

Burnham Beeches Special Area of Conservation
Strategic Access Management and Monitoring Strategy
Supplementary Planning Document

SUMMARY NOTE OF ADVICE TO SLOUGH BOROUGH COUNCIL

1 Introduction

- 1.1 We have been asked to advise Slough Borough Council ("SBC") in connection with the Strategic Access Management and Monitoring Strategy Supplementary Planning Document ("the Draft SPD") relating to the Burnham Beeches Special Area of Conservation ("the SAC").
- 1.2 The Draft SPD was published by Buckinghamshire Council ("BC") in July 2020.
- 1.3 The SAC is owned by the City of London.
- 1.4 The Draft SPD has been published for consultation and comments can be submitted at any time before 3 September 2020. The Draft SPD broadly follows the findings and recommendations of a study carried out by Footprint Ecology.
- 1.5 The Draft SPD, which relates solely to the south and east planning areas of BC's jurisdiction, sets out a proposed mitigation strategy that is designed to avoid adverse public access and disturbance on the integrity of the SAC arising from residential development. This strategy comprises:
- (a) a presumption against residential development within 500m of the SAC; and
 - (b) requiring a standard financial contribution to be paid for each new net dwelling that is permitted in a *zone of influence*,
- of which (a) is of particular relevance to SBC.
- 1.6 The contributions received by BC would be forwarded to the City of London.
- 1.7 This proposed *zone of influence* is drawn as an area of between 500m and 5.6 kilometres from the SAC, which extends well into SBC's administrative area. This zone is based upon the 75th percentile from data obtained from visitor surveys carried out in 2013, 2016 and 2017 from around 900 interviewees i.e. the distance within which 75% of interviewees live.
- 1.8 The Draft SPD identifies a list of projects that would benefit from the proposed financial contribution. They can be summarised as follows:
- (a) provision of electronic interpretation;
 - (b) events and promotion of activities aimed at raising public awareness of recreation pressure and alternative places to visit;
 - (c) the appointment of a ranger/ambassador (a new member of staff);
 - (d) visitor surveys;
 - (e) monitoring of visitor impacts on the ecology of the SAC; and

- (f) the production of an access plan/carrying capacity study.
- 1.9 The Draft SPD estimates that the cost of these projects for a total period of 80 years would equate to £4,784,440. This aggregate cost is then divided by the total number of dwellings estimated to come forward within the zone of influence (referred to as *Allocation BP9 + HELAA + existing applications + windfall*) i.e. a total of 2,364.
- 1.10 Accordingly, the Draft SPD requires a contribution of £2,023.87 (being £4,784,440 divided by 2,364) to be paid by each net new home that is granted planning permission from 1 March 2020. This is a significant per dwelling cost (compared with, for example: (i) the Essex Coast Recreational Disturbance Avoidance & Mitigation Strategy Draft SPD (January 2020) - £122.30 per dwelling; (ii) the Solent Recreation Mitigation Strategy (December 2017) - £564 per dwelling; and (iii) the Suffolk Coast European Site Recreational Disturbance Avoidance and Mitigation Strategy SPD (2019) – £121.89 or £321.22 per dwelling (subject to zoning).
- 1.11 Appendix 1(a) to the Draft SPD contains a pro-forma appropriate assessment for planning applications for residential development within 500m of the SAC, including a proposed reason for refusal.
- 1.12 Appendix 1(b) to the Draft SPD contains a pro-forma appropriate assessment where the applicant is prepared to pay the requisite contribution: it states that, provided the applicant has entered into a unilateral undertaking to secure the per dwelling contribution (as above) and BC's monitoring fee of £541.02, the related planning application will be deemed to be in accordance with the mitigation requirements for the SAC.
- 1.13 Appendix 1(c) to the Draft SPD contains a pro-forma appropriate assessment where the applicant will not pay the contribution and has not provided an alternative solution that is agreeable to BC and Natural England, in which case it advises that the application must be refused and a reason for refusal is set out in the appendix. This ties in with paragraph 3.2.1 of the Draft SPD, which states that if the contribution is not agreed by the applicant and the applicant cannot satisfy the Council and Natural England that their alternative would have the same or better mitigation success than BC's mitigation strategy, then the application must be refused.
- 1.14 Although the Draft SPD has no direct bearing upon the determination of any planning application by SBC, once adopted:
- (a) it will be relied upon by BC and Natural England in responding to applications that fall to be determined by SBC and are considered to have an impact on the SAC;
 - (b) it will assume some credence as establishing the cost of mitigation that is required to address likely harm to the SAC arising from residential development that is permitted within the zone of influence; and
 - (c) generally, risks the establishment of an unhelpful precedent particularly in the context of SBC bringing forward its own local plan in due course.
- 1.15 Accordingly, and for the reasons set out below, it is recommended that objection be raised in response to the Draft SPD.
- 1.16 Possible grounds of objection are set out in the following section of this note.

