

Bradford Core Strategy Examination

Natural England Statement

Matter 1: Legal Requirements and Procedural Matters

1. Introduction

- 1.1 This statement provides further advice from Natural England to inform the Examination of the Bradford Core Strategy in relation to Matter 1 (Legal Requirements and Procedural Matters) question 1.2:

Has the plan been subject to Sustainability Appraisal, including a final report on the published plan, and Habitat Regulations Assessment?

- a. *Is it clear how the Sustainability Appraisal influenced the final plan and dealt with mitigation measures?*
- b. *Are there any outstanding issues arising from the evidence and approach of the HRA, including from Natural England, RSPB and other parties and, if so, how will these be resolved?*

- 1.2 This statement specifically addresses the Habitats Regulations Assessment (HRA) and compliance with European Habitats Directives (part b).

2. Identification and delivery of mitigation

- 2.1 Natural England's representation to City of Bradford Metropolitan Council (hereafter the Council) on the Publication Draft Core Strategy (letter dated 10 March 2014) raised a number of concerns regarding the HRA.
- 2.2 These concerns were discussed at a meeting with the Council and their consultants on the 17 July 2014. Following that meeting Natural England provided further advice to the Council which resolved our concerns regarding the assessment of the plan's adverse effects on the South Pennine Moor's breeding bird assemblage and typical species (letter dated 1 August). This letter is included within Appendix A.
- 2.3 However, advice that mitigation proposed within Policy SC8 was not supported by sufficient evidence that mitigation opportunities exist and could be delivered remained unaddressed. In the absence of this evidence the HRA could not therefore rule out adverse effects upon the South Pennine Moors Special Protection Area and Special Area of Conservation.
- 2.4 Within our representation on the publication draft we advised that:
- "As delivery mechanisms have not been identified or assessed through the HRA, Natural England advises that the Core Strategy should identify an SPD which will outline the mitigation measures and calculate the required developer contributions. The Core Strategy should also be supported by evidence (within or supporting the HRA) which provides confidence that opportunities for additional greenspaces and access management measures exist and can be delivered."*

- 2.5 Further representations to the Council regarding the revised HRA (letter dated 8 December 2014 (Appendix A)) advised that:

“Natural England remain concerned that detailed evidence regarding the implementation of policy SC8, particularly those measures which seek to avoid and/or mitigate the adverse effects of recreational pressure (alternative greenspace and access management) has not been identified in Chapter 6 of the HRA and that delivery has been deferred to a Supplementary Planning Document and Access Management and Monitoring Strategy. Both of which have not yet been provided.

In order to increase confidence that these measures will be delivered and therefore adverse effects ruled out, the HRA should be supported by a draft copy of the SPD, or at least its scope, and detailed examples of deliverable access management measures.”

- 2.6 The Core Strategy was submitted on the 12 December 2014 without this evidence and therefore our concern is still outstanding. Following further email correspondence between Natural England and the Council, Natural England received a draft scoping of the management and mitigation strategy which the Council intend to adopt as a supplementary planning document (Appendix B). This was received on the 13 February 2015.
- 2.7 The scoping of the Management and Mitigation Strategy is a brief document which provides limited additional details beyond the measures already identified in Policy SC8. It identifies improvements to and provision of alternative greenspace within and outside new developments, a list of access management measures, reference to habitat management and monitoring. However, in Natural England’s view does not provide enough detail to provide certainty over deliverability of the measures, as detailed below:
- 2.8 Alternative Green Space - In the absence of a Green Infrastructure Strategy and detailed information regarding opportunities to enhance and/or create new greenspace, there remains considerable uncertainty that these mitigation measures can be delivered. Critically there is no evidence that greenspace opportunities will exist within new developments, or whether they can be located where they will intercept residents.
- 2.9 Whilst this is a strategic document, the Council should provide sufficient evidence that potential development sites (or areas of potential settlement expansion) can physically deliver an alternative recreational resource to the South Pennine Moors (i.e. will they provide suitable experience for dog walkers) either on-site or off-site. The Council should consider whether the housing targets within settlements affected by policy SC8 will be delivered through large allocations or through a variety of smaller sites, as this will have implications for delivery of alternative greenspace. Larger allocations provide opportunities for on-site delivery; a collection of smaller sites will require delivery through CIL.
- 2.10 Site Access Management Measures - Natural England welcomes the scoping paper’s recognition that the provision of alternative greenspace alone will not be sufficient to

fully mitigate the effects of the Core Strategy's housing policies and that the mitigation strategy (SPD) will also focus on site access management measures.

