FREETHS

CITY OF BRADFORD METROPOLITAN DISTRICT COUNCIL
CORE STRATEGY EXAMINATION

COMMENTS FROM CEG LAND PROMOTIONS LTD
ON HOMEWORK ITEM 40: DOCUMENT PS/F066

1. Homework item 40 states: "*Council to finalise wording of Policy SC8 agreed with Natural England and NLP/CEG*". In addition at the Examination on 19 March 2015 the Inspector requested to see the finalised wording of Policy SC8 with confirmation from all parties (the Council, Natural England (**"NE"**) and CEG Land Promotions Limited (**"CEG"**)) that this form of words was agreed.

2. We have reviewed the Council's response to Homework item 40 ie document PS/F066. PS/F066 was sent by Jane Scott of Bradford Council to the Programme Officer on the evening of 1 April 2015.

3. PS/F066 is an over-complex and potentially misleading document in response to a very simple request. We cannot understand why the Council decided to respond in this way. We are concerned that the Inspector and others will not understand it.

4. For clarity, we now attach to this document at Annex A:

   4.1. A clean version of the agreed form of Policy SC8 wording. This is exactly the same as the text of SC8 at the end of PS/F066. This is the wording finally agreed as between the Council, NE and CEG on 13 March 2015 following a meeting between the parties on 10 March 2015 and subsequent emails between the parties, but with one insignificant / uncontroversial change to the final paragraph made since then by the Council ie reference in the final paragraph to "SPD" rather than to "Environment SPD"; and

   4.2. The three e-mails which evidence the Council's, NE's and CEG's agreement to this wording. The first e-mail, sent by the Council to CEG and NE on 12 March 2015, contains the wording of Policy SC8 as agreed by the three parties on 10 March but incorporating NE's subsequent amendments. The second e-mail, sent by Freeths LLP (on behalf of CEG) to the Council on 13 March 2015, evidences CEG's agreement with this revised Policy SC8 wording. The third e-mail, sent by the Council to Freeths LLP on 13 March 2015, contains the final version of Policy SC8 as sent to the Programme Officer on 13 March 2015, with which CEG was happy.

5. In relation to the rest of document PS/F066, we make the following comments:

   5.1. The text on the first 4 pages (with the exception of the last 4 lines of page 4) is completely irrelevant and should be disregarded. This text is merely a copy of an early proposed "Statement of Common Ground" drafted by the Council and sent out by the Council on Friday 6 March. The Council draft document was never agreed. Indeed it was quickly overtaken by the "*Note of Principles Agreed as between the Council, Natural England and CEG Land Promotions Ltd to address the Council's Habitats Regulations Assessment*" as finalised and signed by all parties following a long meeting between the parties on 9 March 2015 (see Annex B).

5.2. The text on the last 4 lines of page 4 and on pages 5 and 6 is the only relevant text to homework item 40. This is the agreed final wording of Policy SC8 as per Annex A of this document.

21 April 2015

FREETHS

Annex A

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

In this Policy:

Zone A is land up to 400m from the South Pennine Moors Special Protection Area (**"SPA"**) and South Pennine Moors Special Area of Conservation (**"SAC"**) boundary;

Zone B is land up to 2.5km from the SPA and SAC boundary; and

Zone C is land up to 7km from the SPA and SAC boundary.

Subject to the derogation tests of Article 6(4) of the Habitats Directive, in all Zones development will not be permitted where it would be likely to lead, directly or indirectly, to an adverse effect (either alone or in combination with other plans or projects), which cannot be effectively mitigated, upon the integrity of the SPA or the SAC.

In conducting the above assessment the following approach will apply:

In Zone A no development involving a net increase in dwellings would be permitted unless, as an exception, the development and/or its use would not have an adverse effect upon the integrity of the SPA or SAC.

In Zone B it will be considered, based on such evidence as may be reasonably required, whether land proposed for development affects foraging habitat for qualifying species of the SPA.