2 Potential Grounds of Objection

- 2.1 Subject to further consideration by officers, it is considered that the Draft SPD is objectionable on the following grounds.
- 2.2 First, the Draft SPD is, in fact, a development plan document within the meaning of the Town and Country Planning (Local Planning) (England) Regulations 2012. These Regulations provide that a document that includes '*development management and site allocation policies, which are intended to guide the determination of applications for planning permission*' must be development plan documents as opposed to SPDs.
- 2.3 In this context, it would appear that the Draft SPD satisfies this definition by, for example, mandating that planning permission *shall be refused* if an applicant declines to pay the requisite contribution etc. On the face of it, it is intended to *guide* the determination of future applications for residential development in the relevant zone of influence.
- 2.4 If so, it should be promoted as a development plan document. This is an important distinction because it would mean that the policy would be subject to:
- (a) public examination by an independent inspector (in the same way as the Draft Plan); and
 - (b) the duty to co-operate.
- 2.5 By promoting this policy in the Draft SPD, BC is circumventing these requirements.
- 2.6 Second, there is no explicit policy basis for the Draft SPD. It refers to the following local policies:
- (a) **policy CS24 (Biodiversity) of the Chiltern District Core Strategy (as adopted in November 2011)**. This is a generic policy relating to the conservation and enhancement of biodiversity within the Chiltern district. It provides that Chiltern District Council ("CDC") will seek to protect and enhance all sites of international, national, regional or local importance (that would include the SAC). The reasoned justification for this policy adds that, having undertaken a Habitats Regulations Assessment, CDC is satisfied that adequate mitigation solutions have been put forward in the Core Strategy (and related plans and strategies) to ensure major impacts will be avoided at important European designations. It adds that CDC will assess whether additional mitigation measures are required at the SAC and whether they can feasibly be put in place to help South Bucks District Council mitigate potential impact from additional traffic;
 - (b) **policy CS32 (Green Infrastructure) of the Chiltern District Core Strategy (as adopted in November 2011)**. This policy simply provides that CDC will identify, protect and enhance strategic green infrastructure assets;
 - (c) **core policy 9 (Natural Environment) of the South Bucks District Core Strategy (as adopted in February 2011)**. This policy states that the highest priority would be given to the conservation and enhancement of the SAC, which will be achieved by restricting the amount of development in close proximity to it and ensuring that development causes no adverse effect on the integrity of the SAC. It goes on to state that further details and mechanisms for achieving this would be given in a Development Management DPD. The reasoned justification for this policy adds that where a specific development could result in significant effects in the SAC, it will

need to be supported by a HRA to determine whether mitigation measures are required. No DPD has since been pursued by BC; and

