

The Conservation of Habitats and Species Regulations 2017
Screening Assessment and Appropriate Assessment

In the light of the “Sweetman Judgement” (People Over Wind and Sweetman v Coillte Teoranta, April 2018), the comments below comprise an Appropriate Assessment which includes advice on necessary avoidance and mitigation measures which is consistent with the advice provided to the Planning Inspectorate on such matters.

Summary of Response

WBC, in consultation with Natural England, has formed the view that any net increase in residential development between 400m and 5km straight-line distance from the Thames Basin Heath Special Protection Area (SPA) is likely to have a significant effect on the integrity of the SPA, either alone or in-combination with other plans or projects. An Appropriate Assessment has been carried out which includes regard to mitigation requirements.

This site is located approximately 2.3km from the boundary of the SPA and therefore is likely to result in an adverse effect on the SPA, unless it is carried out together with appropriate avoidance and mitigation measures.

On commencement of the proposed development, a contribution (calculated on a per-bedroom basis) is to be paid to Wokingham Borough Council (WBC) towards the cost of measures to avoid and mitigate against the effect upon the Thames Basin Heaths SPA, as set out in WBC’s Infrastructure Delivery Contributions Supplementary Planning Document (SPD).

The strategy is for relevant developments to make financial contributions towards the provision of Suitable Alternative Natural Greenspaces (SANGs) in perpetuity as an alternative recreational location to the SPA and financial contributions towards Strategic Access Management and Monitoring (SAMM) measures.

In this instance, the proposed development would result in a net increase of up to 140 dwellings within 5km of the SPA. This results in a SANG requirement of 2.69ha of land. In order to support their scheme, the applicant is proposing the provision of an on-site SANG of 2.83ha which exceeds the requirement and is supported by the Biodiversity Officer and Natural England. The delivery of this land will be secured through the S106 agreement pursuant to this application and will require the entire area of SANG to be open prior to the occupation of any dwelling.

The proposed development is required to make a contribution towards Strategic Access Management and Monitoring (SAMM) which is calculated on a per bedroom basis.

The total SPA related provision is 2.83ha of SANG in order to meet Natural England Guidance. The applicant **must agree** to enter into a S106/s111 agreement to secure this provision prior to occupation of each dwelling. Subject to the completion of the S106 agreement, the proposal would not lead to an adverse effect on the integrity of the SPA and would comply with SEP Saved Policy NRM6, policy CP8 of the Core Strategy, and the NPPF.

1. The Conservation of Habitats and Species Regulations (2017)

In accordance with The Conservation of Habitats and Species Regulations (2017) Regulation 63 a competent authority (in this case Wokingham Borough Council (WBC)), before deciding to undertake, or give any consent, permission or other authorisation for, a plan or project which—

- a. is likely to have a significant effect on a European site...(either alone or in combination with other plans or projects), and
- b. is not directly connected with or necessary to the management of that site.

must make an appropriate assessment of the implications of the plan or project for that site in view of that site's conservation objectives.

A person applying for any such consent, permission or other authorisation must provide such information as WBC may reasonably require for the purposes of the assessment or to enable it to determine whether an appropriate assessment is required.

WBC must for the purposes of the assessment consult Natural England (NE) and have regard to any representations made by that body. It must also, if it considers it appropriate, take the opinion of the general public, and if it does so, it must take such steps for that purpose as it considers appropriate. In the light of the conclusions of the assessment, and subject to Regulation 64 (Considerations of overriding public interest), WBC may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site.

In considering whether a plan or project will adversely affect the integrity of the site, WBC must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.

2. Stage 1 Screening for Likely Significant Effects

WBC accepts that this proposal is a 'plan or project' which is not directly connected with or necessary to the management of a European Site. The Thames Basin Heaths Special Protection Area (SPA) is a European designated site which affects the borough, and WBC must ensure that development does not result in an adverse impact on the SPA. The potential adverse effects on the integrity of the SPA include recreational activities from inside the SPA and air pollution from inside and outside the SPA.