In Zone C, in respect of residential developments that result in a net increase of one or more dwellings, it will be considered how recreational pressure on the SPA or SAC, that such development might cause, will be effectively mitigated. The mitigation may be:

(i) such that the developer elects to offer, either on-site and/or deliverable outside the boundary of the development site, such as the provision of accessible natural greenspace and/or other appropriate measures; or

(ii) in the form of a financial contribution from the developer to:

1. the provision of additional natural greenspace and appropriate measures 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 the SPA and SAC due to the increase in population, an SPD will set out a mechanism for the calculation of the financial contributions, by reference to development types, the level of predicted recreational impact on the SPA or SAC, and the measures upon which such contributions will be spent.

Lindsey Young

From: Danny Jackson [danny.jackson@bradford.gov.uk]
Sent: 12 March 2015 15:31
To: Penny Simpson; 'Andrew Baker'; 'richard.sagar@walkermorris.co.uk'; 'Nicholas Pincombe'; Jonathan Cox; 'Buddle, Zoe (NE)'; 'King, John J (NE)'; 'Keatley, Tom (NE)'; 'Fawcett, Emma (NE)'
Cc: Andrew Marshall; Jane Scott; Anne Heeley
Subject: Re-draft of Polcy SC8
Attachments: SC8 12 March.docx

Importance: High

Dear all,

Please find the latest and hopefully final draft of the re-worded SC8 polcy as discussed on Tuesday. Thanks to all for their input, which I hope is reflected in the document. NE's comments have been added to the previous draft (highlighted yellow) and the Council have added a slight amendment (in blue).

Could you please confirm, ideally by end of play today that you are happy with the new wording and we will then submit to the Inspector as a Main Modification tomorrow as promised.

Regards,

Danny Jackson
Countryside and Rights of Way Manager

Tel: 01274 431230 Mob: 07582 102103
1st Floor, Jacobs Well, Bradford BD1 5RW

City of Bradford Metropolitan District Council
Department of Regeneration and Culture

Economic Development and Property / Culture and Tourism / Planning Transportation and Highways / Climate Housing Employment and Skills

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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;

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To mitigate impacts on the SPA and SAC due to the increase in population, an Environment SPD sets out a mechanism for the calculation of the financial contributions, by reference to development types, the level of predicted recreational impact on the SPA or SAC, and the measures upon which such contributions will be spent.

Lindsey Young

From: Penny Simpson
Sent: 13 March 2015 10:19
To: Andrew Marshall
Cc: Steve McBurney; Christopher Darley (cdarley@nlpplanning.com)
Subject: Policy SC8 wording
Attachments: SC8 12 March.docx

Dear Andrew
CEG now confirms that it is happy with the attached Policy SC8 wording, which is in the form circulated to us by Danny Jackson yesterday.
Kind regards
Penny

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Lindsey Young

From: Danny Jackson [danny.jackson@bradford.gov.uk]
Sent: 13 March 2015 16:02
To: Penny Simpson
Subject: SC8
Attachments: SC8 13 March.docx

Hello Penny,

Just to confirm that we have sent the re-draft of SC8 to the Programme Officer - attached.
I should point out that just before sending, we spotted a minor inconsistency in the language which we have rectfied - we replaced the word "facilities" with "measures" in the paragraph numbered (ii) 1 towards the end of the document. We had agreed to use "measures" in the discussions between all parties so didn't re-circulate again for approval - this would only have delayed the submission. Trusting you find this acceptable.

Regards,
Danny

Danny Jackson
Countryside and Rights of Way Manager

Tel: 01274 431230 Mob: 07582 102103
1st Floor, Jacobs Well, Bradford BD1 5RW

City of Bradford Metropolitan District Council
Department of Regeneration and Culture

Economic Development and Property / Culture and Tourism / Planning Transportation and Highways / Climate Housing Employment and Skills

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FREETHS

Annex B

Bradford Metropolitan District Council Local Plan Core Strategy Examination

NOTE OF PRINCIPLES AGREED AS BETWEEN THE COUNCIL, NATURAL ENGLAND AND CEG LAND PROMOTIONS LTD TO ADDRESS THE COUNCIL'S HABITATS REGULATIONS ASSESSMENT

Background

1. On the morning of 4 March 2015 at the Bradford Metropolitan District Council (**"Council"**) Local Plan Core Strategy Examination there was consideration of CEG's representations and some preliminary questions were asked by CEG and the Inspector of Natural England ("NE") and the Council and its consultants. As a result of this preliminary discussion, it was established that:

    1.1. CEG Land Promotions Limited (**"CEG"**) had made extensive submissions regarding the Council's Habitats Regulations Assessment dated December 2014 (**"HRA Dec 2014"**);

    1.2. CEG's submissions were in part based on background information or data relating to the HRA Dec 2014 which CEG had to secure by information requests of the Council, but which had not been provided by the Council to NE and which NE had not seen. CEG had obtained this information from the Council on 30 January 2015 through an access to environmental information request;

    1.3. The Conservation Objectives for the South Pennine Moors Phase 2 SPA, as published on NE's website and dated 30 June 2014, were incorrect in reference to one species.

