

APPENDIX 4 - Summary of recommendations from the Assessor's Report ¹

Para.	Assessor's recommendation
4.1.23	Considers that it would be reasonable for NE to take a more flexible approach to the "in combination" test in respect of housing located in the vicinity of less sensitive parts of the SPA or residential developments which are unlikely to give rise to significant use of the SPA.
4.1.39	Precautionary Principle has not been correctly applied
4.2.6	Clear conservation objectives should be established for the SPA as a whole.
4.3.38	Although the evidence base is weak, there is a need for some form of avoidance and mitigation strategy in respect of housing development in the vicinity of the TBH.
4.4.10 / 4.4.15	<p>There may well be scope for some areas of the SPA which currently have low visitor pressure to sustain some increase in recreational use without having a significant effect on the SPA's ability as a whole to support sustainable populations of the three species.</p> <p>Where the most convenient point of access to the SPA in relation to new housing development is located in an area of low visitor pressure it could reasonably be held that some additional small scale development would be unlikely to have a significant effect on the SPA.</p>
4.4.28	Areas of the SPA where there are currently predicted to be 30 or more visits during a 16 hour period should be treated as being more sensitive and the avoidance and mitigation strategy adjusted accordingly.
4.4.45	Although the overall increase in visits to the SPA is likely to be quite small they could have a detrimental impact in areas that already suffer from high levels of visitor pressure or are close to this level.
4.4.46	There is sufficient objective evidence to conclude that developments of 10 dwellings or under would be unlikely to have a significant impact if they are located a sufficient distance from sensitive parts of the SPA.
4.5.7	Car free developments located beyond an easy walking distance of the SPA are likely to result in substantially lower recreational use of the SPA.
4.5.8	Other developments should be considered close to sensitive areas of the SPA, for example schools or garden centres.
4.6.4	The provision of SANGs will be likely to have some impact on usage of the SPA. It may not be enough to mitigate all adverse affects arising from new housing on its own but if it was combined with habitat and access management it would be likely to have a positive impact in limiting the growth of visitor pressure on the SPA.
4.6.6	The success of the avoidance and mitigation strategy, particularly in respect to the provision of SANGs, will need to be carefully monitored.
4.6.30	There should be no difficulty in delivering SANGS in larger developments, as a contribution towards the required mitigation measures is unlikely to affect the viability of a scheme. However, it may mean in exceptional circumstances other contributions that would normally be expected of such schemes, such as for affordable housing, might have to be reduced.

¹ Report to the Panel for the Draft SE Plan Examination in Public on the Thames Basin Heaths SPA and Natural England's Draft Delivery Plan. Assessor: Peter Burley. (19 February 2007).

Para.	Assessor's recommendation
4.6.32	A standard financial contribution table should be calculated as soon as possible, based on the necessary level of SANGs that would be required to meet the expected level of housing provided for in the South East Plan, plus any other mitigation measures.
4.6.36	Authorities with mini plans have been able to determine what they consider would be an appropriate contribution towards maintenance in perpetuity, so this should not be insurmountable.
4.6.38	Subject to appropriate funding, the future management and maintenance of SANGs should not prove a bar to their provision. Therefore this issue would not constrain further residential development taking place within the vicinity of the SPA.
4.7.4	It would be slightly more difficult to calculate travel distances to the SPA than straight-line linear distances, but it should be possible to do so using GIS data and a suitable modelling programme.
4.7.5	It should not be necessary to extend the zones beyond a maximum travel distance of 5kms.
4.7.8	It would not be appropriate to use the distance to access points for establishing the zones.
4.7.16	When figures in Liley et al (2005) visitor surveys and the Footprint Ecology study are considered it is pragmatic to define the outer boundary of Zone B at 1 kilometre.
4.7.18	Large scale developments of over 50 houses which are located between 5-7kms of the edge of the SPA should also be individually assessed to determine whether they would have an adverse impact on its integrity.
4.7.19	The 400 metre boundary for Zone A is robust and does not need to be modified, except to take into account any permanent barrier to the movement of cats.
4.8.4	There is not sufficient justification for requiring different SANGs standards for Zones B & C.
4.8.11	The figure up to 8ha per 1000 would provide a reasonable and proportionate standard for the provision of SANGs, particularly if it was supported by appropriate access management measures.
4.8.18	Delete the tables which set out prescriptive standards for various sizes of SANGS and include some general guidance on the quality and accessibility of such space, indicating the type of facilities that might reasonably be expected to be provided within such a space depending on its size. This would allow local authorities more flexibility to tailor the SANGs provision to meet the particular needs of their area more directly.
4.9.4	There are other large forested areas of the SPA, such as Swinley Forest, which do not support significant numbers of Annex 1 birds. There may be potential for habitat management to be funded as mitigation in these areas.
4.9.10	Habitat management may have a small role to play in the mitigation and avoidance strategy for the Thames Basin Heaths SPA, at least in the longer term. However, the preparation of a habitat management plan would need to come first.
4.10.12	Access management has an important role to play as part of an effective avoidance and mitigation strategy.
4.11.1	An education strategy, publicity and coordinated wardening will play a major role in ensuring the effectiveness of access management measures.
4.11.3	Pet covenants may work where a residential development is subject to effective management control. However, this is only likely to be certain where there is some form of on-site management, such as found in sheltered housing or some leasehold flat schemes, where there is a resident warden or caretaker. It cannot be a universal

