

Bradford Local Plan

Core Strategy Examination

Matter 1: South Pennine Moors (Policy SC8 and associated policies)

Written Statement

22nd April 2016

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 The response set out below addresses the soundness tests identified above and in paragraph 182 of the NPPF.
- 1.2 At the opening day of the Bradford Core Strategy Examination in March 2015, a number of issues were raised by the representatives of CEG Land Promotions relating to the HRA Report of December 2014, an evidence base document for the publication draft plan. Issues raised related to the legal status of the breeding bird assemblage, the correct version of the conservation objectives for the South Pennine Moors and the use made of bird and habitat survey data in assessing potential future sites for development.
- 1.3 Document PSF004 sets out the Councils response to the issues raised in relation to the legal status of the breeding bird assemblage. Document PSF009iii identifies the European Site Conservation Objectives for South Pennine Moors Phase 2 Special Protection Area and PSF009iv the citation.
- 1.4 In response to the issues raised on the opening day, the Inspector set up a process whereby a group of officers consisting of Natural England representatives, Council lead officers and their technical HRA advisers Urban Edge Environmental Consulting Ltd and CEG and their legal, technical and planning advisers met to discuss these issues and report back. Preliminary discussions within the group led to the Annex to the note of principles (Doc. Ref PSF014) and a re-drafted Policy Strategic Core Policy 8 – Protecting the South Pennine Moors SPA and the South Pennine Moors SAC and their zone of influence (SC8).
- 1.5 To take the work forward the Council identified a managed process of review of particular elements in the HRA Report of December 2014. The Phase 1 technical work focused on the availability of data from the 2014 South Pennine Moors Phase 2 Breeding Bird Survey, commissioned by Natural England and their advice to the Council of 1st August 2014 (Document ref. PSD026 – Appendix A).
- 1.6 The conservation objectives were confirmed with Natural England and also the position on the impact pathways of increased emissions to air, recreational impacts and urban edge effects. In a later phase of the review the modifications proposed by the Council were assessed and mitigation measures and amendments to the plan were applied. This process continued until the necessary degree of certainty could be achieved in reaching the conclusion that, provided measures were in place in the plan, there would be no adverse impacts on site integrity.

- 1.7 The approach taken is considered to be fully consistent with policies in the NPPF. Positive support in relation to biodiversity is a strong theme running through the NPPF and guidance. Habitats Regulations Assessment is a requirement of the Habitats Regulations, the UK's transposition of the EU Habitats Directive. Paragraph 2 of the NPPF, an introductory paragraph relating to planning law states: 'Planning policies and decisions must reflect and where appropriate promote relevant EU obligations and statutory requirements.'
- 1.8 Regulation 102 of the Conservation of Habitats and Species Regulations 2010 relates to land use plans and the assessment of implications for European Sites. The plan-making body must, before the plan is given effect, make an appropriate assessment of implications for European Sites. The plan-making body must consult the appropriate nature conservation body, ie Natural England and have regard to their representations and must also, if they consider it appropriate, take the opinion of the general public. The plan-making authority must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European Site.
- 1.9 Paragraph 119 of the NPPF indicates that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Birds or Habitats Directive is being considered planned or determined. Identifying a strategic approach which responds to impact pathways identified in HRA is therefore an essential element in producing a sustainable plan. To fulfil the criteria for being positively prepared, a policy needs to be consistent with achieving sustainable development.
- 1.10 Paragraph 011 of planning practice guidance dated 12.06.2014 relating to guidance about legal obligations on local planning authorities and others in relation to European Sites, identifies a link to Circular 06/05: Biodiversity and Geological Conservation as the current guidance, but also indicates that updated guidance on the issue is currently being prepared by Defra. The Circular reiterates the precautionary principle and indicates that if a proposal for a particular type of development on a particular location would be likely to adversely affect the integrity of a European Site, or the effects of the proposal on such a site are uncertain, planning authorities should not allocate the site for that type of development.
- 1.11 The Council, Urban Edge and Natural England have sought references from publications produced by Tyldsley and Associates, as an indication of good practice. Section 2.1 on methodology in the HRA Report of November 2015 identifies a range of references. Good practice guidance identifies differences between plan and project assessments, as plans, particularly core strategies as strategic, higher tier plans, are by their nature less precise than project assessments. The HRA process will become increasingly specific, and therefore capable of identifying appropriate levels of mitigation, which may relate to avoidance or reduction measures, through lower tier plan assessment and project development based on the level of precision and information available in the plan or proposal.
- 1.12 The zones of influence approach presented in SC8 represents an important mitigation measure and element in the overall approach. The zones are linked to particular impact pathways and evidence. Relying solely on assessment of individual sites as

they come forward, in view of the growth to be accommodated, was not considered to be an effective policy option.