At this stage WBC cannot rule out 'likely significance effects' on the SPA (alone or in combination with other plans or projects) because the proposal could undermine the Conservation Objectives of these sites. This is because the proposal lies within 2.3km of the SPA and:

- represents a net increase of over 50 dwellings within 5km of the Thames Basin Heaths Special Protection Area (SPA) which will lead to an increase in local population and an increase in recreational pressure in-combination with other

plans or projects and in relation to air pollution from increases in traffic (alone and in-combination).

As the 'likely significance effects' cannot be ruled out at this stage an Appropriate Assessment must be undertaken.

3. Stage 2 Appropriate Assessment

Based on the information proposed by the applicant, WBC must decide whether or not an adverse effect on site integrity (alone or in combination with other plans or projects) can be ruled out. Mitigation may be able to be provided so that the proposal is altered to avoid or reduce impacts.

The following policies and guidance set out WBC's approach to relevant avoidance and mitigation measures which have been agreed with Natural England. For the majority of housing developments this will comprise the provision of (or contribution towards) Suitable Alternative Natural Greenspace (SANG) and a contribution towards the Strategic Access Management and Monitoring (SAMM) Project. The financial contributions towards SANG would be either through an obligation in a s106 agreement that requires WBC to allocate an appropriate amount of the development CIL receipt towards the provision of SANG, or through an obligation in an agreement under s111 of the Local Government Act, that requires the developer to make an appropriate financial contribution towards the provision of SANG (to be used in the event that the developer successfully seeks CIL relief). Developers will be required to secure an appropriate financial contribution to the SAMM project through an obligation in a s106 agreement.

For SDL development (and occasionally some other larger non SDL developments) within 5km of the SPA, SANG is required at a minimum of 8 ha per 1,000 new residents, constructed and delivered to Natural England's quality and quantity standards and a contribution towards pan SPA access management and monitoring (as advised by the Thames Basin Heaths Joint Strategic Partnership Board). For SDL development (and occasionally some other larger non SDL developments) between 5km, the proposals will need to be individually assessed but it is likely that SANG will be required on site in line with Natural England's quality and quantity standards, although the exact requirement will be agreed having regard to evidence supplied.

a. Policies and Guidance

For this proposal the following guidance and policies apply:

- South East Plan (May 2009) Policy NRM6 (Thames Basin Heaths Special Protection Area)
<http://webarchive.nationalarchives.gov.uk/20100528160926/http://www.gos.gov.uk/gose/planning/regionalPlanning/815640/>
- Wokingham Borough Core Strategy (2010) Policy CP8 (Thames Basin Heaths Special Protection Area) sets out the approach WBC will take in order to protect the TBH SPA <http://www.wokingham.gov.uk/planning/planning-policy/local-plan-and-planning-policies/>
- Wokingham Borough Core Strategy (2010) Policy CP7 (Biodiversity) sets out the approach WBC will take in order to protect national and international nature

conservation sites <http://www.wokingham.gov.uk/planning/planning-policy/local-plan-and-planning-policies/>

- Wokingham Borough Managing Development Delivery Local Plan (2014) Policy TB23 (Biodiversity and Development)
<http://www.wokingham.gov.uk/planning/planning-policy/local-plan-and-planning-policies/>
- Infrastructure Delivery and Contributions SPD (2011)
<http://www.wokingham.gov.uk/EasySiteWeb/GatewayLink.aspx?allid=193415>

The project as proposed would not adversely impact on the integrity of the SPA if avoidance and mitigation measures are provided as stipulated by these policies and guidance.

b. SPA Avoidance and Mitigation Measures

i) The provision of Suitable Alternative Natural Greenspace (SANG) and its ongoing maintenance in perpetuity.

In accordance with the development plan, the proposed development will be required to provide alternative land to attract new residents away from the SPA. The term given to this alternative land is Suitable Alternative Natural Greenspace (SANG).