Para.	Assessor's recommendation
	panacea to controlling the impact of dogs and cats and of course it does nothing to prevent other recreational use of the SPA.
4.12.6	The production of a joint DPD is of such importance that it needs to be undertaken with some urgency over a shorter time span; i.e. a maximum three year target. The idea of producing a joint DPD should not be resisted by the authorities involved but it would always be open to the Secretary of State to direct them to do so if they should prove to be reluctant.
4.13.3	There is no reason why monitoring the impacts of new development or the successfulness of SANGs could not be funded via section 106 agreements.
6.2	The best way forward is for some form of strategic body to be formed to coordinate future strategy for the SPA. It would be better to build on the existing situation rather than impose some new centralised body.

SOUTH EAST REGIONAL SPATIAL STRATEGY EiP

Response to Sub-matter 8Hiv & 8Jiv Combined Thames Basin Heaths SPA

Supplementary statement by Bracknell Forest Borough Council following the publication of the Assessor's Report

2 March 2007

1. Following the publication of the Assessor's Report, Bracknell Forest Borough Council wishes to add to previous comments on Matter 8Hiv/8Jiv. This is intended to provide an opinion for consideration by the Panel. Until the Panel has considered all representations, and reported on the findings, it is the Council's opinion that the Assessor's Report carries no weight for the determination of planning applications.
2. Bracknell Forest Borough Council is in agreement with the joint submission put forward by the Thames Basin Heaths grouping of Local Planning Authorities, but wish to add some additional points.
3. The Council supports the following principles within the Assessor's Report:
 - i) The provision of a significant scale of additional housing within 5km of the SPA would be likely to have a significant effect on the SPA in combination (para. 8.2).
 - ii) Clear conservation objectives should be established for the SPA as a whole (para. 4.2.6). It is believed this should be a priority.
 - iii) There is a need for an avoidance and mitigation strategy in respect of housing development in the vicinity of the SPA (para. 4.3.38).
 - iv) The provision of SANGs will be likely to have some impact on usage of the SPA (para. 4.6.4).
 - v) The success of the avoidance and mitigation strategy, particularly in respect to the provision of SANGs, will need to be carefully monitored (para. 4.6.6).
 - vi) The 400 metre boundary for Zone A is robust and does not need to be modified (para. 4.7.19).
 - vii) There is not sufficient justification for Zone B at 2km and there is no evidence that twice as many visits arise from within Zone B (para. 4.8.3).
 - viii) Other measures have an important role to play in avoiding and mitigating the impacts of new housing. These include: access management, education, publicity, wardening and pet covenants (in some circumstances).
 - ix) Monitoring the impacts of new development and the success of SANGs could be funded via section 106 agreements (para. 4.13.3).
 - x) No more housing should be allocated in the SE Plan until the effectiveness of avoidance and mitigation measures can be proven (para. 9.2).
 - xi) It may be necessary to phase new housing development so that the larger proportion comes forward in the second half of the plan period (i.e. after 2016) (para. 9.1).

