

FREETHS

CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL CORE STRATEGY

SUBMISSIONS RELATING TO THE COUNCIL'S HABITATS REGULATIONS ASSESSMENT AND THE SOUNDNESS OF POLICIES SC8, HO3 AND SC4

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EXECUTIVE SUMMARY

INTRODUCTION

1. CEG Land Promotions Ltd has, in the short time available to it, reviewed the Council's most recent iteration of its appropriate assessment, namely "Habitats Regulations Assessment: Appropriate Assessment Report for the Publication Draft Document (February 2014)" dated December 2014 ("**AA Dec 2014**").
2. The AA Dec 2014 is legally flawed and Policies SC8, HO3 and SC4 of the Core Strategy Publication Draft are fundamentally unsound.
3. The key issues are as follows:
 - 3.1. The Council has adopted an unlawful approach to its assessment of impacts of the Core Strategy on the South Pennine Moors Special Protection Area ("**SPA**") / Special Area of Conservation ("**SAC**") in AA Dec 2014. The approach is in contravention of the requirements of the EU Habitats Directive and associated case law (as implemented in England by regulation 102 the Conservation of Habitats and Species Regulations 2010). If the Core Strategy is adopted on the basis of the AA Dec 2014, the Core Strategy will not be legally compliant.
 - 3.2. The flawed approach to the AA Dec 2014 is the key factor behind the current restrictive Policy SC8. It is also at the heart of the flawed methodology behind the change in status of settlements in current Policy SC4 and the reduction and redistribution of housing targets in current Policy HO3 (and the Council acknowledges that it is the "main driver" for the Wharfedale housing target reductions). As such these policies in their current form are unsound. They are not evidenced, and cannot be justified, by reference to the AA Dec 2014.
 - 3.3. Policy HO3 (relating to housing number reductions and redistribution) and SC4 (relating to change of settlement status) are in any event further unsound because the change to the revised housing targets and the settlement status cannot be explained or justified by reference to the Council's own stated methodology for reduction and redistribution of housing targets. Policy SC8 is further unsound because the evidence does not require it and it prevents reliance by developers on mitigation measures to offset any impacts on "important areas" for birds between 400m and 2.5km from the boundary of the SPA and SAC, even where such mitigation is likely to be successful and even though this is in contravention of the Habitats Directive and case law.

DETAILS OF THE LEGAL DEFICIENCIES IN THE AA DEC 2014

4. There have been three iterations of the Council's "appropriate assessment" in May 2013, February 2014 and December 2014. The Council itself acknowledged that the May 2013 assessment was deficient due to insufficient information. Nevertheless it purported to make "preliminary recommendations" as to possible avoidance and mitigation measures to avoid

potential adverse effects on the SPA and SAC. These measures were, however, of course entirely speculative since they were made on the basis of deficient information and without sufficient evidence for adverse effects. Despite all this, it is these measures which are nonetheless still to be found in the restrictive parts of Policy SC8 and in Policies HO3 and SC4.

5. The later two iterations (AA Feb 2014 and AA Dec 2014) now seek to take into account further evidence. However they are both legally flawed and deficient in a number of basic respects.
6. The Council has failed to undertake a full, proper and lawful assessment of the impacts of the Core Strategy on the SPA / SAC in accordance with the requirements of the Habitats Directive. It should have done so in order to assess such impacts and so to identify, based on that assessment, appropriate mitigation or avoidance measures which address the impacts and which can thereby be shown to be necessary and justified.
7. Instead the Council has remained wedded to the avoidance and mitigation measures originally set out speculatively in its May 2013 assessment which were not based on any meaningful evidence. Consequently, in an apparent attempt to justify these measures after the event, the Council has now had to assume the existence of impacts on the SPA and SAC, without evidence or proper assessment where such impacts do not arise on what the evidence discloses. The Council has therefore used the appropriate assessment process as a means of justifying restrictive policies, rather than (as is required) considering carefully whether those restrictive policies are in fact necessary and justified. The result is that the current form of Policies HO3, SC4 and SC8 are unsound.
8. There are 2 key areas where the AA Dec 2014 is legally flawed:
 - 8.1. The approach adopted in purporting to identify SPA “functional land”, and potential impacts on the SPA by virtue of development on such functional land; and
 - 8.2. The misconceived assessment of urban edge / recreational effects on the SPA / SAC.
9. As to functional land, when assessing impacts on a SPA it is relevant to consider possible indirect impacts on the SPA arising from loss of land outside the SPA boundary. However, there must be proper evidence that the land in question is “functionally linked” to the SPA through use of that land by the SPA’s qualifying bird species. The AA Dec 2014 is legally non-compliant in its assessment of these matters because of any or all of the following:
 - 9.1. First, an appropriate assessment must be made by reference to the qualifying features of the SPA. The Council has wrongly assumed that species of birds seen in its 2013 survey of land outside the SPA boundary (i.e. Curlew and Lapwing) are in fact birds that form part of the qualifying feature of the SPA itself, namely the “breeding bird assemblage” of the SPA. However the “breeding bird assemblage” is no longer a qualifying feature of this SPA. Therefore Curlew and Lapwing are not in fact relevant to an assessment of SPA functional habitat. The Council has therefore incorrectly assumed impacts on the SPA arising from loss of functional habitat, where the relevant birds seen on that land in fact have no relevance to the SPA.
 - 9.2. Secondly, even if the “breeding bird assemblage” had remained a qualifying feature of the SPA (which we do not accept), the Council has made a number of key errors in its assessment
 - 9.2.1. The Council has failed to appreciate or recognise the distinction between birds which breed within the SPA (and so may form part of the “breeding bird assemblage” qualifying feature) in contrast to those that breed

outside the SPA (and therefore cannot form part of that assemblage). When seeking to identify SPA “functional land”, the Council has inexplicably assumed that any of the relevant type of birds that were seen in 2013 on land outside the SPA boundary within a certain distance from it are necessarily birds breeding within the SPA. But the Council has no evidence to support this assumption and indeed sometimes has positive evidence to the contrary. The Council has therefore necessarily skewed and exaggerated the potential for any impacts arising from potential loss of habitat outside the SPA by assuming it would affect the SPA “breeding bird assemblage”.

- 9.2.2. When surveying habitats and birds outside the SPA for evidence of SPA functional habitat, the Council has only considered certain areas in and around its SHLAA sites. But this completely ignores other large areas of potential habitat around the whole of the SPA. Therefore it is misconceived to assume that there would be any material impact on the SPA from loss of SHLAA sites as habitat, as the availability of other habitat has been ignored and the numbers of birds potentially affected has not been considered against the population as a whole.
- 9.2.3. The Council has failed to make any meaningful assessment as to whether loss of SHLAA sites to development could ever give rise to an “adverse effect on integrity of the SPA”, this being the relevant legal HRA test. Such an assessment would be required given the very small numbers of birds recorded on the SHLAA sites in 2013. The Council has failed to consider what impacts (if any) there are on the specific qualifying feature it has identified, namely the “breeding bird assemblage”. This would require some basic data such as identification of the total assemblage of breeding birds. Instead the Council appears to accord to birds such as Curlew and Lapwing within the assemblage the same status of a species (such as Golden Plover) which is in fact a qualifying species of the SPA in its own right. This is misconceived. In addition, due to the absence of proper assessment, the Council has not done what Natural England required, namely a proper exercise in considering and distinguishing between SHLAA sites which are a) unlikely to be deliverable (where significant bird numbers are recorded on-site or likely to be disturbed off-site and therefore should be avoided); b) deliverable with mitigation (either site specific or strategic mitigation), or c) deliverable without mitigation (unconstrained).
- 9.2.4. The Council has made the flawed and unjustified assumption that development must be avoided on SHLAA sites with any bird sightings (whatever number or whatever use is taking place) or the presence of certain grassland types. A preliminary analysis of the information and data only recently disclosed by the Council demonstrates the unscientific nature and absurdity of this approach. Baker Consultants Ltd (on behalf of CEG) has found that only 26 of the 3,097 registrations of “breeding bird assemblage” type birds recorded in the 2013 surveys were actually seen on or near to SHLAA sites. Any impact on these bird populations from possible development on SHLAA sites is therefore tiny and would be completely insignificant from an SPA perspective. Contrary to the Council’s approach, there is therefore absolutely no justification for removal of SHLAAs as potential housing sites on this basis. Furthermore Baker Consultants Ltd has also shown that there is no scientific basis whatsoever for the Council’s assumption that SHLAAs should be removed from the potential housing supply due to the presence in them of certain grasslands.

9.2.5. The Council has also failed to assess in any detail the supposed impacts on breeding bird assemblage birds as against the conservation objectives of the SPA. This is also a central legal requirement that has not been met.

