

Matter 1: Habitat Regulations Assessment (HRA) – Examples of Recreation disturbance Avoidance and Mitigation Strategy (RAMS)

At the hearing session for Matter 1, in discussion on questions 3 and 4, the Inspector requested further information in relation to the Habitat Regulations Assessment. Firstly, he has asked for Natural England's response to the North Essex Authorities (NEA) view that the Outer Thames Estuary Special Protection Area (SPA) should not be screened into the HRA. Secondly, the Inspector requested information on examples of RAMS elsewhere in the country that have been adopted after plan adoption. Lastly, the Inspector asked the NEAs to respond to the following comment in Natural England's response (dated 12 January 2018) to Chris Gibson's late submission:

"To address Dr Gibson's criticism here we would suggest that the LPAs explain: what proportion of the proposed 70ha country park would be new public access land; and how that new area, and the areas with existing public access, would be enhanced and managed to increase their value as mitigation for the effects of the plan on the Colne and other N2K sites nearby."

1. Outer Thames Estuary

The NEAs contacted Natural England on 16 January 2018 and asked for a response to the NEA's view that the Outer Thames Estuary should not be screened into the HRA for the Section 1 Plan.

As indicated in the Statement of Common Ground the NEA do not believe that there will be any Adverse Effects on Integrity (AEoI). The NEA accept the need to be "prudent" in relation to the strategic allocations in Section 1 and believe that any effects on the Outer Thames Estuary associated with the three garden communities can be addressed in the HRA that will support the DPDs required in relation to each community.

Natural England is satisfied that the explanation provided by LUC in their response (paragraph 7a dated 12th January 2018) to Dr Gibson's representations is sufficient to enable a conclusion of no adverse effect on integrity to be reached.

It is acknowledged that the qualifying species of the Outer Thames Estuary SPA are susceptible to disturbance from waterborne activities such as boat movements. However, it is necessary to consider the likelihood of population growth resulting from the Shared Strategic Plan resulting in a Likely Significant Effect on the qualifying features of the SPA. The SPA comprises an area of open sea covering c.3924km², extending over 40km from the coastline, and reaching as far north as Great Yarmouth. The boundary of this SPA is based on the foraging area of the qualifying species, and notably excludes most of the coastal water in close proximity to Tendring and Colchester.

Whilst feeding in the open sea, red throated diver and tern species are highly mobile, covering vast distances, whereas recreational boats would be expected to remain relatively close to the coast. NE has access to data that shows the relative use of

coastal waters for sailing activity, mostly coastal cruising, which shows that even for cruising (i.e. not dinghy sailing) the pressure is limited to inshore coastal waters). Given the mobility of these species and the likely scale of increased recreational activity relative to the size of the site, they are unlikely to be disturbed by watercraft to any level approaching a significant effect. Furthermore, the increase in usage of watercraft is unlikely to result in any discernible increase in the numbers, distribution or frequency of watercraft navigating these waters, particularly when considered in light of their existing usage and importance as established commercial fishing and shipping importance.

2. Examples of RAMS

The requirement to prepare a RAMS is a relatively new requirement endorsed by Natural England as a mechanism to ensure that recreational disturbance impacts on European Sites are properly mitigated. The bar has been raised significantly in terms of the mitigation sought by Natural England for development coming forward under the NEA's individual current adopted Local Plans and the proposals in the Plan currently under examination. The NEAs would like to reiterate their commitment to delivering the RAMS and firmly believe the approach proposed is robust and reflects the current best practice endorsed by Natural England.

As explained in the Habitat Regulations Assessment (EB/003) a RAMS is needed to avoid and mitigate likely significant effects (LSE) and Adverse Effects on Integrity (AEol) in relation to recreational disturbance at European Sites. The Statement of Common Ground between Natural England and the NEAs (SCG/001) proposed changes to the Section 1 Plan to make it clear that the RAMS should be completed before plan adoption. As explained in the NEA and LUC response to Dr Chris Gibson's representation, Essex Place Services has been commissioned by all Essex LPAs to prepare a RAMS for the Essex coast, which will include the European sites within Colchester Borough and Tendring District. This is programmed to be completed in October 2018 (See Appendix 1 for Project Plan), before plan adoption assuming that Section 1 is not adopted ahead of Section 2.