- xii) A Regional Infrastructure Fund and strategic partnership is necessary for the future management of the SPA (para. 9.4).
 - xiii) A Monitoring Framework should recognise the need for appropriate monitoring of the effectiveness of SANGs and other mitigation measures, the impacts of new housing and other development on the integrity of the SPA and the populations of Annex 1 birds it supports.
4. However, the Council has concern over the evidence base underpinning several of the findings within the report and the deliverability of some measures. These are mainly expressed in the joint response, but some additional concerns are as follows:
- i) **The introduction of a 1km zone.** The Council questions the need for an additional zone outside which small developments are unlikely to have a significant effect. The Assessor's Report concludes that there is no evidence that contributions towards avoidance and mitigation measures should differ between Zones B and C (i.e. outside 400m and within 5km), which supposes there is no difference in impact arising from these dwellings (para. 4.8.3). The inclusion of this new 1km zone contradicts this assumption and furthermore does not consider the in-combination impacts arising from many smaller developments. In addition, this zone is based upon evidence from both Liley *et al* and the Footprint Ecology report, which both use a straight line distance. Therefore, it is inconsistent to use this data to conclude that a 1km travel distance is appropriate.
 - ii) **The inclusion of 'sensitive areas'.** These sensitive areas are based solely on visitor pressure data, although visitor pressure is not the only impact on the bird populations. Studies have proven that habitat quality can also have a significant effect on bird populations, suggesting that areas of low visitor pressure but poor quality habitat may be less ecologically sensitive than some areas of high visitor use with good quality habitat. Areas may also be sensitive to impacts other than visitor use, for example, pollution, changes in hydrology, loss of feeding habitat etc. For the above reasons the Council does not believe it appropriate to divide the TBH SPA into 'sensitive' and 'non-sensitive' areas which have differing planning considerations; the integrity of the site as a whole must be considered.
- Furthermore, the delivery of the proposed approach is very complex. The visitor pressure will change over time so a timetable of monitoring for 'sensitive areas' must be established and resources identified, whether this is monthly, annually etc. This raises the issue of what would happen if visitor use increases so an access point becomes a 'sensitive area' after permissions have been granted. It may be the case that developments which have already been permitted, but are not yet occupied, are then required to provide a contribution towards mitigation.
- iii) **The production of a standard financial contribution table.** It is agreed that such a table would be useful, but it would be a lengthy process to draw this up based upon evidence. For example, new evidence would be required to demonstrate the different impacts arising from: dwellings of different sizes, developments with low parking provision or car-free (para. 4.5.7) and the 'other developments' mentioned, i.e. garden centres and schools (4.5.8). The relative impacts of each development type would have to be established, i.e. are the impacts from garden centres comparable to housing and would contributions be a suitable approach? As this could

take a considerable length of time a standardised short-term approach should be taken, i.e. using a fixed contribution for all dwellings.

- iv) **A proposed joint DPD.** The Council has serious concerns about the production and timing of a proposed joint DPD. Bracknell Forest Borough Council has submitted its Core Strategy which is due to go to Examination in June / July 2007. This was supported by an SPA Technical Background Document which included an Appropriate Assessment and an Avoidance and Mitigation Strategy. This suggested the inclusion of policy CS14 relating to the TBH SPA, which sets out a policy approach for the Borough. In addition, Executive has agreed for consultation, as part of the Limiting the Impact of Development SPD, an approach for implementing the Avoidance and Mitigation Strategy by means of Section 106 contributions. This sets out a robust policy framework within which a comprehensive Avoidance and Mitigation Strategy could be implemented. It is anticipated this will be approved in May 2007. A joint DPD could potentially conflict with existing Core Strategy policy and prolong the provision of this local solution. In addition, the Council has serious concerns about the timing of such a document given the various stages of LDF production of all affected authorities, which is expanded upon further in the joint submission.

5. In the light of the above comments, the Council wishes to add to its submission on matters 8Hiv & 8Jiv in relation to the questions asked by the Panel.