2. In the light of these points, the Inspector considered there were serious questions about the HRA Dec 2014, at the present time, which went to the root of the Core Strategy on housing distribution and settlement status and affected the soundness of the Core Strategy. He suggested that a revised appropriate assessment may be needed.

3. The Inspector noted CEG had been requesting a statement of common ground for some time and he requested that the Council and NE meet with CEG to discuss in a collaborative way and agree a way forward for the appropriate assessment issues in advance of the Matter 3 / Policy SC8 session on Tuesday 10 March 2015.

Purpose of this document

4. In accordance with requests of CEG and the Inspectors request, two meetings have taken place between the parties to discuss these matters: on the afternoon of Wednesday 4 March 2015; and on Monday 9 March 2015.

5. This document sets out the principles as agreed between CEG, NE and the Council to take forward and seek to resolve the problems that have been identified by CEG.

6. The agreement of principles set out in this document is strictly <u>without prejudice</u> to the "citation issue" i.e. CEG's submission that the correct list of qualifying species in relation to the South Pennine Moors SPA, upon which the appropriate assessment of the Core Strategy must be based, is the list provided by JNCC following its 2001 SPA review.

Agreed principles

Resolving "the problem" and current conclusions

7. The HRA Dec 2014 will require review and revision within input from and consultation with all parties to this Note ("the Review") in accordance with the agreed principles attached to this document, before the Core Strategy is adopted.

8. Having considered the survey information and data, both existing at the time of publication of the HRA Dec 2014 and provided subsequently by NE, it is agreed that there is sufficient information to conduct the Review without the need for further survey work based on the agreed common ground set out below and attached.

9. Subject to the Review, having assessed all available information, on the basis of the principles attached including the need for a revised form of Policy SC8, it is agreed that the settlement status for Burley-in-Wharfedale as a Local Growth Centre and the housing targets set out in the Further Engagement Draft of the Core Strategy for Burley-in-Wharfedale (as a minimum) are highly likely to be able to be delivered without any adverse impact on the integrity of the SPA or the SAC alone or in combination with other plans or projects. This is in accordance with NE's letter dated 31 March 2014, page 3 "*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.*"

10. It is further agreed that it is likely that all of the SHLAA 2 Capacity/Trajectory sites that have been identified at Burley-in-Wharfedale could be developed in principle (with the corresponding increase in housing targets that would be possible) exceeding those set out in the Further Engagement Draft of the Core Strategy without any adverse impact on the integrity of the SPA or the SAC.

11. This is a conclusion reached, acknowledging that further analysis will need to be carried out on the existing survey data to conclude the Review.

12. These points of agreement will be assessed in a comprehensive Review of the HRA Dec 2014, to be completed in accordance with the principles attached before the Core Strategy is adopted.

13. As a result of these conclusions, the Council will put forward a Main Modification to the Submission Draft of the Core Strategy to reinstate Burley-in-Wharfedale as a Local Growth Centre and to provide as a minimum, for the housing numbers set out in the Core Strategy Further Engagement Draft (see column 5 in Table 2 in the Council's Background Paper: 1. Overview (Updated) dated December 2014).

Signed:

NE....

CEG....

Council....A Marshall

09/03/15

ANNEX

BRADFORD METROPOLITAN DISTRICT COUNCIL
LOCAL PLAN CORE STRATEGY EXAMINATION

NOTE OF AGREED PRINCIPLES AS BETWEEN THE COUNCIL, NATURAL ENGLAND AND CEG LAND PROMOTIONS LTD TO ADDRESS THE COUNCIL'S HABITAT REGULATIONS ASSESSMENT

ANNEX

1. The principles agreed in this document are without prejudice to CEG's view that the correct list of qualifying features by which to assess (under regulation 102 Conservation of Habitats and Species Regulations 2010) the impacts of the Core Strategy is the list published by Joint Nature Conservation Committee (JNCC) following its 2001 review.

