

# Appendix 1: Inspector's Preliminary Conclusions on Compliance with the Habitats Regulations



## NEW FOREST DISTRICT COUNCIL – LOCAL PLAN (PART 2) EXAMINATION

### **Inspector's Preliminary Conclusions on Compliance with the Habitat Regulations**

*At the hearing session on Issue 1 Regulatory Matters I indicated that I was concerned that the assumptions made in the Habitat Regulations Assessment (Doc12) were not adequately delivered in the Local Plan and that further work was required to specify the nature of mitigation measures and their linkage to housing delivery. This note summarises my concerns and invites the Council to consider what further work/changes to the plan are required and how long such work might take.*

#### **1. The Habitat Regulations Assessment (HRA)**

1.1 The *Habitats Regulations Assessment of the Submission Document* (Doc 12, July 2012) sets out in the second half of page 50 (section 4) the basis for the favourable conclusion made in the assessment. It indicates that the following recommendations made following the appropriate assessment of the Core Strategy *must be implemented* (my emphasis) through the Sites and Development Management DPD, namely:

- *promotion of the role of green infrastructure and commitment to resourcing its delivery; and*
- *appropriate levels of open space provision within new development and addressing shortfalls in existing provision.*

1.2 It also indicates that a recommendation made following the appropriate assessment of the Core Strategy must be implemented through subsequent SPD, namely:

- *in particular for development areas close to the sites measures to improve open space to avoid regular visits such as dog walkers.*

1.3 It states that the *effective and timely delivery of mitigation* is key to the favourable conclusion reached.

1.4 The specific measures highlighted by the HRA for the Local Plan must be seen in the wider context of the assumptions and expectations of the HRA for the Core Strategy (October 2008). Table 9 of that document (reproduced in NFDC11) listed various mitigation measures including management of sites to address additional recreational pressures and active partnership working to deliver necessary open space, green infrastructure and site access management.

1.5 The HRA for the Core Strategy (p37) deferred further details, such as to define the quantum of open space required or site specific management measures, to a lower tier development plan document - this Local Plan.

#### **2. Shortcomings of the present position**

2.1 As a result of the hearing and having regard to all the written material, I confirm that I have serious concerns about the adequacy with which the Local Plan has addressed habitat mitigation. This concern is amplified by the lack of progress or any active engagement by the Council with the wider mitigation measures which the Core Strategy assumed would also be delivered.

2.2 The last sentence of DM9 states that proposals likely to add to recreational pressures on sensitive European sites will be required to contribute to the provision of alternative natural green space. The Local Plan does not otherwise refer to *alternative natural green space* (SANG), and so it is unclear how developers will know what is expected of them or whether any necessary SANG is actually available and deliverable to allow residential development to proceed. It appears that no such policy is currently being applied.

2.3 There is a disconnect between what is assumed in the HRA for the Local Plan and what the Local Plan actually delivers. In part, this is because the very broad phrasing used in the HRA assessment creates uncertainty as to what precisely is required.

2.4 The only assumption/expectation that is reasonably delivered is that allocated sites are required to provide for open space in accordance with the standard in Core Strategy policy CS7.

2.5 Delivery of the assumption concerning *addressing shortfalls in existing provision* is ambiguous, but in the absence of any further explanation would imply that all shortfalls should be met. The Council's evidence identifies very considerable shortfalls in a number of settlements for both formal and informal open space. The Local Plan makes only limited new provision to address some of these shortfalls. There is no evidence to indicate that the remaining shortfalls have any prospect of being met. This element of the assumption of the HRA is not therefore delivered.

2.6 Some of the proposed open space to meet existing shortfalls is not linked to any new residential development and there is no certainty that such proposals would be delivered within the plan period. Other open space to meet shortfalls is linked to allocations for new housing, but the nature and appropriateness of the linkage (in terms of habitat mitigation requirements) is ambiguous.

2.7 The HRA assumed that mitigation sites (such as for dog walkers) would be delivered through SPD. Policy DM9 proposes a Green Infrastructure SPD but the emphasis of the wording in the submitted policy is on identifying and protecting existing features and not on providing or improving sites to mitigate the effects of development on European sites. More fundamentally, there is nothing in the plan to link the acceptability of the residential developments proposed in the plan with the delivery of mitigating SANGS in SPD. In short, there would be nothing to stop all the residential allocations (and other sites) being permitted and no mitigation actually being delivered via SPD.

2.8 The other major problem with the expectation of delivery of SANGS through SPD is there appears little evidence as to what scale, type and location of sites is appropriate as SANGS or the prospects for identifying and delivering actual sites.

2.9 The wider picture is also unsatisfactory. A number of *required mitigation mechanisms* are to be delivered outside the scope of the Local Plan involving cross-border working. But it appears that nothing is actually happening to provide cross-border mitigation which takes into account development within the NFDC's planning area. The Council has withdrawn from PUSH and has no involvement with the design and delivery of Test Valley Forest Park. Any mitigation that any such park might provide appears to be linked only to development in adjoining authorities. Equally, there appears to have been no work done with the National Park Authority on how to mitigate the impact of development outside the Park on the New Forest SPA. The statement from the NPA attached to the Council's hearing statement makes clear that its work has not specifically taken into account any mitigation of development taking place outside the National Park. The assumptions made in the HRA for the Core Strategy and assumed to be continuing in the HRA of this Local Plan are not being delivered.