What are the implications of the Assessor's Report, and taking account of the Appropriate Assessment, on the ability of the two sub-regions to achieve the housing provision figures in draft RSS, and on any alternative growth levels and spatial options examined?

6. The Assessor's Report concludes that given the level of SANGs available for mitigation, the level of housing currently allocated in the Draft South East Plan should not have a significant adverse effect on the SPA (para. 9.1). This may identify a suitable quantity of SANGs, together with other avoidance and mitigation measures, but the location and size of SANGs must also be considered when examining the deliverability of spatial options. If SANGs can only be delivered in certain areas, this may leave some authorities outside a 'mitigation zone' for open space and therefore unable to achieve the allocated housing provision. Therefore, in order to conclude no significant adverse effect, the Appropriate Assessment should address the ability of avoidance and mitigation measures to deliver current spatial options; to date this has not taken place.
7. It should be apparent within the Appropriate Assessment and South East Plan policies the timetable for any short, medium and long term recommendations, which are adopted from the Assessor's Report.
8. The Appropriate Assessment should clearly set out a monitoring framework. This must include an assessment of the circumstances under which the avoidance and mitigation measures could be deemed unsuccessful, i.e. whether it is a decline in bird numbers, increasing visitors to the SPA, insufficient use of SANGs etc. The related remedial measures should also be clearly identified, with an appropriate timetable, to ensure a timely review of housing provision figures is triggered by monitoring data.

9. It may be difficult for some authorities to deliver robust strategies quickly, which could therefore affect housing delivery to South East Plan levels. This may necessitate phasing a higher proportion of housing post-2016. Further, we are of the opinion that no additional houses should be allocated to the affected authorities until robust data and wording is in place following implementation of avoidance and mitigation strategies. In our view this will be at least until the second half of the South East Plan period (i.e. post 2016).

What would provide an appropriate policy for the protection of the SPA while enabling acceptable development to proceed (Policies WCBV9 and LF11)?

10. There is no need to include within the Plan the level of detail the Assessor's Report has provided. These details can be more appropriately defined through plan production at a local level with agreements between local authorities and Natural England. However, the level to which recommendations within the Assessor's Report and/or Appropriate Assessment are to be delivered by the South East Plan must be made clear in any policy.
11. The policy should include provision for on-going monitoring and review of housing provision figures at specified times in the future. If the avoidance and mitigation measures are found to be ineffective, according to the monitoring framework set out in the Appropriate Assessment, there should be a fundamental review of allocations.
12. Policy WCBV9 refers solely to new residential development, which is contrary to the Assessor's Report, which includes other types of development, such as schools (para. 4.5.8). If this recommendation is taken on board the policy should be reviewed accordingly.

**PLANNING INSPECTORATE
ADVICE NOTE 2**

**SOUTH EAST PLAN EXAMINATION IN PUBLIC: ASSESSOR'S REPORT ON
THAMES BASIN HEATHS SPECIAL PROTECTION AREA AND NATURAL
ENGLAND'S DRAFT DELIVERY PLAN**

**IMPLICATIONS FOR THAMES BASIN HEATHS SPECIAL PROTECTION AREA
CASEWORK**

A. BACKGROUND

1. Peter Burley was appointed as the Assessor for the Draft South East Plan (SEP) Examination in Public (EiP) to consider the Thames Basin Heaths Special Protection Area (TBH SPA) and Natural England's Draft Delivery Plan (DDP). He held three technical sessions and his report to the Panel was published on the EiP website on 19th February.

2. The report is likely to be cited as a material consideration in the conduct of Section 78 and Section 77 casework and to that extent parties may suggest that it should carry some weight. However, given its purpose in informing the SEP Panel, who will in turn report to the Secretary of State (SoS), decision-makers are currently not in a position to rely upon the Assessor's conclusions and recommendations.

3. The report is due to be debated at the main EiP on 22 March, and the Panel aim to report to the SoS by the end of July 2007. The Panel's report will have some weight, as the Panel will have reached conclusions on the matter, but it will be limited. It will provide the main basis on which the SoS will decide whether any changes need to be made to the draft SEP before it is issued in its final form. The SoS's proposed changes to the SEP are scheduled to be published in mid-December 2007 but it is possible that the Secretaries of State may make a joint separate statement on the TBH SPA issue.

