



Bradford Local Plan Core Strategy Examination - Hearing Statement

Representations on behalf of CEG Land Promotions Ltd (CEG)

Representor Reference: 495
Date: February 2015

Matter 3.5: Strategic Core Policy SC8

Question 3.5: Policy SC8 – South Pennine Moors

a) Is the approach towards new development with the South Pennine Moors and their Zone of Influence appropriate, effective, positively prepared, justified, soundly based and consistent with the latest national policy?

b) Is the HRA evidence soundly based and are there any outstanding issues from Natural England?

- 1.1 As presently drafted, Policy SC8 is unsound.
- 1.2 First, Policy SC8 is premised on the unlawful approach to assessment found in the AA Dec 2014. This is both in terms of the assessment of impacts on assumed functional land of the SPA and (to the extent relevant) in terms of predicted urban edge and recreational effects on the SPA / SAC. This is explained in full in the detailed submission on the Council's Habitat Regulations Assessment at Appendix 1 of CEG's statement on Matter 1.
- 1.3 Secondly, Policy SC8's failure to allow reliance on mitigation measures to address potential impacts in what are classed as "important areas" (namely in the 400m to 2.5km zone from the SPA / SAC boundary), is contrary to the Habitats Directive and the Birds Directive and to caselaw. It is internally inconsistent and flawed as follows:
- Policy SC8 applies to what is described as Zone Bi (between 400m and 2.5km of the designated site boundary) an "*underlying principle*" "*to avoid loss or degradation of areas outside European Sites that are important to the integrity of sites*". The way this approach is currently drafted means that reliance by a developer on mitigation measures in respect of "important areas" in this zone (eg enhancement of land to offset development impacts on SPA functional land) is not permitted, even if such mitigation measures would successfully offset the impact.

- This approach is at odds with Zone A (land within 400m from the SPA / SAC boundary) which logically should be more important than land further away. Here a developer *may* rely on mitigation measures to allow development to proceed.
- This has the paradoxical and perverse effect of applying a level of protection to what are described as “important areas” outside the SPA boundary which is in fact stricter than the protection afforded to land which is closer to the SPA / SAC or even to the SPA / SAC itself. There is (rightly) no absolute prohibition on development within a SPA / SAC or on land within 400m from it.
- In addition to the points made above, it is clear that the boundary of a SAC / SPA must have been drawn widely enough in the first place to provide for the conservation requirements of the qualifying species within it. There is no basis for seeking to give effect to an SPA/SAC beyond its boundaries, yet that is what the approach to Zone Bi does. This aspect of Policy SC8 reflected in its current drafting is therefore unacceptable. This is discussed in Stephen Tromans’ Further Opinion (paragraph 26) at Appendix C of CEG’s detailed submission on the Habitats Regulation Assessment at Appendix 1 of Matter Statement.
- The Council’s approach is also contrary to caselaw. For example, it is well-established (see eg *Hargreaves vs SSCLG* [2011] EWHC 1999 (Admin)) that it is acceptable to mitigate against impacts on SPA-designated birds’ feeding areas outside the SPA boundary through the provision of other feeding resources outside the SPA. Yet Policy SC8 seeks to override this. See Stephen Tromans’ Further Opinion at Appendix C (paragraph 26).
- The Council’s approach is also at odds with NE’s view expressed in its letter dated 31 March 2014 (this is in Annex 2 to Stephen Tromans’ Further Opinion). NE reiterated in its letter to the Council of 8 December 2014, that the 31 March comments remained valid. NE’s letter 31 March 2014 identified that mitigation should be available to developers across all the proposed development zones within Policy SC8:

“Natural England believe this policy [SC8] could be simplified.....Zone C (or Bi) could usefully read: “Zone C would apply between 400m and up to 7km of the South Pennine Moor SPA and SAC. Due to increased recreational disturbance and trampling of their interest features, residential developments within Zone C will adversely affect the South

Pennine Moor SPA and SAC. However appropriate mitigation measures should allow development to take place.....”

- 1.4 Policy SC8 is therefore unsound in its current form. It will potentially prevent development that is otherwise acceptable in terms of its effect on the SPA/SAC. This is contrary to the approach required by the Directives and the caselaw. Moreover, such an approach is potentially harmful to the SPA. Where development of land can mitigate any impacts on the SPA from that development itself, it can sometimes provide incidental positive benefits for the SPA, as well those that occur from existing development. Yet these sorts of potential positive incidental benefits are precluded altogether through the approach to Zone Bi.
- 1.5 Thirdly, the wording of Policy SC8 does not reflect the requirements of the Habitats Directive or the Birds Directive.
- 1.6 Policy SC8 states: *“Development will not be permitted where it would be likely to lead to an adverse effect upon the integrity, directly or indirectly, of the South Pennine Moors Special Protection Area and Special Area of Conservation. To ensure these sites are not harmed, a number of zones have been identified:”* This wording is not consistent with the Directives. It fails to reflect the “derogation tests” envisaged by the Habitats Directive as set out above.
- 1.7 Policy SC8 is unnecessary as a policy given the protection already afforded to the SPA through Policy EN2 (as identified by Stephen Tromans QC). However if the need for a further policy can be justified or is thought necessary, Policy SC8 could be made sound by the changes identified by CEG. Policy SC8 refers to a requirement that developments with more than 1 net dwelling should be required to contribute to: (i) the provision of natural greenspace and facilities to divert pressure from moorland habitats; (ii) the implementation of access management measures; and (iii) a programme of habitat management. If such a policy is to be included, it should apply to development within the 0-400m zone. At present SC8 only applies this policy to the 400m- 7km zone. It should also only apply where such mitigation is in fact required for development of a specific site.. The outer reaches of the zone need to be properly evidence and justified. It is also essential as a matter of legal approach and soundness that SC8 is amended to allow developers the option of mitigating any impacts of their development on any SPA “functional land” (where it is established that it is functional land). The principle of mitigation should apply across all zones described in SC8. The term “important areas” is misleading and should be removed.
- 1.8 If Policy SC8 is to be included at all (notwithstanding the protection already provided by Policy EN2), the revised form of wording policy will still ensure that

