Name of the DPD to which this representation relates: New Forest District (outside the National Park) Local Plan Part 2: Sites and Development Management

Please return to New Forest District Council by 15 November 2013

Please note that your representation will be made available for public viewing at Appletree Court, Lyndhurst and via the Council’s website. (Personal information such as signatures and telephone numbers will not be published on the website).

There are two sections –
Part A – Personal Details
Part B – Your representation(s).

Please fill in Part A, and a separate Part B for each representation you wish to make.

<table>
<thead>
<tr>
<th>Part A</th>
<th>1. Personal Details**</th>
<th>2. Agent’s Details (if applicable)</th>
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<tbody>
<tr>
<td>Title</td>
<td>Mr</td>
<td>Mrs</td>
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<tr>
<td>First Name</td>
<td>Paul</td>
<td>Lisa</td>
</tr>
<tr>
<td>Last Name*</td>
<td>Hanson</td>
<td>Jackson</td>
</tr>
<tr>
<td>Job Title</td>
<td>Chief Executive</td>
<td>Director</td>
</tr>
<tr>
<td>Organisation (where relevant)</td>
<td>Meyrick Estate Management Ltd</td>
<td>Jackson Planning Ltd</td>
</tr>
<tr>
<td>Address Line 1*</td>
<td>Estate Office</td>
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(If an agent is appointed, please complete the Title, Name and Organisation boxes for your client in 1, plus the full contact details of the agent in 2.)

If you have previously made representations on this Plan, please give your representee ref. here: 370
Part B – Please use a separate sheet for each representation  
*(Part A MUST also be completed)*

### Name or Organisation:

3. To which matter does this representation relate?
   
   i. Main Modification to the Local Plan Part 2: Sites and Development Management

<table>
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   ii. The draft Mitigation Strategy Supplementary Planning Document

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   iii. If you wish to comment on the Infrastructure Delivery Plan tick here.

If commenting on a modification to the Local Plan Part 2 (including the revised Habitats Regulations Assessment and Sustainability Appraisal) please fill in sections 4 – 9. If commenting on the draft Mitigation Strategy, please fill in section 10. If commenting on the Infrastructure Delivery Plan, please fill in section 11.

4. On this matter, do you consider the Local Plan Part 2: Sites and Development Management is:

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5. On this matter, do you consider the Local Plan Part 2: Sites and Development Management is **unsound** because it is not:

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6. Please give details of why you consider the Local Plan Part 2 (as proposed to be modified by the Main Modifications) is not legally compliant or is unsound on this matter. If you wish to support the legal compliance or soundness of the Local Plan Part 2: Sites and Development Management, please also use this box to set out your comments.

Please see attached statement

(Continue on a separate sheet /expand box if necessary)

7. Please set out what change(s) you consider necessary to make the Local Plan Part 2 legally compliant or sound on this matter, having regard to the test you have identified at 5 above where this relates to soundness. You will need to say why this change will make the Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of the relevant policy or text. Please be as precise as possible.

Please see attached statement

(Continue on a separate sheet /expand box if necessary)

8. If your representation is seeking a change to the Local Plan Part 2, do you consider it necessary to participate at the oral part of the examination?

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9. If you wish to participate at the oral part of the examination, please outline why you consider this to be necessary:
MEM Ltd are a landowner who are required to provide SANG within NFDC for the strategic
development in Christchurch this has not been acknowledged in the plan in the main modifications.

MEM also have land suitable as SANG for mitigation that is not included in the SPD or the plan, it is
important that this is considered fully through participation.

Please note the Inspector will determine the most appropriate procedure to adopt to hear those who
have indicated that they wish to participate at the oral part of the examination.

Comments on other documents, for consideration by NFDC.

10. Please state here your comments on the draft Mitigation Strategy.

   Please see statement. MM10 and the SPD are interlinked and need to be considered jointly.

