



## **North Essex Authorities Local Plan (Part 1) Examination**

### **Matter 1 Habitats Regulations Assessment (HRA)**

#### **Response to additional issues raised in submitted Hearing statement**

#### **1. Introduction**

This written statement attempts to address the main outstanding issues which have been raised by further representations to the Inspectors questions relating to the Habitats Regulations Assessment (HRA). In Natural England's view our previous response covers most of the issues raised. However, we have provided further clarification on selected questions to provide confidence to the Inspector that the approach taken by the NEA's is compliant with the Habitats Regulations.

#### **2. Q1 Should the HRA have taken account of the implications for European sites of development beyond 2033 proposed in the Section 1 Plan?**

- 2.1 From the written statements provided additional concerns have been raised questioning whether the HRA should have assessed the full quantum of growth for the Garden Communities rather than just assessing the impacts of the growth which is to be delivered throughout the lifetime of the local plan period i.e. to 2033. Natural England's advice in our previous written statement submitted to answer this question advised that the HRA can only be expected to assess the impacts of the planned growth outlined within the period covered by the Local Plan, as this is the growth which the plan is committed to delivering.
- 2.2 However, we note that the NEA's submission advises that Section 2 of the HRA identifies the future total capacities of the garden communities as specified in policies SP7 to SP10 and confirms that the total quantum of future development, beyond 2033, relating to water, recreation and loss of offsite functionally linked land have been considered within the Appropriate Assessment.
- 2.3 It is our understanding that the process for assessing the impacts of the Garden Communities and testing the assumptions for growth of the Garden Communities is through the Local Plan process. The NPPF requires local plans to be reviewed on a 5 year cycle as detailed in paragraph 33 of the NPPF. There is therefore opportunity for the NEA Local Plan to consider any relevant changes or more detailed proposals in relation to the Garden Communities to be considered as part of this review cycle. Any such review which altered the housing numbers, or locations of growth would be subject to a further Habitats Regulations Assessment.

#### **3. Q4. Does the HRA take adequate account of the implications for European sites of the Section 1 Plan in respect of:**

##### **a. water use and waste water?**

- 3.1 From the written statements provided, we note that some additional concerns have been raised regarding water use and waste water, including by CAUSE in their statement which refers also to Dr. Gibson's statement (we assume this is to mean Dr. Gibson's original

statement, as no further comments on water are made within his further statement). It is not clear to us what the additional comments by CAUSE are intended to convey, however in our previous written statement we advised that:

‘the HRA has adequately taken account of the implications for European protected sites in relation to water use and we agree with the conclusion of the HRA. We are also of the view that this is also the case for waste water treatment, provided policy SP7 is strengthened as detailed in the updated and additional draft SoCG. To ensure that new development does not have an adverse effect on any European Protected site, the required waste water treatment capacity must be available in advance of planning consent being give or prior to houses being occupied. We advise that Policy SP7 therefore requires strengthening as follows:

*“To ensure new development does not have an adverse effect on any European Protected **or nationally important sites and complies with environmental legislation (notably the Water Framework Directive and the Habitats Directive)**, the required waste water treatment capacity must be available **ahead of the occupation of dwellings** ~~in advance of planning consent~~”*

3.2 Natural England also notes that the NEA statement, paragraph 1.1.2, refers to the Water Cycle Study which considers the maximum potential growth scenario. Further, the Anglia Water statement considers that ‘the wording of the above policies as amended would provide an appropriate policy framework to ensure that additional foul flows from new development proposals in the North Essex Local Plan area do not have an adverse effect on the integrity of the relevant European sites as a result of water quality.’ In view of the above policy amendments, and the positions of key parties (NEA, AW), Natural England is satisfied that the HRA does take adequate account of the implications for European sites of the Section1 plan in respect of water use and waste water.

#### **b. powered paragliding?**

- 3.3 Natural England notes that this issue is raised in Dr. Gibson’s further statement, within the category he describes as ‘low flying aircraft’, with comments that ‘they must be regulated adequately for the plan to be able to be compliant’, and that the zone of influence may be underestimated.
- 3.4 Natural England has already commented on this issue within our previous representation answering the Inspector’s questions, to which you are referred. In our opinion, the nature of such effects should be considered as falling within the assessment work undertaken, and the mitigation measures already described. The Essex Coast RAMS strategy provides the opportunity to interact with user groups to influence behaviours as may be appropriate. We also previous noted that: ‘Natural England has met with paramotor users on the Colne and Blackwater Estuaries to explain the impacts their sport can have if not undertaken responsibly. Guidance was also provided on how they can avoid disturbing birds whilst flying. As a result of this meeting the users are more aware of their responsibilities and are self-policing the sport locally where possible. Natural England is looking to undertake a similar approach with Jet skiers. The Essex Coast RAMS can build on this approach already taken forward by Natural England staff.’ This action indicates that appropriate influencing is possible with this sector.
- 3.5 It should also be noted that the purpose of the Essex Coast RAMS is to identify and address the majority of damaging user groups, by focussing on the biggest or most frequent disturbance impacts (for example dog walkers). In our opinion, overall the Essex Coast RAMS will reduce disturbance to acceptable HRA levels, even if every last impact is not fully addressed. In HRA terms, the aim is to reduce impact to below the ‘adverse effect on site integrity’ level, rather than to eliminate every possible disturbance pathway (however desirable that may be). It should also be considered that given this niche activity could

indeed have a very large zone of influence, this could more appropriately be viewed as a wider tourism issue more so that a residential housing growth issue (and as such it may have only limited overlap with the Plan HRA).

