



Bradford Local Plan Core Strategy Examination – Proposed Main Modifications

Further Hearing Statement

Representations on behalf of CEG Land Promotions Ltd (CEG)

Date: April 2016

MATTER 1 – SOUTH PENNINE MOORS (Policy SC8 and associated policies)

The Council has reviewed and updated the Habitats Regulations Assessment (HRA) and has consequently amended the approach towards the South Pennine Moors SPA/SAC in Policy SC8.

Key issue:

Is the revised approach towards the South Pennine Moors appropriate, effective, positively prepared and justified with soundly based evidence, including the updated Habitats Regulations Assessment, and in line with the latest national guidance and good practice (NPPF/PPG)

a Is the revised approach towards new development in the South Pennine Moors SPA/SAC and its Zone of Influence appropriate, effective, positively prepared, justified, soundly based and consistent with the latest national policy?

1.1 As mentioned in CEG's consultation response to the Main Modifications dated January 2016 (see paragraph 7 of Appendix 1), CEG is satisfied with Main Modification 28 (ie the revisions to the wording of Policy SC8 itself). Policy SC8 is in the exact form previously agreed in March 2015 between CEG, Natural England and the Council. CEG therefore agrees that the wording of Policy SC8 itself (which sets out the approach towards new development in the South Pennine Moors SPA/SAC and its Zone of Influence) is appropriate, effective, positively prepared, justified, soundly based and consistent with the latest national policy. CEG deals with residual questions over the supporting text to Policy SC8 and other policies below.

¹ including Main Modifications 19-37 & 113-120

b Is the updated HRA evidence and Sustainability Appraisal soundly based and are there any outstanding issues from Natural England or other relevant parties?

1.2 CEG's response to the Main Modifications consultation provides detailed comments on the updated HRA evidence. These are set out at Appendix 1 of those representations and it is not intended to repeat these in detail here.

1.3 In short, CEG noted that the updated HRA evidence amounted to a more robust document with a number of key improvements to the previous flawed HRA work (notwithstanding a number of other issues that remain, as touched on below). The updated HRA evidence therefore correctly supports the resulting and necessary changes to Policy SC8, which itself is sound. CEG concluded in its consultation response that, on the basis of the three bullet points below, the updated HRA evidence was sufficient as an assessment for the Core Strategy and therefore in practical terms CEG saw no need for any further amendments to it prior to adoption of the Core Strategy. This remains CEG's position. This conclusion was reached on the basis of:

- the significant improvements which had been made by the Council in the updated HRA evidence;
- the relatively flexible policy response to the updated HRA evidence as set out in the Core Strategy, in particular as found in Policy SC8, although this point needs to be read in conjunction with the assumption that CEG's remaining concerns, summarised at point c. below, should be addressed; and
- the high level nature of the Core Strategy together with the requirement for further HRAs in relation to lower tier plans and also at the project level, all of which is acknowledged in the updated HRA evidence.

1.4 For the avoidance of doubt, CEG's full position remains that certain aspects of the HRA evidence still give rise to an exaggerated assessment of predicted impacts and that there are a number of other more minor criticisms of the assessment (which CEG has explained in its consultation response (Annexes 3 and 4 to Appendix 1). However, these points would only serve to emphasise the need for the Policy SC8 modification that has occurred and to reinforce the reasons why other objections to the wording of Policy SC8 are misguided.

1.5 To this end we have reviewed comments that were made by other parties on the updated HRA evidence in the Main Modification consultation responses. We note, for example, a number of concerns set out in the response to MM2 by the Addingham Scrutiny Group (080.Addingham Scrutiny Group_MM2). We see no particular merit in them for the reasons which flow from CEG's previous analysis of what is required of the HRA and what the underlying evidence demonstrates. The HRA process has now been subjected to detailed scrutiny by CEG and Natural England over many months. The assessment is supported by evidence (albeit evidence which remains over-precautionary in CEG's view).

It does deal with “in combination” effects. A comparison with an assessment of another plan (eg such as the Harrogate assessment referred to) in the way suggested is of little assistance.