10. As to the Council's misconceived assessment of urban edge / recreational effects on the South Pennines SPA / SAC, the Council's documents reveal that it has rightly not used this as a purported basis for altering its housing distribution under HO3 (as there is no evidence to support what it has done); however it appears to underpin the approach to Policy SC8. In fact the Council's assessment of potential impacts is misconceived and there is no evidenced link between the Policy SC8 and any purported impacts. CEG's professional expert, Andrew Baker of Baker Consultants Ltd, has identified the flaws in the approach. As such Policy SC8 is unnecessary, given the protection already afforded to the SPA through Policy EN2. However, if need for a further policy can be justified or is thought necessary, Policy SC8 must be revised.
11. As a matter of principle the Core Strategy could be sound if recreational impacts are not used as a basis for distorting housing distribution and if Policy SC8 (if justified and considered necessary) were to enable mitigation against possible recreational impacts (where they are established) through (i) the provision of natural greenspace and facilities to divert pressure from moorland habitats; and/or (ii) the implementation of access management measures; and/or (iii) a programme of habitat management, all of which can be of potential benefit to the SPAs in consequence of development. Whilst such measures have not in fact been evidenced as necessary through the data presented in AA Dec 2014, this aspect of Policy SC8 would be acceptable in principle and potentially have the effect of negating any possible recreational impacts on the SAC/SPA.

CONCLUSIONS

12. Based on present information, the Core Strategy is unsound and its adoption on the basis of AA Dec 2014 would be legally non-compliant.
13. To remedy this situation, so as to allow the Core Strategy to meet both the legal compliance and soundness tests and so be adopted lawfully, the following must take place:
 - 13.1. The Council's HRA must be thoroughly revised so as to present a proper and legally compliant assessment with evidenced and justified conclusions.
 - 13.2. Policy SC8 is unnecessary as a policy, given the protection already afforded to the SPA through Policy EN2. However, if need for a further policy can be justified or is thought necessary, Policy SC8 must be revised. CEG has suggested revised wording for Policy SC8 in its submissions under Matter 3.
 - 13.3. Policies HO3 and SC4 must be revised. The housing targets for settlements outside Bradford must be revisited. The status of Burley in Wharfedale as Local Growth Centre must be restored. A settlement such as Burley in Wharfedale should be allocated a target of at least 500 - 700 homes, given the land available which can be developed without any relevant impact on the SPA and in light of its sustainable location, which sustainability has been otherwise acknowledged by the Council. CEG's submissions on HO3 are dealt with in full in Matter 4C. CEG's submissions on SC4 are dealt with in full in Matter 3.2.

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INTRODUCTION

1. These submissions are made on behalf of CEG Land Promotions Ltd ("**CEG**") in relation to the "Habitats Regulations Assessment: Appropriate Assessment Report for the Publication Draft Document (February 2014)" dated December 2014 ("**AA Dec 2014**"). They are made to inform the forthcoming Examination in Public in relation to the City of Bradford Metropolitan District Council's ("**Council**") Core Strategy.
2. These submissions are made further to a letter from Nathaniel Lichfield & Partners ("**NLP**") to the programme officer, Mr Tony Blackburn, dated 23 January 2015. In this letter (enclosed at Appendix D of these submissions) NLP reserved the right to provide the Council with substantive comments on the AA Dec 2014.
3. This was necessary because the Council has chosen to provide very limited opportunity for the public or participants in the Examination to respond to this new document. The Council has conducted no public consultation in relation to the AA Dec 2014 document. Moreover, even though the Council submitted the Core Strategy to the Secretary of State on 12 December 2014, the accompanying AA Dec 2014 was only made available to NLP one month later, on 12 January 2015. It may well be that others have had even less time to consider it.
4. These submissions explain why the Council's proposed Core Strategy based on this AA Dec 2014 (and its preceding version) fails to meet both the legal compliance and soundness tests. In summary there are a large number of deficiencies, both legal and substantive, in the AA Dec 2014 and in the associated methodology adopted by the Council to reduce and redistribute the housing targets in Policy HO3. Three key issues arise:
 - 4.1. The Council has adopted an unlawful approach in its assessment of impacts of potential development under the Core Strategy on the South Pennine Moors Special Protection Area ("**SPA**") / South Pennine Moors Special Area of Conservation ("**SAC**"). If the Core Strategy is adopted on the basis of the AA Dec 2014, the Core Strategy will not be legally compliant.
 - 4.2. The flawed approach to the AA Dec 2014 is the key factor behind restrictive Policy SC8. It is also at the heart of the flawed methodology behind the change in status of settlements in Policy SC4 and the reduction and redistribution of housing targets in current Policy HO3 (and the Council acknowledges that it is the "main driver" for the Wharfedale housing target reductions). As such these policies in their current form are unsound. They are not evidenced, and cannot be justified, by reference to the AA Dec 2014.
 - 4.3. Policy HO3 (relating to housing number reductions and redistribution) and SC4 (relating to change of settlement status) are in any event further unsound because the revised housing targets and the change to settlement status cannot be explained or justified by reference to the Council's own stated methodology for reduction and redistribution of housing targets. Policy SC8 is further unsound because the evidence does not require it and it prevents reliance by developers on mitigation

measures to offset any impacts on “important areas” for birds between 400m and 2.5km from the boundary of the SPA and SAC, even where such mitigation is likely to be successful and even though this is in contravention of the Habitats Directive and case law.

5. This document sets out in its Conclusions the steps that must be taken to revise the AA Dec 2014 and Policies HO3, SC4 and SC8 so as to allow the Core Strategy to meet both the legal compliance and soundness tests. The Conclusions also makes suggestions as to how Policy EN2 should be amended given the representations that are made in relation to Policy SC8.
6. Efforts will be made to agree statements of common ground with both the Council and with Natural England in relation to the matters set out herein.

LEGISLATIVE AND POLICY BACKGROUND

Habitats Regulations Assessment

7. Regulation 102 of the Conservation of Habitats and Species Regulations 2010 requires a proposed core strategy to be made subject to an assessment as to its implications for European sites designated under the EU Habitats and Wild Birds Directives. This assessment is commonly known as a “Habitat Regulations Assessment” (“HRA”).
8. In the case of this Core Strategy, the relevant European sites are the South Pennine Moors SPA and the North Pennine Moors SPA, both classified for birds under the Wild Birds Directive 2009/147/EC; and the South Pennine Moors SAC and North Pennine Moors SAC, both designated for natural habitats under the Habitats Directive 92/43/EEC.
9. The HRA first requires a “screening assessment” to be undertaken by the Council. If the screening assessment determines that the Core Strategy is “*likely to have a significant effect on any European site (alone or in combination with other plans or projects)*” then a further “appropriate assessment” must be conducted. An “appropriate assessment” considers the implications of the Core Strategy for the European sites in view of the sites’ conservation objectives. The Council may then only give effect to the Core Strategy if it has “*ascertained that it will not adversely affect the integrity of the European sites*”. There is a very limited exception to this requirement where three derogation tests 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.
10. The Opinion and Further Opinion of Stephen Tromans QC at Appendix C to these submissions sets out the HRA legal framework in more detail (see paragraphs 6-8 of the Further Opinion).
11. Any core strategy adopted in breach of the requirements of regulation 102 and the associated caselaw (described in that Further Opinion by Stephen Tromans QC) will not be legally compliant.

Soundness test

12. In addition the Core Strategy must meet the “soundness test”.
13. The Core Strategy must comply with the statutory requirements set out in section 20 of the Planning and Compulsory Purchase Act 2004 (“**PCPA 2004**”), particularly the requirement that the plan be sound. In addition the Core Strategy must comply with the statutory

requirement enshrined within section 39(2) of the PCPA 2004 i.e. that it "be prepared with the objective of contributing to the achievement of sustainable development"

14. Paragraph 182 of the National Planning Policy Framework ("**NPPF**") ("Examining Local Plans") further states:

"The Local Plan will be examined by an independent inspector whose role is to assess whether the plan has been prepared in accordance with the Duty to Cooperate, legal and procedural requirements, and whether it is sound. A local planning authority should submit a plan for examination which it considers is "sound" – namely that it is:

- 14.1. **Positively prepared** – *the plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development;*
- 14.2. **Justified** – *the plan should be the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence;*
- 14.3. **Effective** – *the plan should be deliverable over its period and based on effective joint working on cross-boundary strategic priorities; and*
- 14.4. **Consistent with national policy** – *the plan should enable the delivery of sustainable development in accordance with the policies in the Framework".*

Correct approach overall

15. The first key requirement is that the Core Strategy be adopted in compliance with regulation 102 Conservation of Habitats and Species Regulations 2010. As described below, based on the Council's most recent AA Dec 2014 (as was also the case with the Council's previous iterations), this cannot be achieved.
16. Secondly the Core Strategy must be sound. This is discussed in the Further Opinion of Mr Stephen Tromans QC at Appendix C (paragraphs 18-21). In summary:
 - 16.1. As a matter of soundness and domestic planning policy, restrictive policies in a core strategy should be justified by evidence identifying what harm they will prevent. A core strategy should be based on adequate, up-to-date and relevant evidence about economic, social and environmental characteristics of the area (para. 158 NPPF). It should be positive in seeking to meet objectively assessed requirements, and should be justified, i.e. "*the most appropriate strategy, when considered against the reasonable alternatives, based on proportionate evidence*" (para. 182 NPPF). This means that a policy restricting and / or reducing housing or other development within a specified zone should not be imposed without proper evidential justification, particularly if a less restrictive policy would meet the "no adverse effect on integrity" test.
 - 16.2. If a local planning authority wishes to go further than is necessary to ensure compliance with the "no adverse effect on integrity" test then it should justify its approach on the basis of sound evidence. It must be founded on a robust and credible evidence base and the choices made must be backed up by facts. It must also be demonstrable that the content is justified by evidence, and that assumptions are reasonable and justified. It must be the most appropriate strategy when considered against reasonable alternatives. There should be a clear audit trail showing how and why the preferred strategy and approach were arrived at.