- 1.13 It is considered that the overall approach will be effective. A Supplementary Planning Document will be prepared to identify the range of mitigation measures needed to address recreational impacts including on-site mitigation, improvement of existing natural greenspaces or provision of alternative new greenspaces (including future maintenance in perpetuity), provision of dog-walking areas, access and visitor management projects and monitoring. It is considered that provided the future approach to mitigation, in relation to impact pathways identified, is appropriately developed and measures are secured, the Council considers that the tests of soundness are met.

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

- 2.1 The Addendum to the Bradford Core Strategy Publication Draft: Sustainability Appraisal (PS/G004c) presents the findings of the appraisal of the Proposed Main Modifications to Core Strategy Publication Draft. The first consideration was whether re-appraisal of the policy change was required, and then whether re-appraisal of the policy would lead to changes in its earlier appraisal.
- 2.2 The Sustainability Appraisal Addendum concludes, in paragraph 4.1, that: 'Overall the reassessments of those policies which have either been significantly redrafted or amended against the SA objectives have not been changed as a result of the proposed modifications. This is because the overall principle of those policies has not been altered.'
- 2.3 The phase 1 technical element in the HRA review (Doc ref. PSF042d) focused on the evidence presented in relation to the loss of supporting habitat impact pathway. Urban Edge Environmental Consulting Ltd worked on behalf of the Council, in close association with Natural England, as the appropriate conservation body.
- 2.4 A detailed methodology was agreed, which allowed a more refined appraisal of baseline bird and habitat survey data from 2013, SHLAA2 trajectory sites, as a proxy for future land for development and the 2014 South Pennine Moors Phase 2 Breeding Bird Survey, commissioned by Natural England. This meant that the advice provided by Natural England of 1st August 2014 (Doc ref PSD026) could be followed in a more refined manner, although limitations were identified in relation to the extent of data available and the stage of plan-making.
- 2.5 Natural Englands advice indicated that:

'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 deliverable without mitigation (unconstrained)'.

The preliminary site categorisation outputs of this process were also agreed with Natural England.

- 2.6 Section 6.2 of the HRA Report of November 2015 describes the technical analysis in greater detail and outputs of the process are presented in Appendix II of this report. An interim consultation took place with CEGs technical advisers and the RSPB, on the basis of a draft of the data analysis and outputs and a response was made to key issues raised. A further phase in the HRA review sought to assess the modifications made to the plan, with a number of mitigation measures in place, and to confirm the position with Natural England on a number of other impact pathways and amendments being put forward to the plan.
- 2.7 Natural England have stated in their representation (Ref 24 dated 14th March 2016) :
'It is acknowledged that your appropriate assessment concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the revised assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures are appropriately developed and secured in any permission given.'
- 2.8 In their response to the HRA Report of November 2015, Freeths LLP, in a number of annexes to CEG's response, have identified a list of key improvements which they have noted and also a number of minor criticisms. They have identified certain elements which they consider still give rise to an exaggerated assessment of predicted impacts from development on the South Pennine Moors Phase 2 SPA. However they acknowledge:

'These do not affect CEG's judgment that the AA Nov 2015 is adequate for the purpose of an assessment of the Core Strategy,;.....'
- 2.9 Representations made by residents groups and associations have raised general concerns about errors in data interpretation, about a bias towards commercial pressures, about assessment being carried out too late in the process of plan-making and about the degree of flexibility retained in relation to the re-distribution proposed in the modifications and the assessment of lower tier plans. They have raised concerns about the extent of involvement and influence of Natural England and have called for a more independent and open assessment process, although have given some support for the need to collect additional data.
- 2.10 In responding the Council has indicated that it has confidence in the HRA Report of November 2015 produced by consultants Urban Edge Environmental Consulting Ltd who are experienced in carrying out HRA work. Natural England have agreed with the assessment approach and conclusions, provided that all mitigation measures are appropriately developed and secured.
- 2.11 An SPD will provide more detailed advice or guidance in relation to policies in the Local Plan. It is considered that the evidence base presented in the HRA of November 2015 is proportionate to the strategic level of plan-making and that impact pathways have been appropriately addressed in the context of the level of information available about the plan and its implications.

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 (eg Policies WD1 & EN1-EN2)?