Even if adoption of the Plan took place ahead of completion of RAMS, the examples outlined below demonstrate that there are cases elsewhere, including North Northamptonshire and neighbouring Suffolk, where Local Plans have been adopted prior to a RAMS being completed. These examples provide assurance, that the approach the NEAs and Natural England are advocating is acceptable and has been found sound elsewhere.

North Northamptonshire

Natural England refer to the example of the North Northamptonshire Joint Core Strategy in their response to Dr Gibson's representation. The Joint Core Strategy committed to preparing a Mitigation Strategy for the Upper Nene Valley Gravel Pits Special Protection Area (SPA). The Strategy was not in place at the time of the Examination hearing sessions and it was not completed until after the Joint Core Strategy was adopted. The North Northamptonshire LPAs provided a Statement of

Common Ground with Natural England, committing to prepare a mitigation strategy. Paragraph 25 of the Inspector's report (dated 22 June 2016) states:

“Policy 4 (Biodiversity and Geodiversity) has been the subject of concerns from Natural England (NE) regarding the future safeguarding of the Upper Nene Valley Gravel Pits Special Protection Area (SPA). Following a Statement of Common Ground (SCG 11) (November 2015) between NE and the JPU, modifications adding text to paras 3.40 and 3.42 as well as to the latter parts of the policy and referring to a Mitigation Strategy (to be completed by June 2016) for the SPA are necessary to clarify the policy and the details of its satisfactory implementation for soundness (MM 2). As modified, the policy would be consistent with paras 113, 114 and 157 of the NPPF, as well as core principle 7 thereof and thus sound.”

The Joint Core Strategy was adopted in July 2016 and the mitigation strategy was adopted by the LPAs in November and December 2016.

Suffolk


Suffolk LPAs (Ipswich Borough Council, Babergh District Council and Suffolk Coastal District Council) are jointly preparing a RAMS for Suffolk European sites which comprises a Technical Document, which sets out the mechanism for collecting contributions to fund the mitigation measures identified in the Technical Report. A draft RAMS has been completed, however the three LPAs have yet to adopt it. It is anticipated that that RAMS will be adopted in summer 2018. Nevertheless, the LPAs are all requesting contributions from housing schemes within the zones of influence to fund mitigation measures.

Ipswich Borough Council's Local Plan was adopted in February 2017 and the Inspector's report was published in January 2017. The Inspector's report comments in relation to the Duty to Cooperate (paragraph 16) that a Memorandum of Understanding with neighbouring districts and the County Council commits the authorities to (among other things) “ensure implementation of mitigation measures required as a result of Habitat Regulations Assessment and to prioritise infrastructure delivery”.

Natural England's Hearing Statement (26 February 2015) states that a Statement of Common Ground, which addresses their concerns through modifications, explains that contributions to ensure that the mitigation measures identified in the Habitat Regulations Assessment and in the Recreational Avoidance and Mitigation Strategy can be addressed, a completion date is included for the RAMS and the LPA will work with Natural England to agree an interim approach until the RAMS is completed.

The Babergh District Local Plan, which comprises an adopted Core Strategy & Policies was adopted in 2014. The Suffolk Coast and Heaths adopted Local Plan which also comprises Core Strategy and Development Management Policies Development Plan Document was adopted in July 2013. Both of these LPAs are partners in the Suffolk RAMS process which is not due to be completed until the summer of 2018.

Cornwall



Policy 23a of the Cornwall Local Plan (adopted November 2016) requires developers to provide appropriate mitigation (onsite or as payment towards strategic mitigation) for any residential development coming forward within the zones of influence of European sites. The Plan recognises that the evidence base is emerging and that the required level of contributions will be set out in detail in the Mitigation Strategy Supplementary Planning Document (SPD).

The Inspector's report (23 September 2016) notes that "there needs to be transparent consistency between the mitigation measures set out in the HRA and what the Plan proposes. I give particular weight to the views of NE as it is the Government's principal advisor on the protection of European sites, with experience of such issues across the country." (paragraph 19) The Inspector concludes in his report that subject to all the modifications agreed between the LPA and Natural England, the Plan is compliant with the Habitat Regulations. One of these modifications refers to the detailed mitigation measures being set out in a forthcoming SPD. The LPA consulted on the draft SPD in June-July 2017.

