

<b>Site Address</b>	Land To The West Of St Annes Drive And South Of London Road Wokingham RG40 1PB
<b>Application Number</b>	203544

## **The Conservation of Habitats and Species Regulations (2017) (as amended)**

### **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**

Wokingham Borough Council (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. During the planning application process the WBC was satisfied that the air quality pathway of likely significant effects can be screened out and needs no further consideration alone or in-combination. Therefore, this Appropriate Assessment is based on recreational pathway of likely significant effects only.

This site is located approximately **3.5 km** (measured from the access road to the application site) 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.

The strategy proposed by this scheme is 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.

The applicant proposes to consume capacity for 42 dwellings available within the existing Keephatch Meadows SANG (also referenced as Stokes Farm SANG) that was approved and secured in planning permission O/2014/2435. Keephatch Meadows SANG is open to the public and managed by Wokingham Borough Council.

New SANG criteria guidance was issued by Natural England in August 2021 (*Guidelines for Creation of Suitable Alternative Natural Greenspace (SANG) - August 2021*), post the opening of the Keephatch Meadows SANG. In order to have the certainty that this existing public open space meets the current standards and that the notional capacity does not require discounting for any criteria shortfall, Keephatch Meadows SANG has been reviewed by Wokingham Borough Council officers and a set of required works to meet the standard has been identified. Funding for these works by the developer is agreed and secured through S106 planning obligation and therefore the competent authority can have confidence that this SANG capacity will be available prior to first occupation of this development.

WBC's Keephatch Meadows SANG has capacity available in respect of 42 dwellings. The avoidance and mitigation measures in respect of the remaining 12 dwellings (out of 54 dwellings proposed by the scheme) would be provided through a contribution, calculated on a per-bedroom basis, paid to Bracknell Forest Council (BFC) in respect of capacity available at Piglittle Field SANG or an alternative SANG capable of serving the 12 dwellings. WBC considered options available to BFC and is satisfied that the capacity for 12 dwellings can be accommodated by BFC and that they have a mechanism for not double counting capacity within their SANGs.

In this instance, the proposed development would result in a net increase of 6 no. 1 bedroom dwellings, 9 no. 2 bedroom dwellings, 19 no. 3 bedroom dwellings, 20 no. 4 bedroom dwellings within 5km of the SPA which results in a total SANG contribution of **£81,498** in respect of capacity sought from BFC, BFC monitoring fee of **£480** and **£42,800** in respect of set works to Keephatch Meadows SANG.

The proposed development is required to make a contribution towards Strategic Access Management and Monitoring (SAMM) which is also calculated on a per bedroom basis. Taking account of the per bedroom contributions, this results in a total SAMM contribution of **£45,100**.

The total SPA related financial contribution for this proposal is **£169,878**. The applicant **must agree** to enter into a S106 Legal Agreement to make this contribution:

- Prior to first occupation of the development – SAMM contribution and SANG works contribution; and
- Upon completion of the S106 Legal Agreement – in respect of the SANG contribution and monitoring fee to be paid to BFC.

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) (as amended)**

In accordance with The Conservation of Habitats and Species Regulations (2017) (as amended), Regulation 63, a competent authority (in this case 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 National Site Network 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 National Site Network 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 **5 km** of the SPA and represents a net increase in dwellings within 400m - 5km of the Thames Basin Heaths Special Protection Area (SPA) which will lead to an increase in local population and a potential increase in recreational activity on the SPA. 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 Legal 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 Legal 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).

### **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 <https://www.wokingham.gov.uk/EasySiteWeb/GatewayLink.aspx?allId=268860>
- 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 <https://www.wokingham.gov.uk/EasySiteWeb/GatewayLink.aspx?allId=268860>

- Wokingham Borough Managing Development Delivery Local Plan (2014) Policy TB23 (Biodiversity and Development)  
<https://www.wokingham.gov.uk/EasySiteWeb/GatewayLink.aspx?allId=269993>
- 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).

As this development is located within a SDL, SANG would have to be provided at a minimum of 8 ha per 1,000 new residents for any dwellings within 5km of the TBH SPA. This development does not propose any SANG on-site given the size of the site and its constrained nature. Instead, it is proposed to use the spare capacity off-site, within the existing SANGs. This approach is considered acceptable in principle by the officers and Natural England.