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Representations should be posted to: Policy and Plans Team
New Forest District Council
Appletree Court
Beaulieu Road
Lyndhurst
Hampshire
SO43 7PA

Or e-mailed to: sdmrepresentations@nfdc.gov.uk

Representations should be received by no. later than 5pm on 15th November 2013.
Local Plan Part 2: Sites and Development Management
Main Modifications and draft Mitigation Strategy
Representation Form

Name of the DPD to which this representation relates:
New Forest District
(outside the National Park)
Local Plan Part 2: Sites and Development Management

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Part A

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## Local Plan Part 2: Sites and Development Management
### Main Modifications Representation Form

**Part B – Please use a separate sheet for each representation**

*(Part A MUST also be completed)*

### Name or Organisation:

3. To which matter does this representation relate?

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MEM Ltd are a landowner who are required to provide SANG within NFDC for the strategic development in Christchurch this has not been acknowledged in the SPD regarding European Mitigation.

MEM also have land suitable as SANG for mitigation that is not included in the SPD or the plan, it is important that this is considered fully through participation.

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10. Please state here your comments on the draft Mitigation Strategy.

Please see statement. MM10 and the SPD are interlinked and need to be considered jointly.

The comments relate to the entire document.

11. Please state here your comments on the Infrastructure Delivery Plan.
Representations should be posted to:
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Beaulieu Road
Lyndhurst
Hampshire
SO43 7PA

Representations should be received by no. later than 5pm on 15th November 2013.

Or e-mailed to: sdmrepresentations@nfdc.gov.uk
New Forest District Local Plan – Part 2

Draft Mitigation Strategy for European Sites +
Main Modification 10 - Policy DM2B

Response by
Meyrick Estate Management Ltd

Prepared by Jackson Planning

November 2013
1. This statement is made on behalf of Meyrick Estate Management Ltd (MEM) in response to the consultation on the Draft Mitigation Strategy for the European Sites Supplementary Planning Document (EM SPD) and in response to main modification 10 (MM10) in relation to the new policy DM2b. MEM Ltd made representations to the pre-submission stage of the plan and was represented at the hearings. The reference number for previous representations was 370.

2. MEM are direct providers of SANG to mitigate potential harm to the Dorset Heaths European site from the largest single development within Christchurch Borough, of which a small part is likely to be located within NFDC’s administrative area. MEM also have land of SANG quality within NFDC that is currently not included in the Mitigation Strategy.

**Policy DM2b – General Concerns of Soundness**

3. MEM has concerns about the adequacy and drafting of policy DM2b and the effectiveness of delivery as set out in the EM SPD. As drafted DM2b is not a sound policy and therefore does not provide a robust framework for the protection of the European Sites.

4. MEM believe that the plan has not been positively prepared, is not effective, not justified and is not consistent with national policy as a failure to deliver adequate compensation or mitigation measures in terms of the European sites has the following potential consequence. If development is carried and occupied out without measures having been put in place (because DM2b is ineffective) that ensure no significant effect, alone or cumulatively, on a protected site that would be in breach of the Habitats Directive as well as the Habitats Regulations.

5. There are a number of issues with regard to the implementation of the mitigation through the EM SPD that are questionable and potentially lack compliance with national policy (explored below) and this raises doubts as to the efficacy of the policy.
6. Policy DM2b assumes that the mitigation measures will be effective. That is not appropriate; residential development must be prevented until it is certain that mitigation will be effective. A suggested modification of the policy wording is included below at paragraph 41. This is a stronger worded policy that requires development that is likely to have a significant effect on the ecological integrity of the European site to demonstrate that adequate mitigation is put in place.

7. The Council acknowledge that they do not have a comprehensive evidence base to support the mitigation package, so to a large extent it is experimental and untested. Furthermore the Council have chosen to depart from the well established methodologies used in the Thames Basin Heaths and Dorset Heaths, whilst that is in part justified by a unique set of local circumstances, it means that there has been less testing of this radical approach which further places doubt on the ability to achieve the outcomes the policy and SPD seeks.

8. If the policy is not clear about the requirements from the outset, the plan does not provide an effective framework for the delivery of housing development and its mitigation and the plan is therefore not effective and cannot be considered sound.

