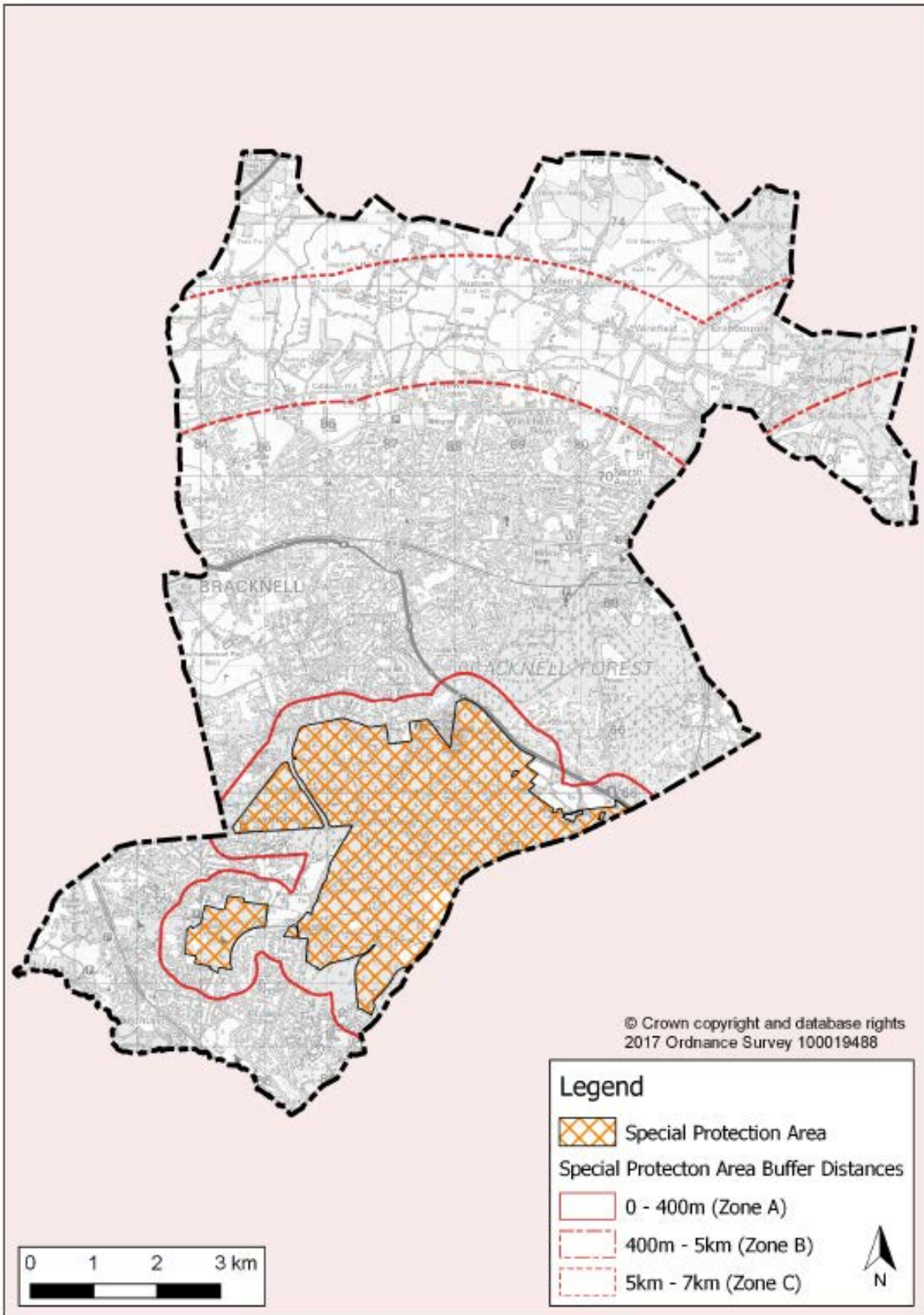
- the provision of suitable alternative natural greenspace (SANG), which makes available an alternative site for new residents to use for recreational purposes, instead of the SPA.
- a contribution towards Strategic Access Management and Monitoring (SAMM) to ensure that access management implemented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

New residential and employment development in Bracknell Forest has the potential to increase the number of car journeys. This is likely to cause a rise in nitrogen deposition which could lead to adverse effects on the SPA in-combination with other developments. Some developments will therefore be required to carry out an air quality assessment as part of a Habitats Regulations Assessment at the planning application stage. The majority of these developments will be identified through the Local Plan process. Any measures proposed to avoid or mitigate the effects of air pollution on the SPA must be agreed with the Council and NE and satisfy the Habitats Regulations.

Developers with prospective applications for non-residential developments should refer to section 2.2 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 (such as the conversion of retail, light office or light industrial space to residential units) is not exempt from the Habitats Regulations. Avoidance and mitigation measures will be required where there is a net increase in dwellings in Zone A (and a net increase in over 50 dwellings in Zone B) as shown in the map above.

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 2017. 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, April 2018) sets out how adverse effects of new housing can be removed by putting in place certain measures. 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. Table 1 in the Thames Basin Heaths SPA Avoidance and Mitigation Supplementary Planning Document <https://www.bracknell-forest.gov.uk/sites/default/files/documents/thames-basin-heaths-special-protection-area-supplementary-planning-document.pdf> sets out the standards of mitigation required.

The SPD does not specify any mitigation which may be required to address any likely significant effects on the SPA as a result of air quality. As stated above, any measures proposed to avoid or mitigate the effects of air pollution on the SPA must be agreed with the Council and Natural England and satisfy the Habitats Regulations.

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 63(2) and 63(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 dwellings and residents as a result of the development at an average of 2.31 persons per dwelling.
- 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 of 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.

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.

10. Further Information

- South East Plan (May 2009) Policy NRM6 (Thames Basin Heaths Special Protection Area) <https://www.bracknell-forest.gov.uk/planning-and-building-control/planning/planning-policy/development-plan/south-east-plan>
- Bracknell Forest Borough Local Plan (2002) Policy EN3 sets out the approach the Council will take in order to protect European nature conservation sites <https://www.bracknell-forest.gov.uk/planning-and-building-control/planning/planning-policy/development-plan/local-plan-2002>
- Bracknell Forest Core Strategy Development Plan Document (DPD) Policy CS14 (Thames Basin Heaths SPA) <https://www.bracknell-forest.gov.uk/planning-and-building-control/planning/planning-policy/development-plan/core-strategy>
- Bracknell Forest Site Allocations Local Plan (SALP) (July 2013) <https://www.bracknell-forest.gov.uk/planning-and-building-control/planning/planning-policy/development-plan/site-allocations-local-plan>
- Thames Basin Heaths SPA Avoidance and Mitigation SPD (SPA SPD) (April 2018) <https://www.bracknell-forest.gov.uk/sites/default/files/documents/thames-basin-heaths-special-protection-area-supplementary-planning-document.pdf>
- Thames Basin Heaths SPA Delivery Framework (2009) <https://files.bracknell-forest.gov.uk/sites/bracknell/documents/thames-basin-heaths-spa-delivery-framework.pdf>
- The Conservation of Habitats and Species Regulations 2017 <https://www.legislation.gov.uk/uksi/2017/1012/regulation/63/made>
- ODPM / DEFRA Circular (ODPM 06/2005, DEFRA 01/2005): Biodiversity and Geological Conservation - Statutory Obligations and their Impact within the Planning

System https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/7692/147570.pdf