17. This, regrettably, is not the approach adopted by the Council in relation to the Core Strategy. In drafting the current form of Policies SC8, HO3 and SC4 of the Core Strategy, the Council has made unnecessary changes to the Core Strategy which make it unsustainable and those changes are not required to ensure compliance with the “no adverse effect on integrity” test; and it has done so without any robust, scientifically credible or HRA-compliant evidence base to support its approach. The Council has failed to consider whether these Policies are justified and whether less restrictive policies would satisfy the HRA “no adverse effect on integrity” test.
18. The Core Strategy therefore fails to comply with the statutory requirements set out in section 20 PCPA 2004, particularly the requirement that the plan be sound. Additionally, the Core Strategy fails to comply with section 39(2) of the PCPA 2004.

HRA BACKGROUND TO THE EMERGENCE OF THE CORE STRATEGY

CS FED October 2011 – AA May 2013

19. The Core Strategy Further Engagement Draft was dated October 2011 (“**CS FED**”).
20. Policy HO3 in the CS FED apportioned a 45,500 residual housing requirement between the Regional City of Bradford, the Principal Towns, Local Growth Centres and Local Service Centres. Burley in Wharfedale was listed as a Local Growth Centre and was allocated 500 homes.
21. The CS FED contained no policy akin to Policy SC8 (which was only later included in the Core Strategy Publication Draft (“**CS PD**”).
22. A HRA “screening assessment” in relation to the CS FED was conducted and reported on over a year later in June 2012. However this was not published by the Council and there was no public consultation on it. Indeed it was only obtained on 4 April 2014 following a specific request for it from the Council by NLP. The screening assessment concluded that an “appropriate assessment” was required.
23. What was described as an appropriate assessment of the CS FED was conducted and reported on in May 2013 (“**AA May 2013**”), 18 months after the publication of the CS FED. However for some unexplained reason the Council only chose to consult on this in February 2014.
24. The AA May 2013 (paragraph E1.4) stated that it was intended to “*inform Officers and Councillors of the potential scale of impacts to European sites, based on currently available information, while setting out preliminary recommendations for avoiding adverse effects on integrity of European sites. A further Appropriate Assessment will add greater detail to the avoidance strategy....*” (emphasis added).
25. The data relied upon in the AA May 2013 document was limited or preliminary and it was fully acknowledged that further studies would be needed to address a number of data gaps. In particular breeding birds surveys, habitat surveys and visitor activity surveys relating to the South Pennine Moors were identified as needed (e.g. paragraphs E6.1, 5.2.7, 5.7.5, 8.2.2, 8.2.3, 8.2.4). In particular, no bird survey data in the “*Wharfedale to the north of Ilkley Moor area*” was available to inform the AA May 2013 (paragraph 5.2.8).
26. The AA May 2013 nevertheless purported to make preliminary recommendations as to possible avoidance and mitigation measures. This was a very strange approach as there was a general absence in AA May 2013 of data relating to or deriving from the South Pennine Moors to make such recommendations. The proposed recommendations and avoidance and mitigation measures were therefore based primarily on a literature review of

certain bird species' behaviour (see for example paragraph 8.2.3) and on impacts documented from residential development around the very different southern heathlands of England. Reliance on impacts documented from the southern heathlands of England is inappropriate due to significant differences in both the species present and the nature of the habitat as compared with the South Pennine Moors (see Appendix B of these submissions for more detail).

27. In summary the AA May 2013 suggested the following:
- 27.1. *“Reducing the scale of housing allocations, particularly for settlements wholly or substantively within 2.5km of the SAC / SPA...”* (paragraph 8.3.1);
 - 27.2. *“From the data that is available to date, it is clear that residential allocations should ideally be located more than 2.5km from the SAC/SPA species. Within this zone new housing must avoid direct (e.g. land take) and indirect (eg increased disturbance) impacts on supporting habitats...”* (paragraph 8.3.2);
 - 27.3. *“.....a precautionary spatial strategy would in the first instance seek to restrict residential development within 400m of the SAC / SPA boundary, in order to avoid the risk of urban edge effects such as fly tipping, introduction of invasive species, cat / scavenger predation and increasing fire risk...”* (paragraph 8.3.3); and
 - 27.4. *“... a further zone around the SPA could be established, within which contributions would be collected from residential development to (a) establish a network of alternative recreational spaces, and (b) adjust the management of visitors within the SAC/SPA...* (paragraph 8.3.3).
28. The avoidance and mitigation measures put forward in AA May 2013, without sufficient site-specific data or evidence, are now still to be found in Policies SC8, HO3 and SC4 of CS PD.

CS PD February 2014 – AA Feb 2014

29. A second appropriate assessment was then published together with the CS PD in February 2014 (“**AA Feb 2014**”). It was only then that a public consultation took place.
30. The CS PD contained a revised Policy HO3. Policy HO3 in the CS PD now purported to apportion a reduced (42,100 down from 45,500) residual housing requirement between the Regional City of Bradford, the Principal Towns, Local Growth Centres and Local Service Centres. In the CS PD, Burley in Wharfedale was demoted to a Local Service Centre (from a Local Growth Centre) and was allocated 200 homes instead of the original 500. A similar change was made in respect of Menston where the reduction was from 900 homes to 400. There were also further changes made in terms of the distribution of housing numbers across other areas.
31. The CS PD, for the first time, introduced new Policy SC8. Policy EN2 was also presented in an amended form in the CS PD.
32. Although the AA Feb 2014 incorporated additional baseline information gathered during a number of studies undertaken during 2013 (including: surveys of visitor activity within the SPA / SAC; breeding bird surveys within 2.5km of the SAC / SPA; and surveys of moorland fringe habitats with 2.5km of the SAC / SPA (paragraph 1.4.2)), it still provided no explanation or methodology as to how the Council had sought to use the findings of the bird and habitat surveys described and how it then arrived at the revised targets in Policy HO3. It simply stated in bold terms:

“The Council used the findings of the bird and habitat surveys described to review the proposed distribution of residential development among settlements within this zone. The

Publication Draft Core Strategy now proposes to allocate a total of 8,600 dwellings to Addingham, Ilkley, Burley in Wharfedale, Menston, Bingley, East Morton, Keighley and Silsden (see Table 1.1), a reduction of 25% [i.e. from a previous total of 11,550 in the CS FED], while Burley in Wharfedale and Menston are no longer designated as Local Growth Centres..... The 1,700 remaining dwellings allocated to Addingham, Ilkley, Burley in Wharfedale, Menston, East Morton, whilst not insignificant, is a reduction of approximately 50% (paragraph 6.3.2).

33. The AA Feb 2014 also maintained that the avoidance and mitigation measures suggested on a preliminary basis in AA May 2013 remained applicable and as such a new Policy SC8 was appropriate (see paragraphs 6.3.3, 6.3.4, 6.3.5).
34. CEG submitted detailed criticisms (dated 31 March 2014) to the Council of its AA Feb 2014 and the associated policies. These included a full explanation of (i) the legal and substantive deficiencies in the AA Feb 2014; and (ii) the absence of any data or analysis to support the relevant policies.

CS PD February 2014 – AA Dec 2014

35. Eventually a third appropriate assessment document, AA Dec 2014, was written in December 2014. This relates to the (unchanged) CS PD dated February 2014. It is said to form part of the evidence base alongside the Core Strategy as submitted to the Secretary of State on 12th December 2014.
36. Regrettably this document was not made available to NLP until 12 January 2015. It was not published on the Council's website until even later. It has not been the subject of public consultation. There is no explanation given for this, despite the Council consulting on the previous two appropriate assessments and despite the public consultation provisions of regulation 102(3) Conservation of Habitats and Species Regulations 2010.
37. The AA Dec 2014 states that it presents "*further analysis of this data* [i.e. the data collected in 2013], *particularly in relation to visitor surveys and an element of review in response to the earlier consultation*" (paragraph 1.4.3).
38. In reality, however, the AA Dec 2014 seeks to present a significantly revised approach and methodology to that presented in the earlier AA May 2013 and AA Feb 2014. The Council appears to be trying to respond to representations from both NLP and Natural England during 2014, including a legal opinion from Mr Stephen Tromans QC submitted to the Council on 17 November 2014, that the approach adopted in the earlier versions (and still to a large extent maintained) was unlawful. Amongst other deficiencies, the earlier versions had erred in giving prominence to potential impacts on bird species outside the SPA / SAC boundary which the authors regarded as "typical species" associated with the habitats for which the SAC was designated. Impacts on such species outside the boundary of the SAC are in fact not relevant to an appropriate assessment of impacts on the SAC.
39. It has now emerged that the Council regards the reduction and redistribution of housing numbers seen in Policy HO3 CS PD (and the associated demotion of Burley in Wharfedale to a Local Service Centre (from a Local Growth Centre) in Policy SC4) as necessary due to an assumed existence of "functional land" outside the boundary of the SPA: see for example paragraphs 9.9 and 9.11-9.24 of the Council's document "Background Paper 1: 1. Overview" dated December 2014. This "functional land" is said to be land predicted to be used by the qualifying bird species for which the SPA is classified.
40. In contrast to "typical species" associated with the SAC, it is correct for an appropriate assessment to consider possible impacts on land outside the SPA boundary where that land is used for foraging by the qualifying bird species for which the SPA is classified. However, as is explained below, the approach adopted by the Council towards so-called "functional

land” is nonsensical when analysed and would, in fact, be counterproductive to the conservation objectives relating to the SPA / SAC.