9. The alternative strategy for European mitigation is in part set out in policy DM2b but the details of the projects are in the SPD. This lists the SANGs necessary to ensure mitigation is provided at the correct level for the delivery of the development planned as a whole. This is necessary for proper planning of the area (discussed below) and is necessary to assist with the double counting of CIL where physical SANG provision is made by a developer, although this is problematic as discussed below in paragraph 29.

10. Another major flaw of policy DM2b is that it is not in itself as it relies on mitigation that is not certain. The current draft wording relies on the European Mitigation Strategy SPD. This is currently in draft, subject to consultation, and is not tested. A significant concern of the draft SPD is that the list of mitigation projects are not to be subject to scrutinised for soundness at examination. MEM are of the firm opinion that the critical mitigation projects
need to be subject to examination, and therefore should be part of the Local Plan Part 2. Regulation 5 and 6 of 2012 Local Planning Regulations limits the contents of SPD, and Regulation 5 (1) (a) (i) and (ii) provides that any document dealing with (i) the development and use of land which the local planning authority wish to encourage during any specified period; (ii) the allocation of sites for a particular type of development or use is a DPD and not an SPD. In addition as examined below the policy does not deal with the effective distribution of SANG.

11. The allocation of land as a SANG, which is an integral part of ensuring that a plan is compliant with the Habitats Directive, should be properly scrutinised and be within a DPD to be compliant with the Local Planning regulations above. This casts considerable doubt on reliance of the EM SPD at this Local Plan Part 2 stage, which is a detailed site allocations development plan document and should have all the relevant allocations (including SANG) for scrutiny, without this detail this renders the plan inconsistent with national policy.

**Policy DM2b – Specific drafting concerns**

12. The first line of the policy states ‘Development’, this should read “new residential development”. The policy is not necessary for other types of development that do not generate additional pressures on the European sites.

13. The second bullet point contains a paradox, in that it suggests that an area without public access is ‘existing open space’. An area without public access cannot be considered as existing open space.

14. ‘SANGS type quality’ is not defined in the plan. There may be broad interpretations of what constitutes a SANG. The Dorset approach is to specify the qualities of SANG within an appendix of each constituent authority’s Local Plan. This is necessary to be an effective policy. Diversion of trips will only occur if the quality of SANG is appropriate. It should be noted that Dorset has moved away from a quantitative approach to a qualitative approach to
SANGs provision. The bullet points under a) suggest a two tier approach to SANG with some meeting SANG quality and some not. This has huge potential for confusion and is unlikely to result in effective mitigation.

15. The lack of clarity in the policy about the nature and distribution of SANGs is a flaw, and the policy may therefore not be effective. If a large SANG of 30-40 ha was delivered within one area of the plan it would meet the policy test a) first bullet point, but would not provide effective mitigation across the District. It is possible this flaw could be overcome with better drafting of the policy.

16. The policy requires ‘appropriate mitigation’ but does not set out what is meant by ‘appropriate’. Within Dorset some ‘appropriate’ mitigation schemes secured to ensure European habitat regulations are met has comprised of skate parks, fire hydrants and cat proof fences – would these be appropriate in NFDC? The lack of clarity within the policy has the potential to secure the wrong type of mitigation, particularly the third bullet point under a) which is extremely vague. The full suite of appropriate mitigation needs to set out within a DPD so it can be scrutinised and examined for accuracy.

17. Given the need to secure significant areas of appropriate mitigation it is entirely inappropriate for sites of more than 50 dwellings to avoid direct physical provision. The policy should specify those sites and their commensurate SANG requirements in full. Windfall sites of 50 dwellings are unlikely so all sites above this threshold and their SANGs can be identified in the policy. If a site of 50 dwellings cannot provide its own SANG it should not be promoted for development.

