

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 the requirements of the Habitats Directive. The Regulations aim to protect sites in the UK that have rare or important habitats and species, in order to safeguard biodiversity. See page 3 for further details on this legislation.

Under the Habitats Regulations, any competent authority, in this case Bracknell Forest Borough 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.

Natural England advises 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, in consultation with Natural England.

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 case, the application would be refused.

The Appropriate Assessment will use the information presented by the applicant, together with Natural England's comments, to identify the effects of the proposal on the site, 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, rely on Natural England's consultation response that there would be harm. The planning authority would then have 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.**

The Council now has an approved strategy for avoiding harm to the SPA which, as part of the Core Strategy and supporting information, has been found sound by Examination in Public. Natural England has agreed that if the plans are implemented as stated in the SPA Avoidance and Mitigation Strategy, with certain monitoring requirements, they "**will stop objecting to consultations on housing applications in those areas of the Borough which have mitigation in line with the avoidance strategy.**" Prospective applicants can make contributions towards the implementation of this strategy which will

avoid harm to the SPA, as well as negate the requirement for additional information to inform an Appropriate Assessment, as detailed below:

Information required for Appropriate Assessment

Natural England has set out the 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 (see the Special Protection Area Technical Background Document for more details)
- 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 Natural England and any other relevant third party, for example the Council or landowners, prior to the application being registered.

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 within Bracknell Forest covers over 1,300 hectares and includes Crowthorne Woods, Wildmoor Heath, Broadmoor Bottom and Broadmoor to Bagshot Heaths and Woods (the area surrounding the Look Out Discovery Centre).

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 Bracknell Forest 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 serious 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?

Natural England, the government agency responsible for the promotion of wildlife, has identified that recreational pressure, especially dog-walking, 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, Natural England advanced a draft Delivery Plan through the South East Plan process, which aimed 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 SPA area the cumulative effect could be significant.

The mitigation measures Natural England 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.

6. Strategic Approach

A standard approach would require 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 strategy across the 11 Local Authorities is being developed, which is known as the Interim Strategic 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, Bracknell Forest Borough Council has completed an Appropriate Assessment of the Core Strategy, which identifies strategic areas of potential semi-natural open space required for the delivery and implementation of the DPDs. This sets out the mitigation required for the planned housing allocation to 2026, thereby establishing a “per-household” standard for mitigation using semi-natural open space. Bracknell Forest Borough Council now seeks contributions in line with this standard for each development application, similar to that we currently seek for open space. This standard is robust, yet realistic, allowing sustainable development, 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 Natural England’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?Id=5>
- Bracknell Forest Borough Council Core Strategy: <http://www.bracknell-forest.gov.uk/environment/env-planning-policy/env-local-development-framework/env-ldf-core-strategy.htm>
- Bracknell Forest Borough Council Avoidance and Mitigation Strategy: <http://www.bracknell-forest.gov.uk/spa-consultation-strategy-main-document.pdf>