

## **REVIEW OF THAMES BASIN HEATHS SPECIAL PROTECTION AREAS AVOIDANCE STRATEGY**

### **Executive Summary**

The report sets out proposed revision to the Thames Basin Heaths Special Protection Areas Avoidance Strategy and request the Executive to approve the revised Avoidance Strategy for public engagement and consultation between September 2021 and November 2021. The Thames Basin Heaths Special Protection Areas is a network of heathland sites that provides habitat for rare birds of European significance – the Dartford warbler, woodlark and nightjar. The birds are ground nesting birds that are easily disturbed by recreational activities of people, in particular, dog walking.

The current Avoidance Strategy was adopted in 2010. It provides guidance to ensure that development impacts does not cause unacceptable harm to the protected birds. It has become necessary to review the Avoidance Strategy to reflect new information and changes in national policy, the most notable are a number of case laws that have direct implications on how the Special Protection Areas are managed. Links to the case laws are in paragraph 1.4 of the report. A copy of the revised Avoidance Strategy is in Appendix 1.

### **Recommendations**

The Executive is requested to:

#### **RESOLVE That**

- (i) the contents of the proposed revision to the Thames Basin Heaths Special Protection Areas Avoidance Strategy Supplementary Planning Document be noted and approved for public engagement and consultation between September 2021 and November 2021; and
- (ii) delegated authority be given to the Director of Planning, in consultation with the Portfolio Holder for Planning, to approve amendments to the draft SPD to reflect new information before it is published for community engagement.

### **Reasons for Decision**

Reason: To ensure that the Avoidance Strategic provides an up to date framework for the protection of the protected birds species in the Thames Basin Heaths Special Protection Areas.

The Executive has the authority to determine the recommendations set out above.

## Review of Thames Basin Heaths Special Protection Areas Avoidance Strategy

**Background Papers:** [Thames Basin Heaths Special Protection Areas Delivery Framework.](#)  
[Woking Core Strategy.](#)

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## Review of Thames Basin Heaths Special Protection Areas Avoidance Strategy

### 1.0 Introduction

- 1.1 The report outlines proposed revision to the Thames Basin Heaths Special Protection Areas Avoidance Strategy and approval of the Executive to publish it for public engagement and consultation between September 2021 and November 2021. The Thames Basin Heaths Special Protection Areas is a network of heathland sites that provides habitat for the following rare birds - woodlark, nightjar and Dartford warbler. The woodlark, nightjar and Dartford warbler are ground-nesting birds of European significance that are easily disturbed by human activity, in particular, recreational activity such as dog walking.
- 1.2 The European Council Directive on the Conservation of Wild Birds (2009/147/EC) requires Member States to identify and designate Special Protection Areas for the conservation of these rare and vulnerable species of birds. The EU Directive has now been transposed into United Kingdom law. The SPAs were designated in March 2005 to specifically protect the rare birds. Two types of the European designated sites fall within Woking Borough – these are the Special Protection Areas (SPA) and Thursley, Ash, Pirbright and Chobham Special Area of Conservation (SAC). The SAC falls within the SPAs, and the development effects on the SAC are essentially the same as those on the SPAs. Given the geographical distribution of the SPAs across the Borough and the proximity of every area of the Borough to an SPA, it is deemed that every residential development within the Borough could have potential harmful effect on the SPAs, and an Appropriate Assessment has to be undertaken to assess the nature and extent of the effects and/or whether there are no potential effects.
- 1.3 The current SPA Avoidance Strategy was approved to come into effect from 1 September 2010. Its main purpose is to provide guidance to ensure that new development avoids potential harm to the integrity and conservation interests of the SPAs. A copy of the current SPA Avoidance Strategy can be accessed by visiting: <https://www.woking2027.info/supplementary/tbhspastrategy.pdf>.
- 1.4 It has become necessary to review the SPA Avoidance Strategy to reflect changes in national policy and up to date information. In particular, the revised SPA Avoidance Strategy takes into account recent legal judgments – People Over Wind, Peter Sweetman v Coillet Teoranta C-323/17 and Wealden District Council v Secretary of State for Communities and Local Government, Lewis District Council and South Downs National Park Authority (2017). The proposed revised SPA Avoidance Strategy is in Appendix 1. For information, a copy of the European Court Ruling can be accessed by this link: <https://curia.europa.eu/juris/document/document.jsf?docid=200970&doclang=EN>. The Wealden District Council v Secretary of State for Communities and Local Government, Lewis District Council and South Downs National Park Authority can be accessed by: <http://www.bailii.org/ew/cases/EWHC/Admin/2017/351.html>.
- 1.5 The overall strategic policy framework for preparing the revised SPA Avoidance Strategy is Policy CS8 (Thames Basin Heaths Special Protection Areas) of the Core Strategy. The SPA Avoidance Strategy provides detailed guidance on how the requirements of Policy CS8 would apply when determining day to day planning applications. The SPA Avoidance Strategy will have the status of Supplementary Planning Document (SPD) when it is adopted, and will be a material consideration in determining planning applications and other planning decisions. The weight that will be given to the SPD in planning decisions will be significantly enhanced by the extent of public participation during its preparation. Therefore, the Executive approving the SPD for consultation will be a significant step forward towards its adoption and effective use. It will also be in line with the provisions of the Corporate Plan regarding community