Stroud

The Habitat Regulations Assessment that accompanied the Stroud Local Plan (adopted November 2015) identified a need for further work to establish any potential impact on the Severn Estuary from growth. The Delivery Policy ES6 of the adopted Stroud Local Plan identifies the potential need to establish a core recreational catchment zone over which recreational pressure effects may extend. Development within the core catchment zone may be required to contribute funding towards impact avoidance and mitigation measures. The policy states that there will be further assessment work on the Severn Estuary SPA and SAC that shall include recreational pressure.

The Inspector's report acknowledges the outstanding matter of the impact of new developments on the Severn Estuary SAC. The Inspector states that "further detailed work will need to be undertaken.... but this does not detract from the overall soundness of these allocations. On this basis, given the agreement with NE and the agreed changes to policy ES6 and the supporting text, the approach is appropriate, effective, justified and in line with national policy."

The Severn Estuary Recreation and Mitigation Strategy was adopted by the LPA in December 2017.

East Herts

The Examination into the East Herts District Plan 2011-2033 is ongoing, with the Inspector's report expected to be completed in April 2018. However, this example shows that Natural England are consistent with their advice and are advocating a similar approach.

Natural England state in their Hearing Statement to the East Herts Plan Examination that: "a Mitigation Strategy document concerning Epping Forest SAC will be produced by the time of adoption of the East Hertfordshire Local Plan. Development proposals will need to take account of this Mitigation Strategy. Where necessary, this

will include new residential development contributing towards implementation of this Mitigation Strategy.”

Summary of Local Plan approaches

These examples of Local Plans that have been adopted prior to the adoption of a RAMS all demonstrate that the approach the NEA and Natural England are advocating for the Shared Strategic Section 1 Plan is sound and legally compliant.

Interim advice

Appended to this note is the project plan for the Essex Coast RAMS. This demonstrates that the Essex Coast RAMS is due to be completed by October 2018. To date milestones in the project plan have been met. However, taking a precautionary approach, it is proposed that the following additional text is inserted into policy SP6 in the event that progress on the Essex Coast RAMS is stalled.

Prior to RAMS completion, the NEAs will seek contributions from proposed residential development to deliver all measures identified (including strategic measures) through project level HRAs, or otherwise, to mitigate any recreational disturbance impacts in compliance with the Habitat Regulations and Habitats Directive.

An interim approach is successfully being used in Suffolk in the absence of an adopted RAMS to collect Section 106 contributions to fund mitigation measures identified in project level HRAs. Natural England has already provided interim advice to the NEAs (as well as the other RAMS authorities) in a letter dated 16th November 2017 to ensure that any residential development coming forward ahead of the Essex RAMS which has the potential to impact on coastal European designated sites is compliant with the Habitats Regulations

As well as the inclusion of the above suggested text to policy SP6, the NEA recommend that 2 additional paragraphs are added to the explanatory text to policy SP6. The paragraphs are included below and the inspector is ask to treat these as a further modification to the policy.

7.4 Proposals for North Essex must be fully compliant with the requirements of the Habitats Regulation. The Appropriate Assessment for the Shared Strategic Plan for North Essex identified a number of avoidance and mitigation measures to be implemented, including the preparation of an Essex Coast Recreational disturbance Avoidance and Mitigation Strategy. These measures are required to be delivered to ensure that development proposals in the plan do not result in adverse effects on the integrity of European Sites and are HRA compliant.

7.5 Until the Essex Coast RAMS is completed, the NEAs will require financial payments, set out in S106 agreements, to fund the necessary recreational disturbance avoidance and mitigation measures, including strategic measures identified, through HRAs or otherwise. Any measures must be implemented from the first occupation of dwellings, thereby ensuring that the level of recreational disturbance is not increased by future residential development. It

must also be demonstrated that such measures would be effective, deliverable and proportionate to the level of housing being proposed.

Natural England fully endorse the proposed changes to policy SP6 and the supporting text.

3. What proportion of the 70ha Salary Brook Country Park would be new public access land and how would it be enhanced and managed to increase the value as mitigation?

