New Forest District Council
Local Plan Part 2 - Examination

Inspector’s pre-hearing and other related questions

Habitat Mitigation Strategy and other related matters

Hearing date: 21 January 2014

STATEMENT ON BEHALF OF THE
ROYAL SOCIETY FOR THE PROTECTION OF BIRDS
(RSPB)

Representor No: 550
1. Introduction

1.1. The Royal Society for the Protection of Birds (RSPB) was founded in 1889. It is a registered charity incorporated by Royal Charter and is Europe’s largest wildlife conservation organisation, with a membership of over 1 million. The principal objective of the RSPB is the conservation of wild birds and their habitats. The RSPB therefore attaches great importance to the conservation of the ‘Natura 2000’ network of sites of European nature conservation importance (the European sites), as well as the national network of Sites of Special Scientific Interest (SSSI) notified by Natural England that assist in the attainment of this objective.

1.2. This representation is made in response to the Inspector’s pre-hearing and other questions (Dec 2013) in relation to the Habitat Mitigation Strategy and related matters of the New Forest Local Plan Part 2 resumed hearings.

2. Background

2.1. In our previous representations regarding the New Forest District Council (NFDC) Sites and Development Management DPD (the DPD), the RSPB expressed concerns that the Council had failed to provide detailed policy criteria and appropriate avoidance and mitigation measures to protect the New Forest and Solent and Southampton Water SPA. These concerns were also raised in the the Inspectors Preliminary Conclusions on Compliance with the Habitats regulations (Note ID/5).

2.2. Following the Inspector’s note the NFDC has had a dialogue with ourselves, Natural England, the Hampshire and Isle of Wight Wildlife Trust and the New Forest National Park Authority in an attempt to address these concerns. We
support the broad approach taken in the HRA addendum produced by LUC (Document NFDC 47 – Appendix 1) and consider that a combination of Suitable Alternative Natural Green Space (SANGS) and Access Management will be needed to provide effective mitigation, provided it is supported by appropriate and effective monitoring. We believe that New Forest District Council has made considerable progress towards ensuring compliance with the Habitat Regulations and that the measures proposed by the Council have the potential to result in an effective mitigation policy.

2.3. However we still have significant concerns regarding the detail provided in the SPD and it is our view that it does not yet give sufficient confidence that the proposed measures can deliver the mitigation required to prevent adverse effects on the European designated sites. However we consider that this would be achievable within a reasonable time frame.

3. **Inspector’s pre-hearing and other questions**

*Habitat Mitigation and related matters*

*Overarching question (question 2)*

3.1. The Inspector’s paragraph 2 asks two key questions. In answer to the first, the RSPB considers that a combination of Suitable Alternative Natural Green Space (SANGS) and Access and Visitor Management is an appropriate combination of measures and that these, if effectively applied, have the potential to provide effective mitigation for predicted impacts on the designated sites. Monitoring is not in itself a mitigation measure but is crucial to demonstrating the effectiveness of the mitigation and, if necessary, what changes are required.
3.2. In answer to the second question, we still have significant concerns regarding the detail provided in the SPD and it is our view that it does not yet give sufficient confidence regarding the effectiveness and deliverability of the proposed measures, but as suggested above we consider that this can be addressed. We set out the key points relating to this below.

_Policy DM2b (questions 3-8)_

3.3. Greater clarity regarding how policy DM2b relates to policy DM2a would be valuable.

3.4. **Question 5.** The phrase “Existing open space of SANGS quality with no existing public access…” is somewhat confusing. Our interpretation is that the Council is referring to areas of “greenspace” that currently have little or no access but which have the potential to be opened up as accessible SANGS quality areas. Areas that currently have little or no usage are potentially the best areas for SANGS as it is certain that any capacity they generate is new.

In terms of the enhanced walking routes there are essentially two types that are available, those within the SPA and those outside it. The latter can legitimately be considered as part of the SANGS package but walking routes within the SPA that utilise existing rights of way are separate from SANGS and should be referred to under Access Management.

An area of green space cannot be double counted as both SANGS and open space. SANGS must be above and beyond generic open space provision.

3.5. **Question 6.** The RSPB broadly agrees that “provided delivery can be secured and any adjoining/nearby land will be suitable/effective, then flexibility is
appropriate to ensure that the most effective and efficient use can be made of land suitable for housing and suitable for SANGS" however “bespoke” SANGS should be well-connected to the new development, and certainly within easy walking distance (ideally within 400m).