- 2.11 The paper lists a number of broad access measures which, though supported by Natural England, should be accompanied by deliverable examples.
- 2.12 Regarding improvements to existing rights of way, the scoping paper is accompanied by examples of footpath repairs within the Rights of Way Improvement Plan. However, not all these works have been agreed by the relevant landowner and many are outside the South Pennine Moors SPA/SAC.
- 2.13 Furthermore Natural England considers the repair of surfaces and upgrades of footpaths are a legal duty of the Highways Authority and address existing damage, they should not be considered mitigation of the plan's future effects.
- 2.14 Habitat Management - As advised in our letter to the Council dated 9 December 2015, when developing on-site habitat management measures, the inspector should be aware of the implications of the recent *Briels* judgment by the Court of Justice of the European Union which ruled that habitat creation on land within a Natura 2000 site was in fact a compensatory measure and should not be taken into account until later in the formal Habitats Directive decision making process. Compensatory measures are considered through Regulation 66 of the Habitats Regulations where a plan or project is to be consented following a negative assessment under Regulation 61 and where in the absence of alternatives, there are imperative reasons of overriding public interest.
- 2.15 As compensatory measures are not relevant to this case, the HRA should be accompanied by examples of habitat management and manipulation mitigation measures that comply with the recent *Briels* judgement and therefore we advise against the inclusion of any measures that include habitat creation.
- 2.16 Monitoring - The Core Strategy identifies monitoring as part of the mitigation package in Policy SC8. The HRA identifies monitoring as the third mitigation measure which will enables better access management measures within the SAC/SPA.
- 2.17 Both the Core Strategy and HRA must recognise that whilst monitoring the effectiveness of the strategy is required within the NPPF, it should not be considered mitigation itself. It can validate predicted effects after the requirements of the Habitats Directives and Regulations have been complied with. Monitoring should not identify mitigation measures that should have already been tested through the HRA.
- 2.18 SPD Production Timescales - The SPD scoping paper should include a detailed production timetable to provide greater confidence that the mitigation measures identified will be in place prior to adoption of the allocations DPD. Its early production would also assist the determination of planning applications which come forward during the interim period.

3. Recommendations under Question 1.2 of Matter 1

3.1 In order to provide greater certainty that the mitigation measures in Policy SC8 will be effective and delivered, the HRA should be supported by evidence which demonstrates that:

- Opportunities to create sufficient and appropriate alternative green space exist, either within allocations/urban extensions or where they would intercept visitors to the South Pennine Moors. Such evidence may include a brief assessment of the quantity, quality and accessibility of existing greenspace and opportunities for new areas of greenspace within settlements with development targets that fall within the 7km zone.
- Viable opportunities to improve access management within the South Pennine Moors exist, beyond those measures which address existing access issues. Such evidence should include examples of deliverable measures across all relevant areas of the N2K site.
- New areas of greenspace and site access measures will be financially secured and managed in the long term, i.e. through Section 106 agreements or CIL to outline that an appropriate delivery mechanism exists.
- On-site (i.e. on the European site) Habitat creation should not be included, as this would usually be classed as compensation. The Core Strategy and compliance with the Habitats Regulations is not reliant on monitoring to avoid adverse effects on integrity.
- The SPD will be produced prior to adoption of the subsequent Allocations DPD to provide a clear framework to inform planning decisions.

Appendix A: Post Publication Correspondence

Appendix B: Points for Scoping of Management and Mitigation Strategy