

Thames Basin Heaths Special Protection Area

Information for Prospective Applicants

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. This area is designated as a result of, and is protected by, the European Habitats Directive.

The Habitats Regulations implement in Great Britain the requirements of the Habitats Directive. The Regulations aim to protect sites in the UK that have rare or important habitats and species, such as the Thames Basin Heaths SPA, in order to safeguard biodiversity. See page 3 for further details on this legislation.

Under the Habitats Regulations, any competent authority, in this case Hart District Council, has a duty to ensure that all the activities they regulate will have no adverse effect on the integrity of the SPA. Regulation 48 of the Habitats Regulations requires the Council to assess the possible effects of the various proposals, including planning applications, on the SPA.

English Nature is currently advising that any planning applications resulting in a net increase in residential dwellings which fall within 5 kilometres of the SPA boundary are likely to result in a significant impact on the site either alone or in combination with other development in the area.

If significant effects are identified, then the project should be subject to an assessment of its implications on the site, 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 if they are minded to grant the application. The Appropriate Assessment must be carried out in consultation with English Nature.

Regulation 48(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 instance, the application would be refused.

In the light of the information presented by the applicant, in addition to English Nature's comments, the Appropriate Assessment will identify the effects of the proposal on the habitats and species, 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, may rely on English Nature's consultation response that there would be harm. If this is the case the planning authority then has 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.**

Information required for Appropriate Assessment

English Nature has set out a scope for an Appropriate Assessment and produced further guidance (English Nature, 1997). 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 48(2) and 48(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 residents as a result of the development (can use the national average occupancy rate unless local or project specific considerations make other occupancy rates likely, in which case these specific considerations should be set out).
- Types of residents and dwellings proposed.
- Likelihood of dogs being kept by the residents, with reference to development type, location and statistics for existing, comparable development.
- 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 on any mitigation measures that they can provide to offset any significant impacts. This could include:
 - The provision of new semi-natural open space in the locality;
 - Improving attractiveness and capacity of existing semi-natural open space;
 - Improving rights of access across land;
 - Restrictions on the type of residential use, affecting the type or behaviour of residents and the likelihood that they will keep pets, giving consideration to enforceability.

Any potential mitigation is likely to cover a range of issues and it will not be possible to mitigate solely by use of a conditioned agreement on the planning application prohibiting dog or cat ownership. This covers a small part of the impact and will not mitigate against other recreational uses such as walking, cycling and jogging.

The Council strongly recommends that any negotiations concerning mitigation measures are carried out in discussion with English Nature and any other relevant third party, for example the Council or landowners, prior to the application being registered.

The applicant is reminded that the assessment has to be calculated in relation to all other plans or projects on the whole of the SPA. Again it is recommended that discussions take place with English Nature on this.

Background Information

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. These sites are protected under EU and national legislation, and by government planning policy.

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 in Hart covers over 2,500 hectares and includes Hazeley Heaths, Bramshill, Castle Bottom to Yateley & Hawley Commons and parts of Bourley & Long Valley and Eelmoor Marsh.

3. What is the legal framework?

The Conservation (Natural Habitats & c.) Regulations 1994, 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 Hart was designated as a *proposed* SPA in 2000, and then given full SPA status in March 2005. This is in order to protect 3 species of birds classified under the Birds Directive: woodlark, nightjar and Dartford warbler.

4. In theory, what does this legislation mean for planning?

The SPA designation is a significant 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 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 an 'Appropriate Assessment'. The purpose of the Appropriate Assessment 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 site, either alone or in-combination (after taking into account the mitigation measures proposed).

5. In practice, what does this legislation mean for planning?

English Nature, the government agency responsible for the promotion of wildlife, has identified that recreational pressure, especially dog-walking and other human activity, 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, English Nature is working on a pilot project across the Thames Basin Heaths SPA, which aims to ensure the Habitats Regulations are implemented by Local Authorities, and that any new development mitigates against additional recreational pressure. They have identified that an adverse impact on the integrity of the site 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. Whilst 1 net additional dwelling alone may not lead to a significant adverse impact, in combination with the other small developments occurring across the whole SPA area the cumulative effect could be significant.

The mitigation measures English Nature believe are able to mitigate against this impact are based on the provision of semi-natural open space, which makes available an alternative site for new residents to use for recreational purposes, instead of the SPA. This open space will preferably be new, although there is some potential to enhance existing open space which is currently under-used and less accessible. The amount of open space required for mitigation decreases with distance from the SPA.

6. Strategic Approach

The current and previous approach requires a case-by-case assessment of planning applications, which is a time-consuming process and does not lend itself to assessing the combined affects of the many developments that may cumulatively affect the SPA. For that reason an integrated strategy across the 15 Local Authorities is being developed, which is known as the Delivery Plan. This aims to be a strategic method of identifying mitigation measures in order to address the complex issues of in-combination and cumulative impacts on the SPA. It will also put forward generic mitigation measures, including draft standards for open space provision, which can be implemented to avoid the need for an Appropriate Assessment of each individual application.

In addition, Hart District Council is working on a plan-level Appropriate Assessment of the Core Strategy and Site Allocations Development Plan Documents, which will identify strategic areas of potential semi-natural open space required for the delivery and implementation of the DPDs. This will look at the mitigation required for the planned housing allocation to 2026, therefore developing a “per-household” standard for mitigation using semi-natural open space. Hart District Council could then seek compensation in line with this standard for each development application, similar to that we currently seek for open space. This standard must be robust, yet realistic, to ensure sustainable development can still take place in the District whilst ensuring no future harm to the SPA.

Further Information

- English Nature (1997) Habitat Regulations Guidance Notes.
- HMSO (1994) Statutory Instrument 1994 No. 2716. The Conservation (Natural Habitats &c.) Regulations 1994.
- ODPM / DEFRA Circular (ODPM 06/2005, DEFRA 01/2005)
- ODPM (August 2005). Planning Policy Statement 9 (Biodiversity and Geological Conservation).
- More information on English Nature's approach to this initiative and links to many more research reports can be found online at:
<http://www.english-nature.gov.uk/about/teams/init.asp?ld=5>