4. The assessor's conclusions and recommendations are copied at Annex 1 below. You are not expected to read the report (although some Inspectors have already had it drawn to their attention in conducting casework), however if you wish to view it you may access it from this link to the EiP website:

<http://www.eipsoutheast.co.uk/home/documents.aspx?ct=11>

5. The report has generally been favourably received and some interested parties have already published their views on their websites. The South East England Regional Assembly (SEERA), Government Office for the South East (GOSE), Natural England (NE) and The Home Builders Federation (HBF) have welcomed the recommendations.

6. Twelve of the affected local planning authorities (LPAs) have drafted a joint Supplementary Response to the report, and have begun to submit this in relation to individual appeals. It expresses support for some of the conclusions but disputes other findings. It can be accessed, together with addendum statements from other parties, on the EiP website via the following link:

<http://www.eipsoutheast.co.uk/participants/documents.aspx?mt=64>

PINS is aware that individual addendum statements from some of the same LPAs appear to be either inconsistent or conflict with the joint submission. Procedure will shortly be asking all of the fifteen affected LPAs to confirm their position. However if there is any doubt on receipt of a file, Inspectors should ask the case officer to clarify with the LPA whether they will be relying on an individual response or the joint response, and seek further clarification if necessary at any hearing/inquiry.

B. CONCLUSIONS AND RECOMMENDATIONS

Summary

7. The Assessor found the DDP to be unsound in its present form, but considered that the additional housing within 5km of the SPA would be likely to have a significant effect in combination with other schemes. He considered that action is required in the short, medium and long term:

- short term – to have in place an interim strategic avoidance and mitigation strategy for the SPA, make provision for seed funding for local authorities to provide new or upgrade existing open space to create suitable alternative natural green space (SANGS), calculate a standard contribution figure per dwelling;
- medium term – to set up a loose strategic partnership involving the affected local authorities, SEERA and Natural England to co-ordinate strategy for and channel funding to the SPA. Natural England to finalise its access management plans and produce a habitat management plan for the SPA. Further research to be undertaken to improve the evidence base for future strategy;
- longer term - a joint DPD to be drawn up to include a long term avoidance and mitigation strategy, access management and habitat management plans for the SPA, and strategic policies covering other land or activities outside the SPA which could have a bearing on its future integrity.
 - implications for South East Plan - as a result of the Assessor's findings on the quantity of land available to provide SANGS, and the amount of SANGS required he was satisfied that the housing allocation in the Draft SEP for the TBH area should not have a significant adverse effect on the SPA. However, he recommended against increasing the housing allocations in the area pending a review of the effects on the SPA, unless this could be achieved by utilising land over 5km from the SPA.

KEY POINTS

Interim avoidance and mitigation strategy

8. The Assessor recommended that:

- no development should be allowed within 400m of the SPA unless it could be demonstrated that it would not lead to further recreational use or have any other significant effect on the integrity of the SPA;
- the interim strategy should only apply to developments of:
 - over 10 houses within 400m -5km of the SPA;
 - under 10 houses within 1km of 'sensitive areas' of the SPA;
 - any other permanent residential accommodation which would provide over 10 extra bedrooms, or under 10 bedrooms but is within 1km of 'sensitive areas' of the SPA.
- larger residential developments between 5 – 7km from the SPA should be individually assessed to ascertain whether or not they would have an adverse effect on the SPA.

Zones and linear/travel distance

9. The Assessor agreed that a zonal approach is appropriate to the avoidance and mitigation strategy. He recommended that the definition of Zone A should remain the same and be measured by linear distance. However he recommended that changes

should be made to the definitions of Zones B and C, and that their boundaries should be measured in travel distance from the edge of the SPA.

10. Zone B (400m to 2km in the DDP) should be redefined as 400m – 1km, and Zone C (2km – 5km in the DDP) should be redefined as 1km – 5km.