18. It is not clear why the standard of 8ha per 1000 population is being used. Authorities within the Thames Basin Heath have determined this standard is insufficient and are now working towards a range of 8-16ha per 1000 and Dorset have removed the quantity and replaced with quality criterion.
Draft Mitigation Strategy SPD – General Concerns

SANG size/ quality issues – consistency with SANGs elsewhere

19. Some of the sites identified in the SPD as SANG clearly will not function as such, for example within New Milton—Proposal NM2 is a very small site of 0.3 hectares, this is not of sufficient size to accommodate a diversion of trips otherwise made to the New Forest SPA and is only at best a local open space. This open space proposal would meet neither of the quality considerations of the proposals within the Thames Basin Heath or Dorset Heaths. The lack of a qualitative assessment of SANG in the plan is a significant weakness in this regard. It would appear that the SPD strategy has merely re branded existing open space proposals as SANG when it is clear they would not function as established SANG policies that are well established and understood elsewhere, for example in Thames Basin Heath and Dorset Heaths.

20. The difference between a SANG allocation and what is termed mitigation improvements to existing open space in the EM SPD is unclear, and is further confused by the paradox noted in paragraph 13 above. Is there an element of double counting with capacity? It is also not clear how these two types of SANG provision would attract contributions from CIL and maintenance payments.

21. The SANG guidelines proposed in both the Thames Basin Heath and Dorset Heaths SPA areas have a high quality standard that has not been spelt out by NFDC and is evidently not a realistic aspiration of the Council given the type of proposed SANG sites shown in the draft SPD. They need to be more convenient for the purposes that trips are normally made to the SPA and as attractive to give sufficient draw away from the SPA sites. A quality standard is required in order for the plan to be effective, and that should be included in the Local Plan part 2.
Duty to co-operate/ Cross boundary issues/ Dorset Heath Mitigation

22. The EM SPD has failed to consider cross boundary and duty to co-operate issues in relation to the potential for SANG outside the NFDC administration to serve development proposed within NFDC. There are is an example of this in relation to land in MEM Ltd client’s control that falls within this category. This is land at Bransgore that falls within the National Park boundary. The woodland at the south west quadrant of the Bransgore crossroads (formed by Burley Road and Ringwood Road) could serve as SANG for development proposed within the settlement or potentially for development of Sopley Camp to make better use of the redeveloped Green Belt site. With the NPPF requirements to cooperate with neighbouring authorities the EM SPD should identify SANGs outside the area that could serve the development, rather than stopping at the boundary, as these are not reflective of patterns of use and behaviour with regard to recreation.

23. The EM SPD has also failed to consider cross boundary and ‘duty to co-operate’ issues for SANG where it is needed to support strategic allocations outside the District and where the SANG provision is required within NFDC, in this case in relation to the need for mitigation for the Dorset Heaths. Representations made to the Part 2 Local Plan consultation and to the earlier hearing (representation 370) highlighted the need for NFDC to acknowledge the Roeshot Hill development proposal in policy in relation to SANG for the Dorset Heaths required within NFDC.

24. The proposal at Roeshot is for a new community of 950 dwellings, associated local centre and supporting uses. This is the main site for delivery of strategic housing need and the single largest site within both Districts; as such it is a strategic priority of the spatial strategy for Christchurch and East Dorset. The site was not seriously challenged at the recent EiP and is expected to be confirmed as an allocation in the plan early in 2014.
25. The NPPF (179) requires local planning authorities to work collaboratively with other bodies to ensure that strategic priorities across local boundaries are properly co-ordinated and clearly reflected in individual Local Plans. In this regard the New Forest District Council (NFDC) Part 2 Local Plan and EM SPD should reflect the needs of a strategic priority site with mitigation issues that cross the boundary into NFDC. Christchurch Borough Council was not consulted in drawing up the draft EM SPD.

26. In addition during the development of the EM SPD NFDC have not approached MEM Ltd with regard to this cross boundary issue, despite MEM Ltd making it clear through previous representations that this was a necessary pre-condition of the development of the strategic site at Christchurch. Indeed during September MEM Ltd did elicit a response from NFDC to a Statement of Common Ground for the Christchurch and East Dorset Core strategy EiP which was held during September this year. The Statement confirms:

   New Forest District Council and New Forest National Park Authority support the concept of SANGs to provide heathland mitigation being provided beyond the administrative boundary of the authority for which mitigation is required due to geographical proximity of the new population to the boundary.

