

REVIEW OF THE THAMES BASIN HEATHS SPECIAL PROTECTION AREAS AVOIDANCE STRATEGY

Executive Summary

The current Thames Basin Heaths Special Protection Areas (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. It had become necessary to review the SPA Avoidance Strategy to reflect changes in national policy and up to date information. A draft revised SPA Avoidance Strategy was approved by the Executive for consultation at its meeting on 9 September 2021. The public consultation took place between 27 September 2021 and 8 November 2021. The report outlines the various responses to the consultation and requests the Executive to recommend to Council to adopt the Avoidance Strategy for the purposes of avoiding harm to the SPAs as a result of development.

A total of 6 individuals and organisations made representations. A summary of the representations and how they have been taken into account is in Appendix 1. The main representation was about the need to draw a distinction between the Special Protection Areas and the Special Area of Conservation.

Where Officers have proposed modifications, they are incorporated in the revised Avoidance Strategy, which is attached as Appendix 2. The report was considered by the LDF Working Group at its meeting on 16 December 2021. The Working Group had proposed some modifications to the Avoidance Strategy, which are detailed in the Minute of the meeting. The Minute of the meeting is attached as Appendix 4. The proposed changes are highlighted for reference. Overall, the proposed modifications are of minor nature and do not change the general substance of the Draft Avoidance Strategy that was approved by the Executive for consultation.

Recommendations

The Executive is requested to:

RECOMMEND TO COUNCIL That

- (i) the various representations to the consultation on the Thames Basin Heaths Special Protection Areas Avoidance Strategy together with Officer's responses and recommendations as set out in Appendix 1 to the report be noted;**
- (ii) the revised Thames Basin Heaths Special Protection Areas Avoidance Strategy in Appendix 2 to the report be adopted as Supplementary Planning Document for the purposes of avoiding harm to the integrity of the Special Protection Areas due to development pressures;**
- (iii) the requirements of the Thames Basin Heaths Special Protection Areas Avoidance Strategy should apply to all relevant decisions from the date of adoption, in this case 10 February 2022; and**

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- (iv) **Surrey County Council and Woking Borough Council work in partnership to ensure access to SANGs and other parts of the Borough by all modes are considered, and this to be added to the remit of the Infrastructure Task Group.**

Reasons for Decision

Reason: To help avoid harm to the SPAs as a result of development.

The items above will need to be dealt with by way of a recommendation to Council.

Background Papers: None.

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1.0 Introduction

- 1.1 The Thames Basin Heaths Special Protection Areas (SPA) 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. 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>. It had 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). 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>.
- 1.4 A draft revised Avoidance Strategy was approved by the Executive for consultation at its meeting on 9 September 2021. The public consultation took place between 27 September 2021 and 8 November 2021.
- 1.5 The report outlines the various responses to the consultation and requests the Executive to recommend to Council to adopt the Avoidance Strategy for the purposes of avoiding harm to the SPAs as a result of development.
- 1.6 A total of 6 individuals and organisations made representations. A summary of the representations and how they have been taken into account is in Appendix 1. The main representation was about the need to draw a distinction between the Special Protection Areas and the Special Area of Conservation. Where Officers have proposed modifications, they are incorporated in the revised Avoidance Strategy, which is attached as Appendix 2. The proposed changes are highlighted for reference. Overall, the proposed modifications are of minor nature and do not change the general substance of the Draft Avoidance Strategy that was approved by the Executive for consultation.

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- 1.7 The strategic policy framework for preparing the revised SPA Avoidance Strategy is Policy CS8 (Thames Basin Heaths Special Protection Areas) of the Core Strategy. When adopted, the SPA Avoidance Strategy will provide detailed guidance on how the requirements of Policy CS8 would apply when determining day to day planning applications.
- 1.8 The SPA Avoidance Strategy will have the status of Supplementary Planning Document (SPD), 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 is significantly enhanced due to the extent of public participation during its preparation. A Consultation Statement setting out details of the extent of engagement undertaken to inform the SPD is in Appendix 3.

2.0 Key topic covered in the Avoidance Strategy

2.1 For the avoidance of doubt, 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 Officers are satisfied that the contents of the revised SPD are sufficiently robust to ensure adequate protection for the SPAs.

3.0 Next stages of the process

3.1 Subject to the recommendations of the Executive it is expected that the report will be considered by Council for adoption at its meeting on 10 February 2022. When adopted, the Avoidance Strategy will take immediate effect from the date of adoption.

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.

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5.0 Implications

Finance and Risk

- 5.1 There are 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, including the relevant Saved Policy of the South East Plan.

6.0 Engagement and Consultation

- 6.1 Community engagement and consultation has been central to the preparation of the SPD. The community engagement and consultation on the SPD has been in line with the emerging culture of engagement set out in the Corporate Plan. 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 draft Avoidance Strategy was subjected to a six weeks community engagement where everyone was given the opportunity to comment, and their views taken into account to inform the revised draft Avoidance Strategy. The Draft Avoidance Strategy was considered by the Working Group and the Executive before it was published for consultation. The consultation was done in accordance with the Council's Statement of Community Involvement. A Consultation Statement setting out in detail the extent of community engagement undertaken to inform the Avoidance Strategy is in Appendix 3.

7.0 Conclusions

- 7.1 Officers are satisfied that the proposed revised SPA Avoidance Strategy is robust enough to provide the necessary framework for the protection of the SPAs. Members are therefore requested to recommend to Council to adopt it as a Supplementary Planning Document.

REPORT ENDS