1.6 CEG has no outstanding issues in relation to the Sustainability Appraisal.

c Have the implications of the revised approach towards the South Pennine Moors SPA/SAC been reflected in the proposed amendments to the text accompanying Policy SC8 and other associated policies and accompanying text (egg. Policies WD1 & EN1-EN2)?

1.7 CEG has identified outstanding areas of objection on this point in its consultation response to the Main Modifications. Appendix 1 of that response sets out in detail CEG’s comments on the Main Modifications relating to the supporting text to Policy SC8 and other associated Policies and text. We incorporate these but do not repeat them again here.

1.8 In summary CEG’s principal objection is that the revised approach towards the South Pennine Moors SPA/SAC has not been reflected in the proposed amendments to the text accompanying Policy SC8, along with other associated policies and accompanying text. In accordance with the spirit of the examination process, CEG identified textual amendments which resolve those points.

1.9 CEG has reviewed the Council’s comments on CEG’s January 2016 consultation response (see Appendix 6 (“Proposed Main Modifications – Summary of Main Issues and Council’s Response”) of the Council’s “Statement of Consultation & Summary of Representations” dated March 2016).

1.10 CEG welcomes the Council’s favourable response to CEG’s suggested amendment at MM30, which assists in clarifying one aspect of the supporting text to Policy SC8. This should therefore be reflected in the supporting text.

1.11 CEG is disappointed with the Council’s response to the remainder of its submissions and invites the Inspector to recommend that the modifications it has proposed be included.

1.12 CEG’s principal point is that the adopted Core Strategy should contain language which is legally accurate. This is not a surprising position to take. The language should be consistent with the EU Habitats and Wild Birds Directives, the relevant domestic implementing legislation and relevant case law. CEG’s January 2016 submissions in relation to MM33, MM53 (and to a lesser extent MM19) identify where the language is deficient and the necessary changes to make the wording sound (in this context, by becoming legally accurate). The objection all turns on essentially the same point. It is that the legal protection of a SPA (in accordance with legislation and case law) is only and correctly directed at the integrity of the SPA itself. It is not directed at protecting other habitat outside the SPA boundary which may or may not be used by SPA qualifying bird features. It is fundamental that if there is

supporting habitat outside the SPA, it is not to be treated or protected in the same way as if it were land within the SPA boundary. The obvious example is that an impact from development on supporting habitat (if it were to occur) would be acceptable under the relevant legislation and everything it stands for if any adverse effect on SPA integrity was nevertheless avoided. This may be the case if the effect on the supporting habitat does not affect the integrity, or because the provision of alternative foraging habitat to offset the loss of supporting habitat is achieved.

- 1.13 Any misunderstanding, as may currently arise from the supporting text to Policy SC8 and in other policies, to the effect that development might be prevented on supporting habitat outside the SPA, or the loss of such supporting habitat is prohibited, runs contrary to this key legal principle affecting protected sites. It is also not a justifiable outcome of the HRA process and it would be unsound.
- 1.14 This principle was fully discussed in the meetings relating to Policy SC8 itself between Natural England, the Council and CEG and, accordingly, Policy SC8 correctly and fully accepts and reflects this principle.
- 1.15 Despite this, it is now unfortunate that parts of the supporting text to Policy SC8 and other text and Policies (as detailed in CEG's submissions on MM19, MM33 and MM53) do not adopt the same approach and do not provide the requisite clarity. The current misunderstanding that could arise is at odds with EU and domestic law, as well as with Policy SC8 itself. CEG has therefore proposed revised wording that would make these parts of the text and the other policies sound and invites the Inspector to recommend these changes.

d Have the implications of the revised HRA evidence for the overall strategy, the settlement hierarchy, spatial location and distribution of development and other key aspects of the development strategy been fully considered and explained?

- 1.16 Please see CEG's answer to b. above in relation to the updated HRA evidence. CEG considers that the reinstatement of Burley-in-Wharfedale as a Local Growth Centre is justified, supported and explained by the updated HRA evidence and also by further evidence as discussed in CEG's Further Hearing Statement for Matter 2 (Policy SC4) (see specifically CEG's response to question (a)) and in CEG's Further Hearing Statement for Matter 3 (Policy SC5) (see specifically CEG's response to questions (b) and (c)).

Note: These responses have been prepared by Freeths LLP on behalf of CEG.