41. There remain a large number of key deficiencies, both legal and substantive, in the AA Dec 2014 and in the associated methodology adopted to reduce and redistribute housing numbers found in HO3. The three key issues which emerge are as follows:
 - 41.1. The Council has adopted an unlawful approach in its assessment of impacts on the SPA / SAC. This in turn means that Policies SC8, SC4 and HO3 of the Core Strategy in their current form are unsound since they are not evidenced, and cannot be justified, by reference to the AA Dec 2014
 - 41.2. This flawed approach is also the main driver behind the methodology adopted by the Council to change the status of settlements and to reduce and redistribute housing target numbers found in Policies HO3 and SC4, so further demonstrating that Policies HO3 and SC4 are unjustified and unsound.
 - 41.3. Policy HO3 is also unsound since its revised housing targets cannot in any event be explained or justified by reference to the Council's own stated methodology for reduction and redistribution of housing targets.
42. The CS PD, particularly Policies SC8, SC4 and HO3, therefore fails to meet both the legal compliance and soundness tests.
43. These three points are now considered in detail.

THE COUNCIL'S UNLAWFUL APPROACH TO THE AA DEC 2014

44. This section of the submissions explains why the AA Dec 2014's assessment of impacts of the CS PD on the SPA and the SAC is not compliant with the legal requirements of regulation 102 Conservation of Habitats and Species Regulations and the associated caselaw. If the Core Strategy is adopted on this basis it will not be legally compliant.
45. The AA Dec 2014 is also at the heart of the purported methodology behind the Council's change in status of settlements and the reduction and redistribution of housing targets in Policies HO3 and SC4; and is also the purported basis for Policy SC8. As such the AA Dec 2014 is the key reason why these policies in the CS PD are unsound.
46. At the core of this unlawful and unsound approach is the Council's failure to apply correctly the “no adverse effect on integrity” test and its consequent failure to put forward policies which are consistent with this and the evidence before it.
47. The Council has failed to recognise that this test is concerned with adverse effects on the integrity of the SPA or SAC by reference to the qualifying features of the SAC or SPA and their conservation objectives. The Council has failed to make any proper assessment of impacts in particular on the qualifying bird features of the SPA (although this also true of the features of the SAC); and, in the absence of this assessment, it has assumed there are impacts and proceeds as if the relevant legal test requires there to be no impacts on the SAC or SPA whatsoever (regardless of their degree and nature). In relation to the SPA, this translates into an approach of avoiding any impact on any bird or any habitat that might be associated (however tenuously) with the SPA.
48. This flawed approach is seen in relation to two aspects of the AA Dec 2014:
 - 48.1. The purported identification of SPA “functional land” and potential impacts on the SPA by virtue of development on such functional land; and

48.2. The misconceived assessment of urban edge / recreational effects on the SPA / SAC.

49. Appendix A contains a detailed technical and scientific analysis of the AA Dec 2014 from Baker Consultants Ltd. Appendix C contains a Further Opinion (and an earlier Opinion) from Stephen Tromans QC. These should be read in full, but key points from Appendices A and C are included in brief below.

The approach adopted in purporting to identify SPA “functional land” and potential impacts on the SPA by virtue of potential development on such “functional land”

50. There are a large number of errors of approach in the AA Dec 2104 in the identification of, and assessment of impacts, on SPA “functional land”.

“Breeding bird assemblage” as a qualifying feature of the SPA

51. The first key error is that explained by Stephen Tromans QC in paragraphs 28-42 of his Further Opinion. The AA Dec 2014 is premised on a serious mistake of law as to the relevant qualifying features of the SPA. This is also discussed in the report at Appendix A from Baker Consultants Ltd (paragraphs 6-15).

52. In seeking to identify what is “functional land” outside the SPA boundary, the AA Dec 2014 assumes that it is relevant to consider use of land by bird species which form part of a “breeding bird assemblage” associated with the SPA. In other words the AA Dec 2014 assumes that the “breeding bird assemblage” is a qualifying feature of the SPA.

53. This stems from the original 1998 citation for the South Pennine Moors Phase II SPA. However, this fails to reflect the fact that the Joint Nature Conservancy Council (JNCC) (the statutory adviser to the UK government on nature conservation) reviewed and updated this SPA citation in 2001. In its review JNCC removed the “breeding bird assemblage” from the list of qualifying features of the SPA.

54. Paragraphs 3.1.4 and 3.1.5 of AA Dec 2014 set out an acknowledgment from both the Council and NE that JNCC’s review received Ministerial agreement. The Council nevertheless goes on to say in AA Dec 2014 that it has based its assessment on the original 1998 citation because of advice in a personal communication from Alan Drewitt, an employee of Natural England. It is unfortunate, to say the least, that it is thought that the detailed scientific recommendations of the JNCC and subsequent Ministerial approval which set the status of European statutory sites can be overruled in this way.

55. A JNCC paper, entitled “Finalising and Publishing the UK SPA Review”, issued for a meeting on 13th June 2001 records as follows:

“5.1 ... the JNCC Chairman will sign-off and send the review to DETR in July 2001 ...

5.2 DETR will then submit the review to the European Commission. It is anticipated that this will be by means of a small group, led by DETR, who will visit Brussels to present the review and its key conclusions no later than 16/17 July.”

56. The minutes of this JNCC meeting record (item 8.3) that *“... Committee endorsed the list of sites and species ... Committee delegated to JNCC Chairman to sign-off the lists in July for submission, as formal advice, to DEFRA.”*

57. By way of further confirmation of this, Andrew Baker of Baker Consultants Ltd has received an email from Dr David Stroud at JNCC (who was responsible for the 2001 review of SPAs) confirming that the 2001 review was formally accepted by the JNCC committee in June 2001. It was then sent to DETR (as it then was) and was published with the endorsement of DETR,

English Nature and other relevant agencies and departments. The review was formally presented to the European Commission in July 2001 by Dr Stroud and a DETR colleague. Dr Stroud's email and the minutes of the JNCC meeting in June 2001 are attached to the report of Baker Consultants Ltd at Appendix A to these submissions.

58. The Council has therefore erred in its approach to the SPA. If Ministers have agreed with JNCC's recommendations, as is reported in AA Dec 2014 and evidenced in the further sources as above, and the consequential decision has been communicated to the European Commission, there can be no justification for reliance on anything other than the JNCC list of qualifying features when undertaking the appropriate assessment of the SPA. The appropriate assessment process is one required under European law to reflect the European protection of such sites.
59. It follows that the changes made to the CS PD and the AA Dec 2014 (which amounts to a retrospective attempt to justify those changes) have both been undertaken on a false premise.
60. Moreover, Baker Consultants Ltd has identified (Appendix A, paragraph 37) from the Council's own 2013 bird survey that only two bird species of those originally within the "breeding bird assemblage" were in fact found within SHLAA sites outside the SPA boundary (i.e. 20 sightings of Curlew and 6 of Lapwing). No other SPA species or breeding bird assemblage birds were found within the SHLAA sites. Extraordinarily it is these sightings which now form the key basis for attempting to justify the restrictive Policies SC8, HO3 and SC4, but these sightings are simply not relevant to an assessment of impacts on the SPA as the breeding bird assemblage is no longer a qualifying feature of it.
61. There is therefore no proper basis or evidence for a restriction of development through Policies HO3 or SC4 or, indeed, Policy SC8 to protect against loss of SPA "functional land".