- (d) **draft policy DM NP3 (Natural – Burnham Beeches Special Area of Conservation) of the emerging Chiltern and South Bucks Local Plan 2036** ("the Draft Plan"). For the purposes of the Draft SPD, this is the key policy and states that an access management and mitigation scheme has been agreed with Natural England, the highway authority and the City of London. It is understood that this agreed scheme is, in effect, the Draft SPD. This policy states that, in order to provide on-site mitigation for additional visits to the SAC arising out of additional development within 5.6km of the site and beyond 400m, a precautionary approach would be taken for the protection and conservation of the SAC such that planning permission will only be granted if it would not give rise to significant adverse effects upon the integrity of the SAC. It adds that:

Major residential developments that would result in a net increase in homes located between 400 metres and 5.6 kilometres from the Burnham Beeches SAC will be required to:

1. *make financial contributions towards the Burnham Beeches Access Management Scheme, or any subsequent scheme which replaces this; and*
2. *demonstrate that no adverse impacts on the SAC will arise as a result of additional visitors to the SAC from the development. This might require the provision of bespoke mitigation, such as Suitable Alternative Natural Greenspace, as part of the development in order to offset visitor pressure to the SAC. Such mitigation will need to be determined in agreement with Natural England [emphasis added]*

- (e) **draft policy SP BP9 (Building – Beaconsfield) of the Draft Plan**, which allocates land to the south and east of Beaconsfield for approximately 1,600 homes.

2.7 It can be seen, therefore, that the specific mitigation required in the Draft SPD is inextricably linked to the above draft policies. It has no such direct link with the adopted policies. This is consistent with BC's response to the Inspector's initial questions in relation to the proposed examination into the Draft Plan, pursuant to which it indicated that a mitigation strategy for the SAC is proposed to be in place before adoption of the Draft Plan. However, there is a concern here that this is the wrong approach and that the Draft SPD should only follow once the policies upon which it is expressly predicated have been found to be sound i.e. upon adoption of the Draft Plan (including policies DM NP3 and SP BP9, as above), following an independent examination.

2.8 Until this time, the detailed policy justification for the Draft SPD is not clear. On this, it is also important to note that draft policies SP BP9 and DM NP3 are subject to objection and, accordingly, only limited weight can be attached to them at this time.

2.9 Third, and related to the above, it is inappropriate and premature to progress the Draft SPD in advance of adoption of the Draft Plan. Whilst the Draft Plan has been submitted for examination by the Secretary of State, the Inspectors who have been charged with conduct of this examination have expressed concerns about whether BC has discharged its duty to co-operate. BC has requested that this issue be addressed at a hearing session in person, which has yet to be arranged.

2.10 There is, therefore, real doubt about the extent to which the Draft Plan will be able to progress to adoption. Accordingly, it is inappropriate for the Draft SPD to be

predicated upon a draft policy that attracts only limited weight and in respect of which there is a real prospect that it might not even be adopted (either in its current form or as modified).

2.11 Fourth, there is a concern that a planning obligation entered into pursuant to the Draft SPD would be contrary to the CIL Regulations 2010 (as amended) and/or national policy because:

- (a) there is no satisfactory evidence to demonstrate that the proposed mitigation would actually have the desired effect i.e. avoid or mitigate harm to the SAC; and/or
- (b) the period (i.e. 80 years) over which the mitigation scheme (and related contributions) has been calculated is excessive, unreasonable and far in excess of the life of the related plan; and/or
- (c) a standard sum payable for each net new dwelling is not necessarily directly related (or fairly related in scale and kind) to the relevant development and fails to have any proper regard to the different characteristics of different occupiers (compare, for example, a family living in a 5-bedroom house with a sole occupancy 1-bedroom apartment or house); and/or
- (d) there is no justification for payment of a monitoring fee to BC in addition to the standard per dwelling contribution; and/or
- (e) the per dwelling contribution sought in the Draft SPD is inadequately evidenced and is, in any event, disproportionate (as (b) above); and/or
- (f) the per dwelling contribution is unreasonably prescriptive and lacks sufficient flexibility.

CLYDE & CO LLP

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