**c. loss of feeding grounds at Tendring Colchester Borders GC for lapwings and golden plovers?**

3.6 Natural England assumes that by 'feeding ground' the question is referring to 'functionally linked habitats' which certain species are dependant upon for their survival which are outside of the European site boundaries. This matter is mentioned by Dr Gibson in his further representation, where he comments that 'Continued surveillance to ascertain whether significant usage by these species, followed by targeted habitat protection, enhancement and creation to offset displacement is probably a viable strategy for these widely dispersed, but important, species.' This conclusion is consistent with Natural England's position as set out within our previous written statement. Furthermore, we proposed some strengthening of Policy SP1B with the inclusion of additional text, which has subsequently been agreed with the Statement of Common Ground between Natural England and the North Essex Authorities. The outcome is that if areas with a strong functional linkage are identified and affected, then measures are available to address these impacts.

**4. Q5 Would implementation of the mitigation measures proposed in the RAMS document [EXD/050] ensure that the Section 1 Plan (either alone or in combination with other plans or projects) would not adversely affect the integrity of any European site?**

From reading the additional written statements Natural England has identified the following key outstanding concerns, which we offer the following advice on:

**a. The mitigation measures proposed in the Essex Coast RAMS do not seem to be sufficient e.g. only 2 water based rangers are proposed to cover the whole of the Essex coast**

4.1 The mitigation measures identified in the Essex Coast Rams were developed by engaging with a whole raft of partners and stakeholders through a series of workshops. The proposals have therefore been identified by partners who have experience of the sites in question and the practical challenges involved in addressing the recreational disturbance impacts for the sites in question. It should also be remembered that the Essex Coast RAMS will not be operating in isolation, it will be operating alongside existing approaches and mechanisms around the coast. The Essex Coast RAMS will also be subject to regular review and monitoring to ensure the mitigation measures being proposed are being effective and are delivering the required amount of mitigation in the right places.

4.2 Natural England will be able to advise if monitoring indicates that recreational disturbance isn't being mitigated as expected. Any such issues can be reviewed and the mitigation refined or targeted as required. There is also scope to adjust the tariff too if it is shown that contributions are not covering the identified measures.

**b. The Essex Coast RAMS only covers costings up to the end of 2038, but mitigation needs to be implemented in perpetuity.**

4.3 Natural England has already advised on this in our previous written statement. As it is recognised that the recreational impacts associated with residential developments will be permanent and will have effects beyond the life of the plan, the Essex Coast RAMS has identified the need for a proportion of contributions received from the residential mitigation tariff to be invested to cover the cost of delivering some of the strategic visitor access management measures '*in perpetuity*'.

**c. The Essex Coast RAMS approach won't deliver the required mitigation as there is no proof that such an approach has worked elsewhere. Criticism that the mitigation relies on a series of soft measures which some users are reluctant to follow.**

4.4 As stated in our previous written statement it is acknowledged that taking strategic approaches to mitigation by utilising access management measures, and where appropriate Suitable Alternative Natural Greenspace (SANG) is a relatively new concept. However, these are approaches which have been rolled out across the country to address recreational impacts of growth on the natural environment and are considered to be effective mechanisms for enabling growth whilst protecting European protected sites.

4.5 Given this is a relatively new concept there isn't a huge body of monitoring reports available yet to show empirically how effective these measures are. However, a report was published entitled "*First year results of monitoring bird disturbance around the Solent, in the presence / absence of rangers*" by Footprint Ecology (August 2017) to monitor the effectiveness of rangers operating at the Solent. The Report identified the following findings:

*"The results provide the initial findings of monitoring that is anticipated to run for a number of years. The results from this year are therefore not intended to provide comprehensive findings or complete results. The results show slight positive effects of ranger presence, particularly in terms of the overall number of birds disturbed, rather than the proportion of events that cause disturbance. It is important to note this is only the second year of the ranger team and other mitigation measures are also only just being established. The Bird Aware branding (including the new website and leaflet) and key messages for the project have only just been developed over the winter. The ranger team is small and the 2016/17 winter was the year in which the public profile was launched. The monitoring is intended to provide baseline results for comparison with future years and to guide how the rangers are deployed."*

4.6 In addition, further monitoring information about this type of approach is emerging from the Thames Basin Heaths SPA strategy, and various updates and reports are available from [this link](#), should this be of interest to the Inspector or other interested parties.

**d. The role of monitoring in the Essex Coast RAMS is questioned as the use of monitoring cannot be considered to be mitigation**

4.7 Natural England agrees that monitoring cannot be considered as mitigation and monitoring that simply informs of an effect is not a measure to prevent impacts. However, monitoring can be used as an early warning mechanism as part of a mitigation package to prevent impacts, where there are clear plans in place for action in light of monitoring findings, and with sufficient certainty that such action will be effective. So in the case of the Essex Coast RAMS monitoring will be in place as an early warning mechanism to identify any instances where recreational disturbance isn't being mitigated as expected. Where this is found to be the case it will trigger a review of the mitigation measures to ensure the impact is properly addressed and mitigation measures will be amended accordingly.

4.8 This approach is used in other strategic solutions across the country to hone mitigation measures. This is important because access patterns can change over time, certain locations can become more popular or the balance of activities can change. Monitoring is integral to the mitigation as it ensures mitigation can adapt to changing circumstances and resolve issues as they emerge. Strategies with good practice in relation to meaningful monitoring include the Dorset Heaths, the Solent and Thames Basin Heaths all of which have dedicated monitoring strategies. On the Dorset Heaths, the monitoring undertaken has changed over time. The original strategy (Liley 2007) set out the foundation for monitoring

which has adapted over time in relation to available resources, staff time etc. Each year a short monitoring report is produced which summarises results for the year and emerging trends. On the Dorset Heaths, Thames Basin Heaths and the Solent, car-park counts are a foundation of the monitoring. The approach has also been used at a range of other sites such as the East Devon Heaths and Ashdown Forest.