Flawed assumption that birds recorded outside the SPA are part of the SPA's breeding bird assemblage

62. Even if one (wrongly) were to follow the Council's approach of treating the previous "breeding bird assemblage" as a qualifying feature of the SPA, the Council's approach is flawed anyway.
63. In its AA the Council has not appreciated, or recognised, the important distinction between birds which breed within the SPA and those which do not. Even if a "breeding bird assemblage" remained a qualifying feature of the SPA, it would only be birds that breed within the SPA that could be part of that assemblage. By definition, those birds that breed outside the SPA could not be part of the assemblage. See Stephen Tromans' Further Opinion (paragraphs 31 and 51) at Appendix C. This is also discussed in Baker Consultants Ltd's report at Appendix A (paragraphs 29-30).
64. Despite this, the focus of the Council's surveys undertaken in 2013 to consider issues of "functional land" ignores this distinction. The surveys should have been to assess whether any birds of the species within the SPA's breeding bird assemblage using the SPA for breeding were also using land outside the SPA for *feeding*. NE's letter dated 31 March 2014 confirms this: "*Natural England has previously expressed concerns that the loss of functionally linked land (feeding habitats beyond the SPA).....requires a robust assessment to determine the scale of impact and the effectiveness and deliverability of mitigation*". There is no such analysis in the Council's surveys or in the AA Dec 2014.
65. To the contrary, whilst the AA Dec 2014 at paragraphs 5.2.17-5.2.24 correctly excludes from its analysis Curlew and Lapwing birds which were flying overhead in relation to land outside the SPA, any bird which was sighted and was not flying was treated as part of the SPA breeding bird assemblage, even when such birds were thought to be breeding outside the

SPA. The AA Dec 2014 confirms this expressly at paragraph 5.2.20 for lapwing “*Some of these birds, particularly lapwing, may be breeding outside of the SPA boundary but contribute to the larger SPA meta-population*”.

66. This is a basic error in itself. It means that the Council’s subsequent “assessment” of any impacts on the SPA is inevitably going to be seriously exaggerated because it will be assumed that all birds sighted off site comprise part of the breeding bird assemblage on the SPA when it is clear that this will not be the case.

Failure to survey all birds and habitat surrounding the SPA

67. The problems identified above are sufficient in themselves to invalidate the AA, but the problems become even more fundamental when one considers what the Council is in fact surveying in this exercise. In order to assess whether there is any indirect impact on the SPA through use of functional land affecting a breeding bird assemblage on the SPA, it is axiomatic that it would be necessary to consider the availability of habitat around the SPA as the whole and the numbers of potential SPA birds using that habitat. The Council has only considered areas which coincide with SHLAA sites. This error of this approach is discussed in the Baker Consultants Ltd report at Appendix A (paragraphs 21-22) and in Stephen Tromans QC’s Further Opinion (Appendix C) at paragraphs 55 and 65.
68. In short, the Council has used the SHLAA sites as the basis for its assessment, with the surveys undertaken limited to a very small area. This can be seen from paragraph 5.2.4 AA Dec 2014: (i) habitat surveys were carried out for meadows within 2.5km of the South Pennine Moors Phase 2 SPA and 1 km of settlement boundaries; and (ii) bird surveys were carried out in “target areas” which focused on the SHLAA sites both within settlements and up to 1km from settlement boundaries.
69. As the Council plainly regarded the 2.5km buffer around the SPA boundary as relevant for an assessment of functionally linked land, it ought to have considered habitats and bird use of this buffer around the entire SPA. It did not.
70. The Council has therefore not assessed impacts (if any) of the use of SHLAA land development as against the correct baseline. Any impacts predicted by the Council are therefore bound to be significantly exaggerated.
71. In addition, it is relevant to note that during the JNCC review of SPAs in 2001, the SPA was made larger. The two separate Phase I and Phase II SPAs were joined together to create a single South Pennine Moors SPA. The true baseline for assessment should therefore have reflected this much larger area.

Failure to consider potential impacts on the “breeding bird assemblage”

72. It has already been identified how the Council wrongly regards the “breeding bird assemblage” as a qualifying feature of the SPA. But even if it remained so and the other errors identified above in identifying functional habitat had not occurred, the Council would have needed to assess the likely impacts from the assumed loss of such functional habitat on the “breeding bird assemblage” itself - ie the total assemblage of breeding birds. The AA Dec 2014 however fails to do this.
73. The AA Dec 2014 has, for example, commented on supposed impacts on Curlew. But it has not considered whether or how impacts on Curlew would translate into any material impact on “the breeding bird assemblage”. What is relevant is the ability of the “assemblage” to sustain itself as a population breeding within the SPA. There is no reasoning whatsoever within the AA Dec 2014 in on this point.

74. The Council has erred by treating each species said to form part of the assemblage as a SPA qualifying feature in its own right. As confirmed by Stephen Tromans QC's Further Opinion (see paragraph 52), this approach is incorrect in law.
75. This is a key flaw in itself. As noted by Baker Consultants Ltd (see Appendix A), no birds of the species which are in fact qualifying features of the SPA in their own right have been noted in the SHLAA areas in the Council's 2013 bird surveys. Indeed, only 20 Curlew and 6 Lapwing (species that formed part of the original "breeding bird assemblage") were noted within the 2013 surveys on the SHLAA sites. Even if it were assumed that use of the SHLAA sites resulted in the displacement of these birds and there were no other habitat available for them, the Council would then need to assess what impact (if any) such displacement would have on the breeding bird assemblage as a whole. It can readily be seen that there is no evidence to indicate that such displacement would cause any material adverse effect to the assemblage.

Failure to make any proper or detailed assessment as to whether loss of SHLAA sites to development could ever give rise to an "adverse effect on integrity of the SPA"

76. In addition to the points above, the AA Dec 2014 fails to assess how impacts on any birds recorded on SHLAA sites (if such impacts were to arise) would affect the integrity of the SPA. This is fundamental to compliance with the HRA legal requirements and yet has been omitted.
77. If one assumes (albeit wrongly) that the Council is correct that the breeding bird assemblage is a qualifying feature of the SPA then, as Stephen Tromans QC's Further Opinion states (paragraph 50), the three relevant questions to be addressed are:
- 77.1. how far the loss of the feeding habitat would impact on the population of these species breeding within the SPA;
 - 77.2. how far that impact would in turn impact on the population of the assemblage as a whole across the SPA, and
 - 77.3. to what extent the impact on the population of the assemblage as a whole would affect adversely the integrity of the SPA, taking into account the conservation objectives.
78. Nowhere in the AA Dec 2014 does the Council address these issues. This is a key flaw in the Council's purported "appropriate assessment."
79. In relation to the third question, in addition to the Council's failure to assess impacts on the total assemblage of breeding birds, the Council has erred by failing to provide any forensic assessment of the Council's 2013 data as against the conservation objectives of the SPA and by treating Curlew and Lapwing as SPA qualifying features in their own right. As confirmed by Stephen Tromans QC's Further Opinion (see paragraphs 43-48 and 52), this is incorrect in law.
80. Instead of addressing these three questions, the AA Dec 2014:
- 80.1. assumes without evidence an impact on the species (without examining whether they are in fact breeding within the SPA so as to be part of the assemblage);
 - 80.2. fails to address at all how effects on a limited number of members of a species would impact on the assemblage, simply assuming there would be such an effect; and

80.3. entirely fails to grapple with the ultimate and decisive test of impact on integrity of the SPA.

See Stephen Tromans QC's Further Opinion (paragraph 56).

A linked flawed assumption that development must be avoided on SHLAA sites with SPA bird sightings and with certain grassland habitat

81. We refer below to the Council's methodology for reducing and redistributing housing targets. However, the Council has made a mistaken assumption that development must be avoided on SHLAA sites where the 2013 survey data shows either (i) SPA bird sightings or (ii) the presence (with or without relevant birds) of relevant "supporting" grassland habitats.

82. In relation to bird sightings:

82.1. As an example, SHLAA site BU/001 (north east of Burley in Wharfedale and owned by CEG) has apparently been discounted from the housing supply because 2 Lapwing were seen in 2013 involved in an aerial dispute with a bird of prey above the SHLAA. In addition the two birds were considered by the surveyors to be a breeding pair. It follows from the latter point that that these birds cannot be considered part of the SPA breeding bird assemblage (see paragraph 33 of Baker Consultant Ltd's report at Appendix A) and therefore on this basis alone discounting this land is mistaken. But there is also no evidential basis for the assumption that displacement of two such birds if the land were to be developed would result in any material effect on the SPA of any kind.

82.2. Baker Consultants Ltd has undertaken a preliminary analysis of the 2013 bird survey data (further analysis at this stage has not been possible due to the late arrival of the AA Dec 2014 and also a delayed response from the Council in relation to access to environmental information requests made 2 over months previously). This analysis is presented in paragraphs 39-44 of their report at Appendix A.

82.3. Baker Consultants Ltd found that only 26 birds were recorded in all of the SHLAA sites (amounting to 20 Curlew and 6 Lapwing). Although these species are species listed within the "breeding bird assemblage", we have already noted that this assemblage is wrongly regarded by the Council as a qualifying feature of the SPA. The 2013 bird survey recorded 3097 registrations of the species listed as making up the breeding bird assemblage in the original 1998 SPA citation. The 26 Curlew and Lapwing recorded on the SHLAA sites therefore amounts to only 0.84% of this total.

82.4. Baker Consultants Ltd (paragraph 42 Appendix A) explains that, for HRA purposes, NE usually advises that any plan or project which, when subjected to HRA screening, affects more than 1% of the population of the qualifying interest feature should be subject to further scrutiny through an appropriate assessment. An impact that affects less than 1% of the population is so small as to be insignificant and therefore cannot constitute a likely significant effect on the SPA / SAC.