3.6. **Question 7.** The RSPB agrees with Natural England (NE) on the additional text to be inserted into the penultimate paragraph of DM2b. This statement is a common part of adopted development plan policies setting out mitigation strategies elsewhere in relation to European sites and will help ensure an approach consistent with such plan policies, for example those around the Thames Basin Heaths. We consider that this policy wording should be in the plan rather than the SPD. NE’s input will be useful in addressing the connection of bespoke SANGS to new development, as mentioned in 3.5, above.

3.7. **Question 8.** Yes, it should be made clear in the policy that SANGS provision should be completed prior to the occupation of a site.

**SANGS (questions 9-18)**

3.8. **Question 9 and 12.** The SANGS criteria listed in the SPD (NFDC46, Section 5.28) are broadly appropriate but, in their current form, lack the detail necessary to make them effective. For example what exactly is meant by a “special feature” and what exactly constitutes a “wider catchment”. There should be clear guidelines on, for example, the length and variety of walks required, the surfacing of paths and the size of car parks.

We consider that a list of essential and desirable attributes for SANGS, assessed by NE, and based on the Thames Basin Heath (TBH) Guidelines (see NFDC47, Sites and Development Management DPD Addendum, Section 4.87) is a vital
addition. There can be flexibility within these guidelines but, again, there needs to be clarity on where that flexibility is. A list of what features should be delivered by SANGS would provide criteria for developers and the Council to assess whether land offered for SANGS will be effective and would also give a clear steer for the monitoring programme.

We consider that the information currently provided about the size, nature and quality of sites as well the basis for their selection is not sufficiently clear. As we stated in our response to the SPD (dated 15 November 2013) we consider that this question could be addressed in the Mitigation Strategy SPD (NFDC46) by the inclusion of a concise narrative to explain why the Council considers that each of these packages of mitigation measures (different for each location) will be effective. This narrative would set out the evaluation of how the size and character of the sites would provide an experience for any user such that the proposals form an effective mitigation package.

The selection of SANGS should be evidence led. If the SANGS criteria for the New Forest are to be different to those determined for other sites it must be demonstrated what the differences are in the New Forest and what SANGS characteristics are appropriate to mitigate them. We would consider that general principles applied in other areas such as how far people walk and the importance of all weather footpaths are likely to apply equally to the New Forest. Any differences are likely to be of degree only.

For example, Section 5.28 states that “Individual sites (smaller SANGS sites) or zones (larger SANGS sites) are targeted at different user groups.” However available evidence suggests that disturbance from dogs is the single biggest impact on the designated sites. The RSPB considers that, as in other areas
(TBH), all SANGS should be targeted primarily at dog walkers unless evidence shows that another user group is a higher priority.

3.9. **Question 10.** Evidence from the Thames Basin Heaths suggests that sites smaller than 2ha are too small to have a diversionary effect. We consider the Council needs to provide evidence to support the assertion that such sites could be effective with individual “mitigation narratives”. For example a smaller site could be linked to other greenspace of SANGS quality. Questions of the future provisioning and management of adjoining land and links and the certainty of their delivery would also have to be addressed.

3.10. **Question 11.** The RSPB would also appreciate greater clarity on this point.

3.11. **Question 13.** In a complex area such as the New Forest the key objective is to ensure that there is no net increase in recreational visits to the Forest. In our opinion it does not matter if this is achieved by diverting trips by existing users away from the SPA or by catering directly for new visits or by a combination of the two. However, that said, it should be remembered that it will be harder to change established patterns of use and where possible priority should be given to attracting new residents, particularly when in close proximity to new development.

3.12. **Question 14 and 15.** At the very least, a long-lease should be secured on SANGs before they can be relied on for individual planning applications. Ideally the freehold of the land will be acquired. TBH LPAs calculate SANGs tariffs to include cost of purchasing the land, even when they already own it, as it will be tied to the development in perpetuity.

*New/enhanced walks (questions 19-20)*
3.13. The RSPB has concerns over the over the effectiveness of the proposed new and enhanced walks. It is unclear in many cases what is proposed above and beyond standard rights of way obligations. In many cases the proposed walks appear to use sections of roads which would not be considered typically attractive. The RSPB would like to see more of a narrative explaining why these routes are likely to be attractive and therefore effective at diverting visits from the SPAs.