2.10 Cumulatively these concerns represent a very significant problem for regulatory compliance and the effectiveness of the Local Plan.

2.11 In the absence of greater clarity in the plan, it would appear that each individual residential proposal might need to undertake a Habitat Regulations Assessment. It was agreed at the hearing that this would be an undesirable state of affairs placing a considerable burden on individual applicants and being very difficult to do in terms of evidence and assessment.

### **3. The Way Forward**

3.1 It is very difficult to suggest the way forward other than in broad, procedural terms. The way forward needs to be evidence-led and procedural steps will need to be revisited to ensure compliance with the Habitat Regulations. The disconnect between what the HRA assumes to be delivered and what the plan and other measures actually delivers needs to be overcome.

3.2 It seems essential for the Council to somehow quantify in broad terms the scale, type, location, and relationship to the scale and location of residential development of the new or improved open spaces (SANGS) that would complete the necessary suite of mitigation, within the context of what else is actually being done (eg adherence to CS7 and only limited provision to address existing shortfalls) and the absence of progress on wider mitigation.

3.3 There will need to be evidence that what is required by way of SANGS is actually deliverable and the provision of SANGS needs to be sufficiently defined in the local plan to enable my agenda question 3.10 to be answered:

*how will the Council and others know that adequate mitigation has or will be secured to enable the planned scale of development to proceed and how will developers know what is expected of them.*

3.4 To indicate that sufficient priority is being given to SANGs, the IDP will need to be revised.

3.5 At the hearing on Policy DM9, the Council tabled (NFDC20) a suggested revised wording for the policy setting out at much greater length what a Green Infrastructure and Mitigation Strategy SPD needs to do. However, words along these lines do not begin to address the issue of the scale of SANGS or its location in relation to settlements where development is taking place or provide any linkage between delivery of SANGS and delivery of housing.

3.6 I confirm my suggestion at that hearing that it may be helpful to split the purpose of DM9 into 2 separate policies. One policy would cover those elements of Green Infrastructure not covered in saved Local Plan policy DW-E12 (or its subsequent revision) or DM7, primarily linkages between these other open spaces within settlements. The wording of the policy would need to reflect the fact that such areas would be identified in SPD and could not have the same degree of protection afforded to sites which have been designated in a development plan and tested prior to adoption.

3.7 A separate policy should set out the complete suite of measures that the Council finally determines will be taken forward to ensure necessary mitigation for all European sites. I would suggest that this includes reference to compliance with the CS7 standard as a mitigating measure and makes clear what proposals for addressing existing shortfalls are also intended as mitigation. It should then set out what else is required and what will need to be done in SPD. The scope should not just be on protecting the New Forest SPA, but all the SPAs where potential adverse effects have been identified. It should include the most up to date position in relation to mitigation measures emerging from the Solent Disturbance and Mitigation Project. Monitoring measures should be defined to ensure that what is proposed is delivered in step with housing development.

3.8 Accordingly the further outputs are likely to include:

- Evidence gathering or application of existing evidence;
- A revised HRA taking into account additional evidence and realistic proposals;
- A new policy in the Local Plan for mitigation (and DM9 rewritten with a much clearer and narrower scope);
- A revised IDP to indicate appropriate priority for open space projects which are necessary for mitigation.

3.9 I invite the Council to consider how long will be required to undertake this work. I would encourage the Council to involve Natural England and other interested parties at an early stage in this work. Any updated evidence and revised background papers such as a revised HRA or IDP will need to be published, at the latest, at the same time as consultation on proposed changes to the plan.

#### **4. Other points**

4.1 At the hearing the Council emphasised that mitigation should be seen in a wider context eg substantially less development being proposed in the Core Strategy than in past plans; the much greater scale of development proposed in adjoining authorities; that mitigation is not so pressing here as is the case with other European sites elsewhere; and the comparatively good status of much of the New Forest SPA. In so far as these factors are relevant, I assume that they would have been taken into account in the HRA.

4.2 I note that Natural England is not maintaining earlier concerns raised in terms of regulatory compliance or soundness. However, its letter of 19 September 2012 did seek further information on the progress of measures previously identified to ensure that the local plan is compliant with the Habitat Regulations. On the evidence available to me there has been little progress since 2008.

4.3 I also note that the National Park Authority has not raised any fundamental concerns regarding soundness. Of interest is that the NPA's Core Strategy identifies only residential development *within* 400m of the SPA boundary as needing mitigation. It has set out in SPD precise means of securing that mitigation. The Local Plan is not proposing to allocate any sites within 400m of the SPA. It made this choice as a precautionary measure to minimise potential effects on the SPA. It is not clear whether this locational strategy was taken into account in the HRA.

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**25 February 2013**