82.5. On this basis, even if it were assumed that all the birds on the SHLAA sites were part of the breeding bird assemblage and that development of the SHLAA sites in question would result in displacement of all of those birds without any other available land for them to use, the consequential effect on 0.84% of the identified birds off-site would not even trigger the HRA screening test, let alone be regarded as contrary to the HRA's "no adverse impact on site integrity" test.

82.6. But it is clear that the assumption that there would be an impact on 0.84% of the breeding bird assemblage is an unrealistically high assessment in any event. This is because, as already explained above:

- 82.6.1. The Council has failed to supply data to inform an appropriate baseline against which to assess the 26 birds found in 2013 in the SHLAA sites. The Council did not survey for breeding bird assemblage birds within the 2.5km buffer land around the entire SPA. The Council only surveyed birds within certain discrete areas. The 26 birds sighted on the SHLAA sites could only represent a tiny proportion (and much smaller than 0.84%) of birds when assessed against a correct baseline.
- 82.6.2. The Council has included within the 26 birds, birds which were clearly breeding outside the SPA and as such could not be regarded as part of the SPA's breeding bird assemblage anyway.
- 82.6.3. The Council has failed to assess impacts on "the breeding bird assemblage" (ie those birds breeding within the SPA).

83. In relation to grassland habitats:

- 83.1. As is explained in detail below, the Council has removed from the potential housing supply any SHLAA sites which were found in the 2013 habitat surveys to contain any one of three grassland types. This was the case even where no SPA birds were seen on those habitats during the 2013 bird surveys.
- 83.2. Paragraph 5.2.9 of the AA Dec 2014 states that: *"Three grassland types were identified that were considered more likely to provide a foraging resource for SPA qualifying bird species, and are collectively referred to here as 'supporting habitats'. These were; species rich semi-improved grassland, unimproved grassland and rush pasture. These supporting habitat types were dominant in only 9.0% of the surveyed area"*.
- 83.3. For example, SHLAA site BU/004 (on the southern edge of Burley in Wharfedale) was removed from the housing target because of the presence of "species rich semi improved grassland", even though no SPA birds on it were seen in 2013.
- 83.4. Baker Consultant Ltd's report at Appendix A explains why this approach is without scientific justification (see paragraphs 23-26). Paragraph 5.2.9 AA Dec 2014 is not supported by the "Technical Note: Initial Interpretation of Bird and Habitat Survey Data" dated October 2013, authored by the same AA Dec 2014 authors.
- 83.5. This Technical Note had to be obtained through an access to environmental information request made to the Council. The Technical Note states: *"In conclusion, on analysing the 2013 bird and habitat survey data, there do not appear to be any clear patterns of bird association with habitats of greater botanical diversity. There are some instances of greater bird abundance in areas of rush pasture or where agricultural improvement has been less intense, but this is by no means a uniform pattern. By the same token, there are a number of SHLAA sites that did not feature particularly interesting or diverse habitats but nonetheless supported a reasonable abundance of birds. Despite this, it would seem prudent to concentrate proposed residential allocations on areas that feature neither high numbers of bird records nor good quality habitats."*
- 83.6. Nor is paragraph 5.2.9 AA Dec 2014 supported by a further document "South Pennine Moorland Fringe Habitat Surveys: Supporting data to inform City of Bradford Metropolitan District Council Core Strategy Development Plan Document" dated January 2014. This also had to be obtained through the access to environmental information request. This states:

“4.1.1 The majority of the fields surveyed were considered to be of relatively low ecological value with 65.8% of fields being dominated by amenity, improved or species poor, semi-improved grassland. Although initial analysis of the habitat data alongside the bird survey data did not identify any clear habitat preferences shown by SPA birds, three habitat types are considered to be of the most value for both SPA qualifying birds and those typical of SAC habitats (UEEC 2013b). These were;

- species rich, semi-improved grassland,
- unimproved grassland; and
- rush pasture.”

83.7. It is therefore clear that these habitat types were selected without any scientific basis or evidenced correlation with SPA species' behaviour. There is therefore no scientific evidence or justification for withdrawing a SHLAA site from the housing supply just because one of these habitats was present in it.

83.8. In Baker Consultants Ltd's opinion the 2013 habitat surveys process and analysis is so flawed that it should be disregarded entirely in the HRA process (paragraphs 26 and 33 Appendix A).

The misconceived assessment of urban edge / recreational effects on the SPA / SAC

84. It is clear from the AA Dec 2014 and the Council's "Background Paper 1: 1. Overview" dated December 2014 that the "main driver" behind the revised housing targets in Policy HO3 and the change in settlement status of Burely in Wharfedale in Policy SC4 is the assumed impacts on SPA "functional land". This has been dealt with above.

85. However to the extent that the Council seek to rely (if at all) on urban edge / recreational effects on the SPA / SAC to justify Policies HO3 / SC4, the reports at Appendix A (from Baker Consultants Ltd, paragraphs 45-54) and at Appendix B (from Andrew McCloy) sets out the reasons why the approach to AA Dec 2014's assessment of urban edge / recreational effects on the SPA / SAC adopted is misguided and incorrect.

86. In particular Appendix B from Andrew McCloy concludes that:

86.1. the AA Dec 2014 relies heavily on evidence which is not sufficiently comprehensive or robust to inform its conclusions;

86.2. it proceeds on the false premise that a likely rise in visitor numbers (non-quantified) to an already accessible outdoors location will simply result in materially higher levels of disturbance;

86.3. the AA Dec 2014 takes no account of the existing or future mitigation measures on the SPA and how this is likely to influence visitor activity and deal effectively with its impact; and

86.4. the AA Dec 2014 takes no account of the wider and ongoing promotion of the South Pennine moorland by Bradford Council, amongst others.

87. In summary, the recreational and urban edge evidence presented in the AA Dec 2014 is selective, incomplete, misrepresented (some data is not accurately reported); erroneous; and inconsistent. The AA Dec 2014 fails to establish any clear causal connection between recreation or urban edge effect and their supposed impacts on the SPA / SAC.

88. Therefore there is no evidence that the higher housing targets in Policy HO3 of the CS FED would have risked recreational or urban edge impacts on the SPA or SAC, or that the reduced housing targets in Policy HO3 CS PD are somehow referable to such impacts.

89. The AA Dec 2014 also suggests that Policy SC8 has been informed by the Council's predicted urban edge / recreational effects on the SPA / SAC (eg see paragraphs 6.4.1,

6.4.5, 7.2.11, 7.2.13, 7.2.21, 7.3.5, 7.3.10). The reports in Appendices A and B apply equally here and show that the purported evidence presented by the Council does not justify or require Policy SC8, particularly given the existence of Policy EN2.

90. If a further policy were however justified and considered necessary, provision in it for full mitigation against any possible (albeit not evidenced) recreational / urban edge impacts in terms of (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 would be a straightforward means of addressing any evidenced recreational or urban edge effects. This is discussed further below.

FLAWED METHODOLOGY TO INFORM A CHANGE IN SETTLEMENT STATUS AND REDUCTION AND REDISTRIBUTION OF HOUSING TARGET NUMBERS FOUND IN POLICIES HO3 AND SC4

91. This unlawful approach to the AA Dec 2014, particularly in relation to identifying SPA “functional land”, is a key factor behind the methodology adopted by the Council to change settlement status in Policy SC4 and to reduce and redistribute housing targets as found in Policy HO3, so further demonstrating that both Policies are unjustified and unsound.
92. This is clear from the Council’s “Background Paper 1: 1. Overview” dated December 2014. This explains the methodology adopted by the Council to change settlement status and to reduce / redistribute housing targets. Table 2 shows the reduction in housing across the district attributable to the findings of the AA Dec 2014, where settlements such as Burley-in-Wharfedale have been changed from a Local Growth Centre to Local Service Centre. In relation to Wharfedale towns, “Background Paper 1: 1. Overview” makes clear that the “*the potential direct and indirect impacts of the CS FED’s housing proposals on the SPA and its 2.5km buffer zone was the main driver for the changes eventually incorporated within the CS PD*” (emphasis added).
93. In essence (see section 9) the Council has revealed that it removed any reliance on SHLAA sites if they happen to coincide with a bird sighting or with the presence of a specific habitat type (see paragraph 9.13 and the footnote to Table 2 under paragraph 9.24). This has been done on the purported basis that these SHLAA sites represent potential “functional land” used by birds representing a qualifying feature of the SPA (see for example paragraph 9.10). The Council states that it has then recalculated the housing capacity of the remaining SHLAA sites and adjusted the policies, including Policy HO3 to reflect this (paragraph 9.16). This approach is misconceived for all the reasons already identified.
94. Moreover, the advice of Natural England to the Council does not reflect this approach. In particular:
 - 94.1. NE’s letter dated 31 March 2014 stated that: “*Prior to any reduction in housing targets, the HRA must prove that sufficient sites, to meet the previous settlement targets, cannot be allocated without adverse effects on integrity. Without this, any reduction may be challenged and found unsound*”. NE was therefore asking the Council to prove that there were not sufficient SHLAA sites “without adverse effects on SPA integrity” and to assess how much housing those sites could deliver, before any reduction in housing targets was made. The Council has not done this.
 - 94.2. NE’s letter 1 August 2014 also said “*Natural England appreciate CBMDC’s have sought to avoid, rather than mitigate any adverse effects and that the precautionary principle has been applied. However when appraising potential development locations the Council should consider whether it is possible to identify sites/locations that are a) unlikely to be deliverable (where significant numbers are recorded on-site*

or likely to be disturbed off-site) and therefore should be avoided, b) deliverable with mitigation (either site specific or strategic mitigation), or c) deliverable without mitigation (unconstrained)". Again, the Council has not done this as explained above.