where mitigation measures are not judged to be adequate so as to comply with the “no likely significant effect” test or the “no adverse effect on integrity test” (and Natural England would of course be consulted on this) then the development will not proceed (subject to the derogation tests).

- 1.9 Such a revised policy will also ensure that any concern about gaps in the Council’s survey work means that the Council does not reach any pre-judgment that all areas “*outside European Sites that are important to the integrity of sites*” cannot be mitigated. Such mitigation will continue to be a matter for consideration if and when planning applications come forward.
- 1.10 Without prejudice to the right to participate further in discussions about the wording and whether Policy SC8 is required at all, if any such policy is to be included the following revised wording is suggested:

Strategic Core Policy (SC8): Protecting the South Pennine Moors SPA and SAC and their zone of influence

Strategic Core Policy (SC8): Protecting the South Pennine Moors and their zone of influence

Development will not be permitted where it would be likely to lead to an adverse effect upon the integrity, directly or indirectly, of the South Pennine Moors Special Protection Area and Special Area of Conservation, unless the derogation tests of Article 6(4) Habitats Directive are met ie where there is no alternative solution; there are imperative reasons of overriding public interest including those of a social or economic nature; and compensatory measures can be provided to ensure that the overall coherence of Natura 2000 is protected. To ensure these sites are not harmed, a number of zones have been identified:

Zone A

No development involving a net increase in dwellings would be permitted within a suitable buffer area around the South Pennine Moors SPA or the South Pennine Moors SAC (normally 400m) unless, as an exception, the form of residential development would not have an adverse effect upon the SPA or SAC sites’ integrity.

CEG submits that the creation of two Zone Bs is unnecessary and the approach to Zone Bii should apply to Zone Bi in the creation of a single Zone B, i.e:

Zone B

Zone B would apply between 400m and up to 7km from the boundary of the South Pennine Moors SPA and the South Pennine Moors SAC.

Within Zone A and Zone B the Council will consider whether, in combination with other proposals, any likely significant effect on the SPA or SAC may occur or (where appropriate assessment is required) whether any adverse effect on integrity of the SPA

or SAC may occur. Where such effects may occur, the use of appropriate avoidance or mitigation measures in either case will allow development to take place.

If however (contrary to this approach) Zone Bi is to be included, it should at least be consistent with the approach to mitigation applied elsewhere. The following wording relating to Zone Bi is without prejudice to the contention that the inclusion of such sub Zones of Zone B is not necessary.

Zone Bi

Zone Bi would apply between 400m and 2.5km of the designated Site boundary.

Within Zone Bi the Council will consider whether land proposed for development has significant carrying capacity using the available evidence from bird and habitat surveys relating to bird species which are qualifying features of the South Pennine Moors SPA. Where such carrying capacity is demonstrated, development will be permitted if the loss of such land will not have a likely significant effect on the SPA or, if this cannot be ruled out, on the basis of objective information, permission should only be granted if the loss of such land will not have a likely significant effect on the SPA or (where appropriate assessment is required) will not have an adverse effect on the integrity of the SPA or in either case where the loss of such land can be mitigated.

Zone Bii

Zone Bii would apply between 2.5km and up to 7km of the boundary of the South Pennine Moors SPA and the South Pennine Moors SAC.

Within Zone A, Zone Bi and Zone Bii the Council will consider whether, in combination with other proposals, any likely significant effect on the SPA or SAC may occur or (where appropriate assessment is required) whether any adverse effect on integrity of the SPA or SAC may occur. Where such effects may occur, the use of appropriate avoidance or mitigation measures in either case will allow development to take place..

Zones Bi and Bii

Within Zones A, Bi and Bii residential developments that result in a net increase of one or more dwellings will be required to show how any pressures on the SPA such development might cause will be mitigated on site. If such measures are not possible on site the development will make a planning contribution to:

- 1. The provision of additional natural greenspace and appropriate facilities to deflect pressure from moorland habitats and the long-term maintenance and management of that greenspace.*
- 2. The implementation of access management measures, which may include further provision of wardens, in order to reduce the impact of visitors*
- 3. A programme of habitat management and manipulation and subsequent monitoring and review of measures*

To mitigate impacts on European Sites due to the increase in population, an approach will be adopted that sets out a mechanism for the calculation of the planning contribution.