Mitigation standards

11. Whilst the Assessor concluded that the evidence base for SANGS was weak he recommended that SANGS should still form part of the overall mitigation strategy. However he concluded that the NE requirements were excessive (16ha/1000 population for Zone B, and 8ha/1000 population for Zone C in DPP) and that a revised single standard of 8ha/1000 population should be applied. He also agreed with all parties that for a SANGS to be effective it must be in place before the new development it is intended to serve is occupied.

C. IMPLICATIONS FOR CASEWORK

12. In some circumstances Procedure will be writing to the main parties and Natural England following the submission of the report to the Panel, in order to allow them an opportunity to amend or add to their evidence. The approach to handling appeals will vary depending on whether they are proceeding by written representations, hearing or inquiry, and the stage they have reached. In order to assist parties they will be referred to this Advice Note which will be placed on the PINS website.

Hearing and inquiry cases placed in abeyance pending submission of the Assessor's report and event not yet held

13. The placing of TBH appeals in abeyance, where requested by both main parties, was prompted by the submission at inquiries and hearings of substantial volumes of the material that was being prepared for the SEP technical sessions. To continue with inquiries and hearings in such circumstances risked inconsistency in decision-making as the evidence would have been presented and tested to varying degrees according to the manner in which, and by whom, it was introduced to the various events. Now that the SEP sessions have closed and the Assessor's report has been submitted to the Panel, the main parties will be asked if they wish an appeal to come out of abeyance.

14. If they both agree, they and NE will be given a deadline (10 working days) from the date the abeyance ends by which to submit any comments on the Assessor's report. These comments will be cross-copied and the parties given an opportunity to cross-comment (a further 10 working days), after which there will be no further exchange of representations in relation to the Assessor's report. The appeal should then proceed to the event. Whilst the submission of further evidence on the matter at the event is not desirable, acceptance of it will, as always, be at the discretion of the appointed Inspector.

15. If either or both of the main parties do not wish the appeal to come out of abeyance they will have to provide full reasons for their request and Procedure will consider whether the appeal will be unnecessarily delayed if it remains in abeyance. If Procedure considers it should go ahead, the parties will be advised accordingly and the arrangements for commenting on the Assessor's report set out above will be followed.

Hearing, inquiry and written representations cases proceeding but event not yet held

16. Exceptionally, notwithstanding the provisions of the Hearings Rules, the main parties and NE will be notified in writing that they will be permitted to submit comments on the Assessor's report if they consider it to be material to their case. A period of 10 working days will be permitted. These comments will be cross-copied and the parties given an opportunity to cross-comment (a further 10 working days), after which there will be no further exchange of representations in relation to the Assessor's report. Provided that the above process has been completed, the appeal should proceed to the event.

17. In the event that there is insufficient time prior to the hearing to permit this, and the parties have indicated that they wish to respond to and present evidence on the matter, consideration may be given to (i) the postponement of hearings or inquiries, or (ii) in written representations casework, exceptionally, acceptance of material after the site visit.

Hearing, inquiry and written representations cases event held but decision not yet issued

18. At this stage, there will only be certain circumstances in which there will be a need to canvass the parties. These are where you intend to:

- i. dismiss on SPA grounds but would have allowed on other grounds;
- ii. allow on all grounds including SPA, despite outstanding objections from the LPA or NE on the SPA issue.

You do not need to canvass the parties where you intend to:

- iii. dismiss on SPA and other grounds;
- iv. allow on SPA grounds but dismiss on other grounds;
- v. allow on all grounds including SPA and there are no outstanding objections from the LPA or NE on the SPA issue.

19. Where i. and ii. above apply the main parties and NE will be given a deadline (10 working days) by which to submit any comments on the Assessor's report. These comments will be cross-copied and the parties given an opportunity to cross-comment (a further 10 working days), after which there will be no further exchange of representations in relation to the Assessor's report. The appeal should proceed to a decision.

20. If you are dealing with a TBH SPA case and it does not appear that the above procedures have been followed you should contact the case officer immediately.

21. Further advice will be issued at key later stages, such as the issue of the Panel's report and ultimately the Secretary of State's decision on the SEP.

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