- 3.1 The text accompanying SC8 indicates that within Zone B, the zone within 2.5km of the European Site, consideration needs to be given to whether land being proposed for development affects foraging habitat of qualifying bird species, which may involve the collection and assessment of additional data. While caution needs to be applied to the baseline survey work carried out to date in terms of being in a position to definitively identify areas of importance for foraging birds, it is considered to be adequate for the purposes of a strategic plan.
- 3.2 The hierarchy of Habitats Regulations Assessment of plans and policies means that proposals can be subject to further and more detailed assessment when more information is available in a lower tier plan. This can take place provided that sufficient flexibility is retained over the exact location, scale or nature of development to enable adverse impacts on site integrity, in relation to the impact pathways identified, to be avoided. Identifying the appropriate level of mitigation measures will form an important element in future planning.
- 3.3 In relation to the impact pathway of increased emissions to air, it was recommended that more detailed testing and traffic modelling should be undertaken to inform work on the Allocations DPD. An SPD will be prepared to identify the range of mitigation measures needed to address recreational impacts including on-site mitigation, improvement of existing natural greenspaces or provision of alternative new greenspaces (including future maintenance in perpetuity), provision of dog-walking areas, access and visitor management projects and monitoring.
- 3.4 CEG criticises the accompanying text to SC8 as being ‘inconsistent with the agreed modifications to the parent policy’ and relevant legislation. The Council notes that Regulation 102 relates to land use plans and that identifying the appropriate response will depend on the particulars of each individual case.
- 3.5 The Council doubts whether it is helpful, positive or appropriate to insert legal caveats into sentences which form part of a general planning text, which aims to use a style of language that could be understood by a general reader. This would certainly be out of keeping with the language used in the text of the plan overall, despite the fact that the underlying basis of many other policies lies in legal requirements, duties and regulations.
- 3.6 Freeths LLP have been critical of text in WD1 Wharfedale Sub-area (and associated policies) which identifies an intention to ‘avoid the loss of important foraging land within the SPA’s zone of influence’. However the policy text itself for SC8 - Zone B (2.5km zone), puts an emphasis on the importance of evidence and data collection in relation to whether land proposed for development affects the foraging habitat for qualifying species of the SPA. The Council considers that it is not appropriate to pre-judge the outcome of future data collection and links with site categorisation, in the context of a higher-tier 15 year plan.

- 3.7 In relation to comments from wider representatives of the development industry, there is some evidence of a cautious welcome for the current approach and also a desire to progress towards further clarity in relation to mitigation measures and contributions and a recognition of the need to retain a degree of flexibility at this stage.
- 3.8 In relation to Policy EN1 – Protection and improvements in provision of open space and recreation facilities and Policy EN2 – Biodiversity and geodiversity, in the Environment Section, it is not considered appropriate to instigate a far stronger link between the wording of SC8 and policies that have a very different remit, in the context of good practice and the modifications identified.
- 3.9 The most recent input from Freeths LLP is critical of the strong support for biodiversity networks in one of the modifications proposed to EN2. The modification reflects the overall support for biodiversity in the NPPF, the style and content of paragraph 109 in the NPPF, bullet point 3, the significant importance attached to network mapping in the contents of Paragraph 009 in the practice guidance and subsequent references and the evidence held by the Council, particularly in relation to grassland, woodland, wetland and heathland networks. The importance of ecological networks in the Bradford context has been strongly supported by a range of organisations through earlier consultation stages. The text in the modification is strongly supported in the latest representations by a number of key stakeholders, in particular Natural England (Rep. 24), the Environment Agency (Rep. 62), Bradford Urban Wildlife Group (100) and Burley Community Council (70). All the above factors support the modification as proposed by the Council.
- 3.10 In the context of increases in housing numbers in Wharfedale, individual residents and groups and associations have criticised and made objections to the approach to mitigation. These criticisms relate to the adequacy and effectiveness of measures to address recreational impacts, the combined impacts of development on foraging land and questions about whether there is sufficient flexibility inherent in housing targets to allow an appropriate response in future assessments. Issues were also raised in relation to the need to exclude sensitive sites from housing targets and/ or for sites for which impacts and levels of mitigation remain uncertain to be put in a later phase of the plan, in order to allow data to be collected. General criticisms have been made in relation to the contents of policies EN2 and SC8 having been ‘diluted’.
- 3.11 A more detailed response has been made to criticisms in the Statement of Consultation and table of representations. The Council considers that the overall approach adopted, which follows a methodology agreed with Natural England and acts on the basis of their advice, in relation to a preliminary categorisations of a range of potential sites, is proportionate to the level of decision-making being undertaken.
- 3.12 Provided all the mitigation measures and plan amendments remain and are appropriately developed and secured, the Council concludes that the approach is considered to be proportionate, without being unduly precautionary. In the context of good practice, relating to risk in assessing plans, the degree of uncertainty in a higher tier plan in relation to the precise location and range of sites coming forward, in relation to housing employment land and associated infrastructure, and the modifications proposed to the plan, the range of measures and plan amendments

identified are essential elements in allowing the Council to reach the conclusion that the core strategy will not result in adverse effects on the integrity of European Sites.

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?

- 4.1 The amended targets for housing distribution have been assessed and evidence is presented in Section 6.2 and Appendix II of the HRA Report of November 2015. Provided the recommendations in the HRA Report are followed through and amendments put forward are incorporated into the plan, the Council has been able to conclude that the core strategy with modifications would not result in adverse effects on the integrity of European Sites. The Matter 2 Statement sets the HRA in the context of the wider evidence put forward at the examination.