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engagement. As highlighted in the Corporate Plan, the Council is establishing a stronger commitment to embedding a culture of consultation into the decision making process, empowering communities and making decisions alongside communities. The consultation on the SPD will be in line with this emerging culture.

- 1.6 Subject to the recommendations of the Executive, it is intended that the report will be published for a six weeks public engagement and consultation between September 2021 and November 2021. The Working Group and the Executive will have the opportunity to consider any representations received and the final version of the SPD before it is reported to Council for adoption by the end of this year.
- 1.7 The report was considered by the LDF Working Group at its meeting on 21 July 2021. Members of the Working Group were supportive of the recommendations of the report. The Draft Minute of the Working Group meeting is in Appendix 2.

### **2.0 Topics covered in the Avoidance Strategy**

2.1 The SPA Avoidance Strategy covers the following key broad topics in detail:

- Policy context within which the SPA Avoidance Strategy has been prepared;
- The provision of Suitable Alternative Natural Greenspace (SANGs) and the standards that they have to meet to be considered as an acceptable SANG;
- An overview of existing SANGs in the Borough and their current capacities;
- How SANG capacity is calculated;
- Proposed SANGs in the Site Allocations DPD to meet future development needs;
- Guidance on how SANG capacity is assigned to development;
- How developer contributions are secured towards SANG provision and maintenance;
- Guidance on the provision of bespoke SANGs;
- Types of development covered by the SPA Avoidance Strategy;
- Strategic Access Management and Monitoring; and
- The process for identifying SANGs

2.2 Overall, the Avoidance Strategy ensures that the Council takes appropriate and necessary steps to avoid harm to the SPAs and that developers are fully aware and informed of their duty to mitigate the effects of their development on the SPAs.

### **3.0 Next stages**

3.1 Subject to the recommendations of the Executive, it is intended that the SPD will be published for a six weeks public engagement and consultation between September 2021 and November 2021. The Working Group and the Executive will have the opportunity to consider any representations received and the final version of the SPD before it is reported to Council for adoption by the end of this year.

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### **4.0 Corporate Strategy**

- 4.1 A key objective of the Corporate Strategy is to create an enterprising, vibrant and sustainable borough. The SPA Avoidance Strategy will help to achieve this objective by making sure that there is sufficient Suitable Alternative Natural Greenspace (SANGs) at right locations to serve future development.

### **5.0 Implications**

#### Finance and Risk

- 5.1 There is no additional financial implications for preparing the SPA Avoidance Strategy. However, the Avoidance Strategy provides a framework for securing developer contributions towards the provision of SANGs and Strategic Access Management and Monitoring (SAMM)
- 5.2 The Council has a legal duty to protect the conservation interests of the SPAs. It is therefore necessary for the Avoidance Strategy to be up to date to satisfy this requirement.

#### Equalities and Human Resources

- 5.3 There are no equalities or human resources implications for preparing the Avoidance Strategy.

#### Legal

- 5.4 The Council has a legal duty to protect the conservation interests of the SPAs. It is therefore necessary for the Avoidance Strategy to be up to date to satisfy this requirement. The SPD should be in general conformity with the development plan of the area.

### **6.0 Engagement and Consultation**

- 6.1 Community engagement and consultation has and will be central to the preparation of the SPD. As highlighted in the Corporate Plan, the Council is establishing a stronger commitment to embedding a culture of consultation into the decision making process, empowering communities and making decisions alongside communities. The community engagement and consultation on the SPD so far has been in line with this emerging culture. The draft SPD has been prepared with significant stakeholder involvement. It has already been subjected to targeted stakeholder engagement with Members of the Thames Basin Heaths Special Protection Areas Joint Strategic Partnership Board, including Bracknell Forest District Council, Guildford Borough Council, Elmbridge Borough Council, Rushmoor District Council, Wokingham Borough Council, Hart District Council, Surrey County Council and Royal Borough of Windsor and Maidenhead, and their views taken into account in preparing the draft.
- 6.2 The community engagement and consultation of the SPD will help establish a new dialogue with the local community about how the development impacts on the SPAs could be mitigated. The outcome of the community engagement and consultation will inform the final version of the SPD.

REPORT ENDS