In this instance, SANG provision will be required at a minimum of 8 ha per 1,000 new residents for any dwellings within 5km of the TBH SPA. The SANG will be constructed and delivered to Natural England's quality and quantity standards and the developer will need to make an appropriate contribution towards in perpetuity maintenance of the SANG. An occupation restriction will be included in the Section 106 Agreement in order to ensure that the SANGs are complete and open to the public prior to the occupation of the dwellings. This gives the certainty required to satisfy the Habitats Regulations in accordance with South East Plan Policy NRM6 (iii) and Core Strategy Policy CP8

ii. Strategic Access Management and Monitoring (SAMM) Contribution

The proposed development will also be required to make a contribution towards Strategic Access Management and Monitoring (SAMM). This project funds strategic visitor access management measures on the SPA to mitigate the effects of new development on it.

The level of contributions are calculated on a per bedroom basis. As the residential element of this application is in outline, the final dwelling mix will not be determined until the reserved matters stage. However, depending on the final dwelling mix, the level of SAMM payments will be calculated as follows:

£376.86 per 1 bed Dwelling
£492.61 per 2 bed Dwelling
£646.76 per 3 bed Dwelling
£852.47 per 4 bed Dwelling
£1,019.22 per 5+ bed Dwelling

Prior to the permission being granted the applicant must enter into a Section 106 Agreement based upon the above measures.

c. Air Pollution Impact Pathway

Information provided by the applicant with regards to potential air quality impacts upon the SPA indicate that the proposals will result in an increase in traffic at peak times compared to baseline levels and contribute an 11% increase in AADT immediately outside the site on Park Road. At greater distance from the site traffic will disperse into the surrounding network where proportionally the traffic arising from the site forms a significantly smaller contribution to the overall volume of traffic. Traffic would most likely disperse in a northerly, easterly or south-easterly direction towards the other main centres and motorway. The nearest A-road within 200m of the SPA lies 5.8km south of the site and therefore only a very small proportion of journeys are likely to be made in this direction from the site. Correspondingly, it is anticipated that any increases in AADT arising from the site on the surrounding network would have reduced to a negligible level before reaching the SPA.

Accordingly, it is not considered that the development will result in changes to air quality that would adversely affect the integrity of the SPA, either alone, or in combination with other plans or projects and no further assessment is required.

4. Conclusion

An Appropriate Assessment has been carried out for this development in accordance with the Habitats Regulations 2017. Without any appropriate avoidance and mitigation measures the Appropriate Assessment concludes that the development is likely to have a significant effect upon the integrity of the SPA with the result that WBC would be required to refuse a planning application.

Provided that the applicant is prepared to make secure land (see above) towards the costs of SPA avoidance and mitigation measures, the application will be in accordance with the SPA mitigation requirements as set out in the relevant policies above.

WBC is convinced, following consultation with Natural England, that the above measures will prevent an adverse effect on the integrity of the SPA. Pursuant to Article 6(3) of the Habitats Directive (Council Directive 92/43/EEC) and Regulation 61(5) of the Conservation of Habitats and Species Regulations (2017), and permission may be granted.

If the applicant does not agree with the above mitigation and does not enter into a Section 106 Agreement to secure the measures, then the application must be refused using the following reason for refusal.

5. Example Reason for Refusal

In the absence of a planning obligation to secure suitable avoidance and mitigation measures and access management monitoring arrangements, in terms that are satisfactory to the Local Planning Authority (LPA), the LPA is unable to satisfy itself that the proposals include adequate mitigation measures to prevent the proposed development from having an adverse effect on the integrity of the Thames Basin Heaths SPA, in line with the requirements

of Regulation 63 of the Conservation of Habitats and Species Regulations 2017 and Article 6(3) of Directive 92/43/EEC. The proposal would be contrary to Policy NRM6 of the South East Plan, Policies CP8 and CP4 of the Core Strategy.

Date:	29/10/2020	Signed:	
--------------	------------	----------------	---