The proposal site is located approximately 1 km from the existing Keephatch Meadows SANG, which was created to provide SANG land for North Wokingham SDL Development to mitigate the impact of residential development within Strategic Development Location. Officers confirmed that capacity exists within Keephatch Meadows SANG in respect of 42 dwellings out of the 54 dwellings proposed. The Keephatch Meadows SANG has a car park and is of a size such that the catchment area for this SANG includes the proposal site. The works to Keephatch Meadows SANG as identified will ensure that the existing notional capacity does not require discounting for any criteria shortfall and as such will ensure that the required SANG capacity will be available. An occupation restriction will be included in the Section 106 Legal Agreement in order to ensure that these contributions have been made prior to first occupation of the development.

The developer is seeking capacity for the remaining 12 dwellings through consumption of capacity of BFC-controlled SANG. This agreement is subject to separate discussions between the developer and BFC. This approach will require an appropriate contribution from the developer towards: SANG enhancements, in perpetuity maintenance, administration and education and facilitation, in accordance the Bracknell Forest Thames Basin Heaths Special Protection Supplementary Planning Document (TBHSPD) (2018) to be paid the BFC upon the completion of the S106 Legal Agreement (in respect of the BFC-controlled SANG capacity), therefore ensuring that the required SANG capacity is available prior to first occupation of the development.

This gives the certainty required to satisfy the Habitats Regulations in accordance with South East Plan Policy NRM6 (iii) and Core Strategy Policy CP8.

The development will result in a net increase of **54 no dwellings** with the following dwelling mix: **6 no. 1 bedroom dwellings, 9 no. 2 bedroom dwellings, 19 no. 3 bedroom dwellings, 20 no. 4 bedroom dwellings.**

The level of SANG contribution in relation to **Piglittle Field SANG** (or an alternative SANG capable of serving the site) depends on the dwelling mix of the 12 no. dwellings and is proposed as set out below:

No. of bedrooms	SANG Contribution 5km	Aggregate SANG Contribution
1 bedroom	£4,568.00	£0
2 bedrooms	£5,412.00	£0
3 bedrooms	£6,408.00	6 x £6,408.00 = £38,448.00
4 bedrooms	£7,175.00	6 x £7,175.00 = £43,050.00
5 bedrooms	£8,324.00	£0
Total SANG Contribution		<b>£81,498.00</b>

This part of the SANG contribution is required to be paid to BFC prior to completion of the S106 Agreement. A further monitoring and fee of **£480** is also payable to BFC prior to completion of the S106 Agreement. On receipt of the above BFC will issue confirmation that the SANG capacity has been provided and that the contribution has been applied to the relevant areas. BFC will be able to confirm any spending of the contribution on request as it closely monitors all SANG (and other S106) contributions to ensure all relating terms and conditions are complied with for transparency and audit purposes.

The payment of contributions required to ensure that the notional capacity at Keephatch Meadows SANG does not require discounting for any criteria shortfall will be secured through S106 obligation. The payment of the Keephatch Meadows SANG works sum equates to **£42,800** and is required to be paid to WBC prior to first occupation of the development.

#### 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.

From 1<sup>st</sup> April 2021 SAMM contributions have been updated across the 11 Local Authorities affected by the Thames Basin Heaths Special Protection Area. Following engagement with Natural England, the Joint Strategic Partnership Board agreed this change is necessary to ensure sufficient income is raised to cover the costs of the SAMM project in perpetuity. Without this change the SAMM project would be at risk of being unable to deliver the objectives of the SAMM project, and therefore secure positive outcomes for the SPA

The level of contributions is calculated on a per bedroom basis. The application for this development is for **6 no. 1 bedroom dwellings, 9 no. 2 bedroom dwellings, 19 no. 3 bedroom dwellings, 20 no. 4 bedroom dwellings.**

The level of SAMM contribution in relation to both SANGs depends on the dwelling mix of the 54 no. dwellings and is proposed as set out below:

No. of bedrooms	SAMM Contribution 5km	Aggregate SAMM Contribution
1 bedroom	£464.00	6 x £464.00 = £2,784.00
2 bedrooms	£646.00	9 x £646.00 = £5,814.00
3 bedrooms	£858.00	19 x £858.00 = £16,302.00
4 bedrooms	£1,010.00	20 x £1,010.00 = £20,200.00
5+ bedrooms	£1,153.00	£0
Total SAMM Contribution		<b>£45,100.00</b>

Prior to the permission being granted the applicant must enter into a Section 106 Agreement based upon the above measures with the aggregate SAMM contribution payable to WBC.

#### **4. Conclusion**

An Appropriate Assessment has been carried out for this development in accordance with the Conservation of Habitats and Species Regulations (2017) (as amended). 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 a financial contribution (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 63(5) of the Conservation of Habitats and Species Regulations (2017) (as amended), 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) (as amended) 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.

<b>Date:</b>	29 November 2021	<b>Signed:</b>	<i>Joanna Carter</i>
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