95. It is inherent in what NE advised that, even on NE's approach, sites which did not have **significant** numbers of birds forming part of the SPA qualifying features on them or likely to be disturbed from them did not have to be precluded. Nor did such sites which would be deliverable with mitigation (whether site specific or strategic), or any other sites which would be unconstrained. All such sites should have been retained for development and reflected within the Council's housing targets. The Council claims in paragraphs 6.3.7 and 6.3.8 of AA Dec 2014 that it has "broadly" followed NE's advice in this respect but the evidence which CEG has now seen demonstrates that this is simply wrong.
96. To the contrary, the Council has adopted a very different and unjustified approach. Rather than identify sites based on NE's approach under a), b) and c), the Council has simply excluded from the housing supply any SHLAA site where the 2013 survey recorded any bird sighting, or the presence of what the Council asserts to be supporting habitat type (even where no relevant bird has been seen associated with that habitat). The Council has then purported to revise housing targets on this mistaken basis. In so doing:
- 96.1. The Council failed to give any consideration at all to which SHLAA sites had significant numbers of birds on site and which did not, let alone which birds are in fact part of the breeding bird assemblage "qualifying feature" of the SPA. The Council's AA Dec 2014 makes no meaningful assessment of impact on SPA integrity at all. In fact only 26 birds were noted across all of the SHLAA sites across all settlements within or partly within the 2.5km buffer zone (20 curlew and 6 lapwing). This in itself amounts to only 0.84% of all birds within the breeding bird assemblage species seen in the 2013 surveys. There is simply no basis at all for suggesting that any of the SHLAA sites contain "significant" numbers of birds, let alone for suggesting that their use would have any adverse impact on the integrity of the SPA.
- 96.2. The Council has also failed to consider whether mitigation against any supposed impacts from loss of functional land would be available.
97. The Council appears to be suggesting that its approach was "precautionary": *"This was a precautionary approach as consultants acknowledged that the presence of such sightings and habitats would not necessarily render a site as unsuitable for development. More detailed impact assessments would have to be carried out as part of the Allocations DPD and potential management and mitigation measures assessed"* (paragraph 9.14 of Background Paper 1: Overview). The Council then goes on to state in the AA Dec 2014 (paragraph 5.2.36) that *"further data gathering and more detailed analysis of bird data and habitat variables are envisaged in order to be confident that habitats preferred by target species have been identified. This will inform work on the subsequent Allocations DPD"*.
98. The Council's claims are misguided and betray a misunderstanding of the "precautionary approach" in this field. The Council's approach has led to SHLAA sites being dismissed from the housing supply, changes in settlement status and housing being redistributed without proper evidence, assessment or justification of the type that is required. This is not "precautionary"; it is simply unwarranted. In addition, it is obvious that reliance on a more detailed assessment at the Allocations DPD stage is no answer to this and it is wrong. The Allocations DPD will not alter the settlement status changes that have been made in the Core Strategy, nor the housing targets and distribution in Policy HO3. As paragraph 5.2.39 of the CS PD explains Policy HO3 *"sets the framework within which the site allocating DPDs will be prepared"*.

99. The 2013 bird survey data provides no credible basis for changing settlement status or removing from the housing supply those SHLAA sites where birds were sighted or purported habitat is said to exist. Even if bird sightings or habitat type had been a proper basis for removing reliance on sites, the Council ought then to have considered which SHLAA sites should be reinstated based on the availability of mitigation measures to offset any potential impact.
100. The Council's chosen approach is seriously flawed and unsustainable because it will serve to restrict development in what are otherwise highly appropriate and sustainable locations on the false basis that such restriction somehow serves or protects the SPA. There is no justification or evidence to support this. The approach also seeks to pre-judge the results of future work which the Council acknowledges is necessary.

SETTLEMENT STATUS AND REVISED HOUSING TARGETS NOT EXPLAINED OR JUSTIFIED BY COUNCIL'S OWN STATED METHODOLOGY

101. The Council's "Background Paper 1: 1. Overview" dated December 2014 explains the methodology adopted by the Council to change settlement status and to reduce / redistribute housing targets.
102. Settlements such as Burley have been changed from Local Growth Centre to a Local Service Centre and Paper 1 includes Table 2 which purports to set out how the Council's analysis impacted on this and 12 other relevant settlements. Yet on examination, there is no correlation between the fourth column of Table 2 dealing with "revised settlement capacity" and the sixth column, "CS PD HO3 Target". The revised housing targets allocated to each location in Policy HO3 of the CS PD do not reflect the analysis described by the Council as the reductions are greater than that which would occur from removal of reliance on SHLAA sites in the manner set out above.
103. This is particularly noticeable for the Wharfedale towns in circumstances where paragraph 9.9 of Background Paper 1 makes clear that the "main driver" for the housing reductions were concerns about impacts on functional land outside the SPA.
104. To take Burley in Wharfedale as an example, the revised settlement capacity is stated to be 407 dwellings, after the 3 SHLAA sites with bird sightings or a specific habitat type have been removed. However Policy HO3 in the CS PD nevertheless only seeks to allocate 200 dwellings to this area. Similarly, for Menston the revised settlement capacity (after the 1 SHLAA site with a bird sighting or a specific habitat type has been removed) is given as 981 but Policy HO3 in the CS PD allocates only 400 to this area.
105. Therefore, quite apart from the central deficiencies in what has already been described, the methodology of reducing and redistributing housing targets is not justified or explained on the evidence. The reduction and redistribution of housing numbers, particularly in Wharfedale, is therefore clearly unsound.
106. Further comments on the absence of any wider justification for a reduction in the level of housing distribution across the Bradford District are found in CEG's statement in respect of Matter 4C at the forthcoming Examination.

REASONS WHY POLICIES SC4, SC8 AND HO3 ARE UNSOUND

107. From the above it can be seen that Policies SC4 and Policy HO3 are unsound because:
 - 107.1. The Council has adopted an unlawful approach in its assessment of impacts of potential development under the Core Strategy on the SPA and SAC.

- 107.2. The approach to the AA Dec 2014 is at the heart of the methodology behind the change in settlement status and the reduction and redistribution of housing targets in current Policies SC4 and HO3, where the Council has identified that it is the “main driver” for these policy changes. This is not evidenced, and cannot be justified by reference to the AA Dec 2014.
- 107.3. Policy HO3 is further unsound because its revised housing targets cannot in any event be explained or justified by reference to the Council’s own stated methodology for reduction and redistribution of housing targets.
108. Policy SC8 is also unsound for a number of reasons listed below.
109. First, Policy SC8 is premised on the unlawful approach to assessment found in the AA Dec 2014, 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 above. As discussed below, Policy SC8 is unnecessary based on the Council’s AA Dec 2014, particularly given the existence of Policy EN2.
110. 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:
- 110.1. 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.
- 110.2. 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.
- 110.3. 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.
- 110.4. 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.
- 110.5. 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).

110.6. 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.....""

111. Policy SC8 is therefore unsound. It will potentially prevent development that is acceptable in terms of its effect on the SPA/SAC. This is contrary to the approach required by the Habitats Directive 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 that occur from existing development. Yet these sorts of potential positive incidental benefits are precluded altogether through the approach to Zone Bi.

112. Thirdly, the wording of Policy SC8 does not reflect the requirements of the Habitats Directive or the Birds Directive. 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

113. Policy SC8 is unnecessary given the protection already afforded to the SPA through Policy EN2. The Further Opinion of Stephen Tromans QC (Appendix C) advises as follows:

Para. 17. *"An obvious way of satisfying the "no adverse effect on site integrity" test would have been simply a policy that any development likely to have a significant effect on a European Site will be subject to AA and that permission will be refused if it cannot be ascertained that there will not be adverse effects on integrity and the subsequent derogation tests cannot be met ... Combined with a robust AA, this would be a perfectly acceptable way of proceeding. Indeed Policy EN2 in the draft CS is largely to that effect."*

114. At paragraph 57, Mr Tromans QC advises that *"...the policies precluding development (SC8 and HO3) are in my view not necessary to ensure that development will not have an adverse effect on the SPA's integrity and have not been demonstrated to be so by the AA"*. He continues (paragraph 58) to advise that *"It would be perfectly acceptable to have a policy that would require AA at the specific project level and provide that permission would not be granted in the absence of a favourable assessment."* As noted above, Policy EN2 is largely to that effect. Mr Tromans' Further Opinion continues (paragraph 59) with consideration of relevant caselaw before concluding (paragraph 60) that the restrictive policy in SC8 is not justified.