27. Although the purpose of mitigation as identified in policy DM2b and the EM SPD is different to that of the Dorset Heaths in detail, the principle of mitigation is the same, therefore the SPD must recognise this. A problem with the lack of defined SANG quality in the Local Plan part 2 is exacerbated by the quality of SANG being set out in detail for Christchurch and East Dorset in an appendix within the draft DPD. There is therefore a mismatch in qualities of SANG that might be required within NFDC dependant on which borough the development is located, and which SPA is required to be mitigated.

**CIL and SANG issues**

28. CIL payments and SANG provision are a serious concern with regard to habitat mitigation. The Inspector reviewing the Poole CIL charging regime noted that CIL severed the direct link between development and mitigation, but did not resolve the issue as part of her consideration of the CIL charging schedule.
29. The EM SPD at paragraph 7.18 relies the land for SANG to be provided as a ‘payment in kind’ to avoid double charging. This may not always be possible as the landowner may not wish to dispose of the land to the charging authority. Private SANG provision that achieves the same habitat mitigation cannot be precluded, so must be allowed for in policy to avoid CIL double charging.

30. The CIL charging schedule with a rate of £80 per square metre for residential development was developed before the EM SPD and it did not consider the SANG mitigation costs. There are likely therefore to be problems with delivery of sufficient habitat mitigation at the £80 rate. Given that the SANG opportunity land costs are not included in the CIL charging schedule viability calculations of the ‘benefit in kind’ route is effectively seeking a significant subsidy from the landowner. This is likely to be resisted by developers who would favour paying the CIL off site rather than loose the value of SANG land that Natural England have estimated to be as much as £80,000 per hectare (based on a capitalisation of setting up costs).

31. It must therefore be for the Local Plan Part 2 with the EM SPD to direct practical arrangements to deliver the appropriate mitigation whilst avoiding double charging, or avoidance of physical SANG provision by paying CIL only and not providing the land. You cannot have both CIL and SANG as envisaged in the draft EM SPD for fear of double charging with regard to European mitigation where the SANG land remains in private control, which is a legitimate way to secure SANG if it meets the habitat regulations.

32. It is essential that the Local Plan Part 2, the EM SPD and the CIL Charging Schedule effectively provide the framework to ensure that Habitats compatible development is delivered, without this the plan would be inconsistent with national policy and could not be found sound.
33. The other significant problem with CIL and SPA mitigation is affordable housing, which is not required to make CIL payments. The solution in the EM SPD is that private development must cover all housing development including affordable where habitat mitigation is required. The difficulty with this solution is for the Council to know that appropriate mitigation is provided for the development proposed. How, for example, is habitat mitigation to be secured for 100% affordable housing exception sites? Those would in effect have no mitigation, and cannot meet the habitats directive. The problem could also occur if the scenario outlined in paragraph 14 was to occur.

34. A solution to this may be to draw up a list of infrastructure projects in relation to the measures required in accordance with the Habitats Regulations. Those projects not included (for example the SANGs at New Milton) would not therefore be subject to a charge – as stated in the CIL Guidance:

86. Regulation 123 of the Community Infrastructure Levy Regulations provides for charging authorities to set out a list of those projects or types of infrastructure that it intends to fund through they levy. This list should be based on the draft list that the charging authority prepared for the examination of their draft charging schedule.

87. When a charging authority introduces the Community Infrastructure Levy, section 106 requirements should be scaled back to those matters that are directly related to a specific site, and are not set out in a regulation 123 list. For transparency, charging authorities should have set out at examination how their section 106 policies will be varied, and the extent to which they have met their section 106 targets. Relevant local policy changes should be implemented at the same time that the charging schedule is introduced, and integrated as soon as practical into the relevant Plan.

35. Given that the CIL regulations require change to local policy to reflect the implementation of CIL, it is possible to pre-empt this with changes to this plan. The list of what would be the Regulation 123 projects could be included in more detail in the IDP, and expressed spatially on the proposals map. This way the projects will be subject the examination and avoid the issues highlighted in paragraph 10 above.