Access Management/enhanced Ranger services (questions 21-22)

3.14. The Wildlife Ranger and Coastal Warden are a key part of the Mitigation Strategy. As such it is vital that both posts are guaranteed for, at least, the full plan period and that they start as soon as possible. We believe it is important for both posts to start in 2014 and, ideally, rangers should also be in post at the point of occupancy of the new housing.

Overall delivery/funding/monitoring (question 23-28)

3.15. The original HRA for Part 1 of the Core Strategy indentified impacts on the designated sites based on the total number of dwellings expected to be built over the whole plan period. The Core Strategy was declared “sound” on the basis that key recommendations would be implemented through the DPD. The total scale of mitigation must be assessed on the whole plan period, anything less would mean that Council has failed to implement the recommendations and therefore would have failed to comply with the Habitats Regulations. The entire basis of the soundness of the Core Strategy would be undermined.
3.16. It is the responsibility of the Council to find the funding to implement these recommendations. Since over half the overall residential development over the plan period has already been built the Council will likely have to seek other sources of funding. We understand that it is possible for the Council to ask for contributions at the reserved matters stage.

3.17. **Question 25.** The fact that CIL is not payable on affordable housing need not be a difficulty. Although affordable housing is exempt from CIL there is no reason why the Council cannot modify the CIL payments on other dwellings to compensate for this. The issue at this stage is the number of affordable houses remaining to be built, their proportion of the total outstanding housing figure, and any impacts upon viability that this might have. The sum per dwelling currently sought by the Council is not particularly high when compared against those being levied by Thames Basin Heaths authorities so the requirement to ensure that the impacts arising from affordable housing are mitigated is not necessarily a problem. The Council will be in a far better position to indicate what the figures look like.

3.18. **Question 26.** This is a problem that the introduction of CIL is causing for all strategic mitigation schemes and is not an issue restricted to this Council. The CIL regulations give no way to ring-fence payments raised to ensure that the legal requirements of the Habitats Regulations are met. Unless the CIL regulations are amended to permit such ring-fencing the matter has had to be approached on a presumption of good faith on the part of the Local Authorities involved: if the authority collects mitigation payments to enable it to provide mitigation measures to ensure that there is no adverse effect on the integrity of Natura 2000 sites it has to be presumed (in the absence of evidence to the contrary) that this is what the money will be used for. This can be tracked by looking at the items of expenditure to which CIL is applied and comparing this against the rate at which mitigation measures should be delivered to ensure
effective and timely mitigation. Whilst the local authority keeps to this approach there can be confidence that adverse effects will be avoided, but the moment that the authority directs funds away from mitigation measures that the housing delivery rate requires this confidence is lost: for future planning applications the conclusion will be that an adverse effect cannot be avoided as there is no longer confidence that the authority will ensure that the mooted mitigation measures will actually be delivered. Much the same presumption underlies the use of section 106 monies – although the local authority cannot redirect the funds to other works there is still the possibility that it will delay spending the funds, in which case the housing delivery would outstrip the mitigation available and the conclusion of any appropriate assessment would have to be that any housing scheme would not avoid an adverse effect. In either circumstance this confidence could be re-established if and when the local authority addressed and shortfalls and brought mitigation delivery back into step with housing delivery.

3.19. **Question 27.** Provided that the Council are able to find alternative sources of funding to “pump prime” the initial provision of infrastructure an initial shortfall in funding need not be a problem. This approach has been mooted for strategic mitigation schemes in areas such as the Thames Basin Heaths.

3.20. **Question 28.** The importance of monitoring has been highlighted (NFDC 11, paragraph 20). The plan should make clear that progress will be monitored annually and will be reviewed in time to inform the Local Plan Review.

*Consequential matter – formal open space*

3.21. **Question 29.** Many of the areas now identified as SANGS were listed under different designations in previous documents. More clarity is required to
demonstrate that measures will be introduced to make these areas attractive enough to divert people from the New Forest and Solent European sites.

Habitat Regulations Assessments

3.22. **Question 30.** We do not consider that the conclusion of the Habitats Regulation Assessment is currently justified as there is insufficient confidence over delivery of the mitigation. However we do consider the approach to mitigation outlined within the SPD could provide the necessary justification for that conclusion. As described above, this would require greater clarity on all the mitigation measures and a narrative on the evidence supporting the individual mitigation schemes proposed.