115. However, if need for a further policy (beyond EN2) can be justified or is thought necessary, Policy SC8 must be revised as it is in any event unsound in its current form. Proposed revised wording for policy SC8 is set out in the Conclusions below (and in CEG's Hearing Statement for Matter 3).

CONCLUSIONS

116. To allow the Council to adopt a sound and legally compliant Core Strategy, key changes must be made to both the AA Dec 2014 and Policies SC4, HO3 and SC8. Linked changes should also be made to Policy EN2 to ensure consistency.

AA Dec 2014

117. The AA Dec 2014 fails to make any proper assessment of impacts on the SPA and SAC and plainly draws incorrect and unjustified conclusions from the data that has been presented. An assumption is made that there will be impacts from use of certain land where the evidence does not justify this. There is then an immediate leap to the approach set out in Policies SC4, SC8 and HO3 but without addressing (a) implications for the development of the conservation objectives; (b) implications for the integrity of the SPA; or (c) the ability to mitigate against such effects, if significant.
118. The resulting change in settlement status and the reduction and redistribution of housing numbers now found in Policies SC4 and HO3 are unjustified. Policy SC8 is unnecessary and is in any event unsound in its failure to allow mitigation in respect of “important areas” in the 400m-2.5km zone from the boundary of the SPA / SAC.
119. Based on the data collected and presented in the AA Dec 2014, a revised HRA is required which presents a credible and evidenced assessment of impacts and reasonable and justified measures to control development so as to allow a conclusion of “no adverse effect on the integrity of the SPA or SAC”. The Conclusions of Baker Consultant Ltd’s report at Appendix A (section 5) are that:
- 119.1. the assessment should be based on the correct qualifying features, and in respect of the SPA this means the qualifying bird species as set out by JNCC in 2001;
 - 119.2. the HRA process should be undertaken again using the 2013 bird survey data correctly (and discarding the flawed assumptions made about the 2013 habitat survey data); and
 - 119.3. applying the HRA process correctly and the approach of no adverse effect on integrity to the SPA, the policy approach reflected in the original CS FED should be reinstated.
120. The following changes to Policies SC4 and HO3 are needed to render them sound. As noted above, Policy SC8 is unnecessary. However, if its retention can be justified and is thought necessary, the changes set out below are needed to render it sound.

Policy HO3

121. The housing targets in Policy HO3 must be revised.
122. The Council has already accepted that if Burley in Wharfedale were not constrained by the HRA, Burley would be a sustainable location for housing growth. It is the misconceived approach to the SPA that has led to the change in its settlement status and the reduction in housing numbers. See eg pages 19 and 20 (on Policy SC4) in Appendix 7C “Summary of Comments received and Council Response to the PD Consultation, Section 3 – Vision, Objectives and Strategic Core Policies” to the Core Strategy Publication Draft Statement of Pre-submission Consultation. Page 20 states:

“It is therefore acknowledged that Burley in Wharfedale would be a relatively sustainable location for housing growth if other factors suggested that growth in the area would be an

appropriate option. However the Council are required to propose a strategy for meeting housing need which would be acceptable in terms of the potential direct and indirect impacts on the S Pennines SPA & SAC. The Council were therefore justified in looking to reduce the scale of growth within the 2.5km buffer zone within which Burley is located. As a result of the reduction in the housing target for Burley, the Council considers that it cannot be identified as a growth area in Policy HO2 and should not be designated as a Local Growth Centre in Policy SC5".

123. It is clear from a proper analysis that the "evidence" provided in the AA Dec 2014 does not justify any change in settlement status or any reduction in housing target for Burley in Wharfedale.
124. Indeed, as explained in CEG's other representations, the sustainable nature of Burley, its justified status as a Local Growth Centre, and its ample supply of available land (as demonstrated in the SHLAA) means that it should be reinstated as a Local Growth Centre and the numbers of houses should be amended to at least 500 - 700. The use of such land will be sustainable and will not have any adverse effect on the integrity of the SPA. Moreover, Policy SC8, if altered to be consistent with the Habitats Directive and the caselaw, will protect the SPA.
125. The Core Strategy will remain fundamentally unsound without such changes.

Policy SC4

126. Consistent with the above, Policy SC4 must be changed to ensure that Burley in Wharfedale remains a Local Growth Centre.

Policy SC8

127. 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 need for a further policy can be justified or is thought necessary, Policy SC8 could be made sound by the changes identified below by CEG.
128. 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 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 evidenced and justified, as does the entire zone.
129. 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.
130. If Policy SC8 is to be included at all (notwithstanding the protection already provided by Policy EN2), the revised form of the policy wording below 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).

131. Such a revised policy will also ensure that any concern about gaps in the Council's survey work is overcome and 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.
132. 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 upland heath/South Pennine Moors (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 ~~take a precautionary approach to the review and identification of potential Greenfield sites for development based on an assessment of~~ 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. and appropriate additional monitoring. The underlying principles will be to avoid loss or degradation of areas outside European Sites that are important to the integrity of sites and that sufficient foraging resources continue to be available, in order to ensure the survival of bird populations.~~

Zone Bii

Zone Bii would apply between 2.5km and up to 7km of the ~~designated Site~~ 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. appropriate assessment is still likely to identify significant adverse effects in combination with other proposals, however appropriate avoidance or mitigation measures should allow development to take place.~~

Zones Bi and Bii

~~Within Zones A, Bi (taking into account the need to avoid loss or degradation of areas outside European Sites that are important to the integrity of the sites) and Zone 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 contribute 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.~~

133. In addition the following changes should be made to Policy EN2 to ensure both accuracy generally but also to ensure consistency with revised Policy SC8 (if considered required):

EN2: Biodiversity and Geodiversity

North and South Pennine Moors

A. Any development that would be likely to have a significant effect on a European Site either alone or in combination with other plans or projects will be subject to assessment under the Habitat Regulations at project application stage. If it cannot be ascertained that there will be

no adverse effect on site integrity then the project will have to be refused, unless the derogation tests of Article 6(4) Habitats Directive can be 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.

Locally Designated Sites

B. Development likely to have an adverse effect on a site of ecological/ geological importance (SEGIs and RIGS) or a site of local nature conservation value (Bradford Wildlife Areas) will not be permitted unless it can be clearly demonstrated that there are reasons for the proposal which outweigh the need to safeguard the substantive nature conservation value of the site. When assessing whether Pproposals ~~that~~ are likely to have an adverse impact on such sites ~~will be assessed according to~~ the following criteria will be relevant;

1. Whether works are necessary for management of the site in the interests of conservation.
2. Whether adequate buffer strips and / or other mitigation has been incorporated into the proposals to protect species and habitats for which the Locally Designated Site has been designated.
3. Whether ~~t~~he development would be expected to result in no overall loss of habitat; or whether ~~and~~ mitigation could be expected to include compensatory habitats adjacent to or within the vicinity of any losses proposed. Existing habitats and proposed mitigation should be quantified.

Habitats and Species outside Designated Sites

C. Proposals that may have an adverse impact on important habitats and species outside designated sites need to be assessed according to the following criteria:-

1. The potential for adverse impact on important/priority habitats that occur outside designated sites
2. The potential for adverse impact on species of international, national and local importance
3. The extent to which appropriate measures to mitigate any potentially harmful impacts can be identified and carried out

The assessment needs to take account of:

West Yorkshire Local Site Selection Criteria and

Where relevant developers will be expected to submit (European) Protected Species surveys and other ecological assessment related information with their application.

Development which would cause serious fragmentation of habitats, wildlife corridors or have a significantly adverse impact on biodiversity networks or connectivity will be resisted unless it can be clearly demonstrated that there are reasons for the proposal which outweigh the need to safeguard the substantive nature conservation value of the features of interest.

Enhancement

D. Plans, policies and proposals should contribute positively towards the overall enhancement of the District's biodiversity resource.

They should seek to protect and enhance species of local, national and international importance and to reverse the decline in these species. The Council will seek to promote the creation, expansion and improved management of important habitats within the district and more ecologically connected patchworks of grasslands, woodlands and wetlands. Opportunities for specific habitat creation within development proposals will be sought, including provision for future management.

[IF POLICY SC8 IS TO BE RETAINED THE WORDS “Subject to policy SC8” SHOULD BE ADDED]. Habitats of the moorland will be enhanced and landowners or occupiers will be actively encouraged to manage ~~important~~ areas for bird foraging to ensure continued provision of suitable habitat

[IF POLICY SC8 IS TO BE RETAINED THE WORDS “Subject to policy SC8” SHOULD BE ADDED]. The Council will recognise the importance of foraging/ commuting areas for protected and SPA species outside the statutory designated area as a material consideration in the preparation of development plans and in the determination of planning applications. Where appropriate foraging sites, currently outside the SPA/SAC, whose loss to development could not be adequately mitigated, will be considered for designation.

APPENDIX A

REPORT FROM BAKER CONSULTANTS LTD

APPENDIX B

REPORT FROM ANDREW MCCLOY

APPENDIX C

OPINION AND FURTHER OPINION FROM MR STEPHEN TROMANS QC

APPENDIX D

**LETTER FROM NLP TO THE PROGRAMME OFFICER, MR TONY BLACKBURN,
DATED 23 JANUARY 2015**