Salary Brook Local Nature Reserve and Local Site (Co146), is owned and managed by Colchester Borough Council and covers an area of 21.6ha. This is currently the only publicly accessible land within the 70ha area proposed as a Country Park, although it should be noted that there is a definitive public right of way through Churn Wood. The additional 48.4 hectares of land which includes Churn Meadow and Churn Wood, would be additional publicly accessible land. This results in a new country park which incorporates approximately 70% new public access land.

Policy SP8 Subsection E15 proposes the delivery of

“A network of multiple-functional green infrastructure will be provided within the garden community incorporating key elements of the existing green assets within the site. It will include community parks, allotments, a new country park, provided along the Salary Brook corridor and incorporating Churn Wood, the provision of sports areas with associated facilities; and play facilities;”

This demonstrates that as well as the new green infrastructure to be delivered as part of the proposed county park, that additional green infrastructure is also proposed for delivery within the wider Tendring Colchester Borders Garden Community. No figure is currently available about the overall total amount of green infrastructure to be delivered. This will be determined in the detailed Development Plan Document for the Garden Community.

It is also too early in the process to confirm how the new proposed County Park and other green infrastructure assets will be managed. The detailed design, amount, layout and functionality of the green infrastructure being proposed across the whole site in Policy SP8 will be masterplanned as part of the preparation of the individual Garden Community detailed DPDs as confirmed by the NEA on Tuesday as part of discussion on Matter 1 Q3 & 4. Colchester Borough Council’s Community Services team recently commissioned Essex Ecological Services to prepare a Management Plan for the Salary Brook LNR. A draft of the Management Plan is available and once finalised, the Management Plan will be a key piece of evidence to influence how the County Park will be managed to ensure that it delivers benefits for wildlife and people as well as wider environmental benefits such as flood risk alleviation and landscape enhancements.

It is appropriate to take account of the mitigation that this will offer in considering the AEol.



Appendix 1. Essex Coast RAMS Project Plan

Task	Start date (w/c)	End date (w/c)	Action owner
MOU, project brief, SLA and project planning	20/11/2017	11/12/2017	Place Services
Baseline Evidence Review and Report	20/11/2017	11/12/2017	Place Services
Baseline Evidence- provide data, reports and survey information	20/11/2017	11/12/2017	LPAs
Steering Group Meeting (14th Dec)	14/12/2017		Meeting
Visitor Surveys (Winter)	08/01/2018	28/02/2018	Place Services
Issue Invitations to Workshop 1 (north and south)	15/01/2018		Place Services
Preparations for Workshop (printing, presentations etc)	29/01/2018	12/02/2018	Place Services
Steering Group Meeting (25th Jan)	25/01/2018		Meeting
Stakeholder Workshop 1 (N- Colchester. S- Wat Tyler, Records Office?)	26/02/2018		Meeting
North workshop	01/03/2018		Meeting
South workshop (?)	26/02/2018		Meeting
Steering Group Meeting (28th Feb)	26/02/2018		Meeting
SPD Drafting	26/02/2018	19/03/2018	Place Services
Steering Group Meeting (26th March)	26/03/2018		Meeting
Review of SPD	02/04/2018	16/04/2018	LPAs
Steering Group Meeting (23rd April)	23/04/2018		Meeting
SPD revisions	07/05/2018	15/05/2018	Place Services
Visitor Surveys (Spring) if needed	07/05/2018	28/05/2018	Place Services

Task	Start date (w/c)	End date (w/c)	Action owner
Steering Group Meeting (23rd May)	23/05/2018		Meeting
Drafting RAMS report	04/06/2018	30/06/2018	Place Services
Preparations for Workshop (printing, presentations etc)	21/05/2018	04/06/2018	Place Services
Stakeholder Workshop 2 (north and south)	11/06/2018		Meeting
North workshop	15/06/2018		Meeting
South workshop (?)	12/06/2018		Meeting
Steering Group Meeting (20th June)	20/06/2018		Meeting
SPD drafting and revisions	18/06/2018	02/07/2018	Place Services
Steering Group Meeting (9th July)	09/07/2018		Meeting
Review draft RAMS	06/08/2018	20/08/2018	LPAs
Update RAMS	27/08/2018	03/09/2018	Place Services
Steering Group (7th Sept)	07/09/2018		Meeting
Update RAMS and finalise	03/09/2018	24/09/2018	Place Services
RAMS sign off	24/09/2018	01/10/2018	LPAs