2. The AA Dec 2014 requires review.

3. The review can be conducted on the basis of existing data. No further data is required.

4. The review will follow the assessment structure outlined in Figure 1 of ODPM Circular 06/2005.

5. The relevant conservation objectives for the purpose of the review will be NE's conservation objectives for the South Pennine Moors Phase 2 SPA dated 4 March 2015.

6. The basis of the review will be housing reflecting the SHLAA 2 capacity (ie SHLAA 2 trajectory sites) as background to the housing targets in the Core Strategy Further Engagement Draft.

7. The NE 2014 SPA breeding bird survey data will provide the baseline against which the assessment of impacts of the Core Strategy on birds of the SPA's breeding bird assemblage qualifying feature will be undertaken. The assessment will further consider, as against that baseline, the breeding bird survey data of 2013.

8. The SPA's breeding bird assemblage qualifying feature population is to be calculated by assuming that there is a breeding pair of birds for each "territory centre" identified in the 2014 breeding bird survey. At present this is thought to be 2,300 birds.

9. When assessing impacts on SPA qualifying species birds, the assessment will consider their presence on land up to 2.5km from the SPA boundary only.

10. The parties have agreed the activity types from the 2013 breeding bird survey which are relevant to assessing impacts on the SPA breeding bird assemblage qualifying feature. In essence these are birds which are foraging outside the SPA and not birds which were recorded in the 2013 survey as breeding outside the SPA or as merely overflying. It is proposed at this stage that the assessment is made on this assumption even though it is likely that some of these birds are in fact breeding outside the SPA and CEG reserves its position on this final point.

11. It is CEG's position that there is no evidence to support any indirect effects of urbanisation of sites on neighbouring foraging birds of the breeding bird assemblage species. The Council does not agree. The parties agree that if the Council wishes to pursue this point in the review it will have to demonstrate, through relevant scientific evidence, that this impact pathway does exist.

12. The assessment of impacts on the breeding bird assemblage qualifying feature of the SPA is to be made on the basis of the total population of all species making up the breeding bird assemblage across the SPA. In this context, diversity of the assemblage is a relevant consideration.

13. On the basis of the assessment above, the assessment must identify the SHLAA 2 trajectory sites which are:

    a. Unlikely to be deliverable (where significant bird numbers are recorded and mitigation is not possible); or

    b. Deliverable with mitigation (either site specific or strategic mitigation); or

    c. Deliverable without mitigation (unconstrained).

    Where b. or c. applies, the relevant sites will not be excluded from the resulting housing targets for individual settlements on Habitat Regulations Assessment grounds.

14. In view of the absence of a correlation as between what is described as "supporting habitat" in the AA Dec 2014 and the use of breeding bird assemblage species of those habitats, any SHLAA 2 trajectory site containing any one or more of the "supporting habitats" of rush pasture, species rich semi improved grassland or unimproved grassland shall not be precluded from the housing target figures on Habitat Regulations Assessment grounds but will be subject to further assessment at a later stage.

15. Policy SC8 as set out in the Core Strategy Publication Draft as submitted to the Examination will require revision. Policy SC8 will be revised when the AA Dec 2014 review is complete. Nevertheless the parties agree at this stage that its reformulation should track the language of the Habitats Directive tests and that Policy SC8 will also make explicitly clear that, across all zones except Zone A, avoidance and / or mitigation measures will be in principle acceptable where appropriate to address any risk of likely significant effect on the SPA or SAC or risk of adverse effect on integrity of the SPA or SAC.

16. CEG does not agree with the recreational or urban edge impacts described in the AA Dec 2014. CEG reserves its position on this point. However the parties agree that revised Policy SC8 should leave open whether an individual developer (i) makes a financial contribution as is currently envisaged in Policy SC8 or (ii) offers to deliver alternative measures. A supplementary planning document will follow and will impose tariffs and / or other and measures to be specified in proportion to impacts.

Council – A Marshall

Natural England

CEG –

09/03/15