**Alternative Sites**

36. It is not clear how NFDC have selected the sites for SANG and mitigation. There has been no engagement with landowners and no attempt to call for SANG sites for example in the
way housing sites are selected. This is a failing of the EM SPD which means the best strategy for SANG site selection to complement development site selection may not have been made.

37. MEM Ltd believe that land at New Milton at Great Woar Copse (where consistent with the SNCI designation), and possibly open ground to the north (consistent with the masterplan of this site as promoted by Taylor Wimpey) would provide a good quality SANG well related to the proposed nm3 mitigation site. This has not been tested in the round with the development proposal and compared to the allocation of site nm4 in relation to development proposals. It also has not been subject to viability testing given the significant additional costs of SANG mitigation, monitoring and maintenance given problematic viability without these extra financial burdens at the allocated site at Caird Avenue.

What modifications are required so the plan can be found sound?

38. Policy DM2b needs to be significantly altered as set out above to be compliant with the Habitats Regulations and Habitats Directive. It needs to firmly state that residential development proposals must demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse affects.

39. By including the specific SANG requirements in the plan under policy DM2b with the express requirement to take opportunities to link this with existing or proposed green infrastructure is the sound approach since:

(i) It avoids the uncertainties over the EM SPD and the difficulties with relying upon CIL.

(ii) This should be paralleled by an approach of listing the specific Habitats infrastructure that will be funded through CIL on the regulation 123 list and in detail in the IDP, consistent with the CIL Guidance and making it clear other such projects will not be funded by CIL thus avoiding the issue of double counting.
40. Alternatively those sites that provide a physical SANG could have a nil rated CIL tariff to avoid double counting.

**Suggested Revised Policy DM2b**

41. The following wording is suggested to make DM2b effective.

**DM2b - Protection of the European Nature Conservation Sites**

Any new residential development within the plan area is likely to have a significant effect on the ecological integrity of the European sites:

* the New Forest European nature conservation sites (the New Forest SAC; New Forest SPA; The New Forest Ramsar site) or
* the Solent Coast European nature conservation sites (the Solent Maritime SAC; Solent and Southampton Water SPA; Solent and Southampton Water Ramsar site).

In order to allow the new residential development to be permitted, the development proposal will be required to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects. Where required this will provide mitigation through a range of measures as set out in the below and in the European Mitigation Supplementary Planning Document including:

* Provision of on-site alternative natural greenspace (SANG) (provided in accordance with guidelines set out Appendix X of this plan) either through new provision or upgrading of existing open space
* Access and Visitor Management: measures to manage the number of recreational visits to the New Forest European sites and the Solent Coast European sites; and to modify visitor behaviour within those sites so as to reduce the potential for harmful recreational impacts.
* Monitoring of the impacts of new development on the European nature conservation sites and establishing a better evidence base: to reduce uncertainty and inform future refinement of mitigation measures.

The avoidance or mitigation measures are to be delivered in advance of the developments being occupied and must provide for mitigation in perpetuity. For allocated development sites (NB Add specific list of all allocated new and large existing sites where SANG is to be provide.) Suitable Alternative Natural Greenspaces (SANGs) will be secured by way of a legal agreement between the developer and the relevant council. The new SANG sites will link to existing and proposed green infrastructure and other ecological mitigation
projects to form a network.

On other small sites where SANG is not directly provided Heathland mitigation measures will be secured through CIL. The authority will ensure that mitigation measures to avoid harm are given priority as required by this policy by including all projects on the Regulation 123 list and the Infrastructure Delivery Plan.

The list of projects here: (repeated in the Regulation 123 List) will be funded by CIL will include Suitable Alternative Natural Greenspace (SANG), access and visitor management, wardenng, education, habitat re-creation and other appropriate avoidance measures. They will link to existing and proposed green infrastructure and SANGS to form a network.

The combination of, the SANGS listed above alongside access and visitor management and mitigation measures set out in the regulation 123 list, existing and proposed green infrastructure and EM SPD function together as an effective package avoiding the harmful effects of additional residential development on the European and internationally designated heathlands.