

Bradford Local Plan

Core Strategy Examination

Further Statement Relating to Matter 1 – South Pennine Moors (Policy SC8) and associated policies

May 2016

1. Introduction

- 1.1. This statement sets out the Council response to EIP hearing statements made by various parties relating to Policy SC8 and is designed to assist the Inspector in considering the soundness of the Core Strategy and the questions posed within matter 1.
- 1.2. The Council has already submitted position statements for each matter and has responded in full to the representations made at main modifications stage within its Statement of Consultation. The Council's further statements therefore merely make supplementary points particularly in relation to new matters raised by participants or points of clarification.
- 1.3. The Council have not sought in these further statements to address matters which were not the subject of main modifications and which the Inspector has made clear will not be subject to further discussion within the hearings.

2. Legal context

- 2.1 A legal opinion accompanies this statement. This is particularly relevant to the representation on behalf of CEG (PS/J020c) .
- 2.2 The Council considers that the key factors are: that the land-use plan in question is a core strategy, ie a strategic plan, that the likelihood of policies and proposals in the plan having a significant adverse effect needs to be fully addressed, that assessment needs to consider the implications for the (European Site) in view of that site's conservation objectives and that definitions of integrity and the incorporation of the precautionary principle need to be considered in the context of a strategic plan.

3. Supporting habitat

- 3.1 CEG's principal contention (paragraph 1.12) is that legal protection is not directed at protecting other habitat outside the boundary which may or may not be used by SPA qualifying bird features.
- 3.2 Case law associated with the Habitats Regulations indicates that adverse effects on habitat that can be considered to be functionally linked to an SPA should be scrutinised in the same legal framework as are the direct effects of acts carried out on the protected site itself.
- 3.3 In the context of HRA work assessing the core strategy, supporting habitat was the term used to broadly identify and define a particular impact pathway¹. In considering impacts on supporting habitat and functional linkage at this stage in the plan-making process, the advice provided by Natural England is considered to be of primary importance.

¹ See HRA November 2015 (PS/G004h), paragraph 6.2.4

- 3.4 This advice is quoted in the Matter 1 Statement at paragraph 2.5 and interpreting this advice formed the focus of the Phase 1 technical review. In relation to the categorisation of SHLAA2 trajectory sites, presented in the HRA Report of November 2015, it is indicated that some caution needs to be applied to the assessment outcomes². Whilst these are considered to be adequate at a strategic level, they were based on just 2 visits per site during the 2013 breeding season. In relation to this level of supporting evidence and the tier of plan-making, some consideration needs to be given to risks associated with this assessment³.
- 3.5 On the basis of the current level of survey effort and of testing of the SHLAA2 trajectory sites, no sites or locations have been identified that would fall into the category identified by Natural England as ‘unlikely to be deliverable (where significant numbers (of birds) are recorded on-site or likely to be disturbed off-site)’. However, equally, the testing that has been carried out at this stage cannot be considered to rule out the likelihood that such sites exist. Therefore in order to achieve the necessary levels of certainty required in relation to a strategic plan and to follow the advice of the conservation body, clear parameters, in the form of plan modifications, needed to be set to inform future plans and decision- making.

4. The integrity test and mitigation measures in the plan-making context

- 4.1 Following the Phase 1 technical review, the core strategy with main modifications was subject to further assessment in order to determine whether it could be ascertained that policies and proposals within it would not adversely affect the integrity of European Sites.
- 4.2 In Circular 6/05: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact within The Planning System, site integrity is defined as:
- ‘The integrity of a site is the coherence of its ecological structure and function, across its whole area, which enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified, designated or listed.’
- 4.3 The integrity test incorporates the precautionary principle, which means that it is for the decision- maker, in this case the Council, to consider the likely and reasonably foreseeable effects and to make certain that the plan will not have an adverse effect on the integrity of the site before it may grant permission or in this case adopt the plan. If the proposal would adversely affect integrity, or the effects on integrity are uncertain but could be significant, the decision-maker should not grant permission, or in this case adopt the plan, subject to regulations 103 and 105.
- 4.4 The Council therefore considers it reasonable to apply the precautionary principle in the context of the advice provided by Natural England and in circumstances where the need for further data is acknowledged. This is a situation where effects might be

² See HRA November 2015 (PS/G004h), paragraphs 6.2.24, 6.2.26-31, 6.2.56

³ See HRA November 2015 (PS/G004h), paragraph 6.2.57

significant, but where there is only limited information in relation to ascertaining that there would be no adverse effects on the integrity of a site, in terms of the population of the species for which the site has been classified. The limits in relation to information relate primarily to the number of survey visits made and the ability to definitively categorise sites and the fact that the phase 1 technical review related solely to SHLAA2 trajectory sites as a proxy for potential land for future development.

- 4.5 The DTA Handbook, which can be regarded as good practice in relation to HRA assessment of plans states:

'Because the integrity test incorporates the application of the precautionary principle as a matter of law, and because plan assessments are, by their nature, less precise than project assessments, it is important for the assessment process to eliminate the prospect of adverse effects on site integrity in so far as that is possible at the level of specificity inherent in the nature and purpose of the particular plan.'

- 4.6 As part of the judgement on integrity, the decision-maker must consider the way in which it is proposed to carry out the project or plan and whether conditions or other restrictions would enable it to ascertain that site integrity will not be adversely affected.
- 4.7 In the Matter 1 response in 3.12, the Council explained that taking account of good practice relating to the risks inherent in assessing a strategic plan, and risks relating to the precise location and range of sites coming forward for a variety of uses, the range of measures and plan amendments identified are essential in allowing the Council to reach the conclusion that the core strategy will not result in adverse effects on the integrity of European Sites.
- 4.8 The plan-based measures were applied in the context of giving consideration to the full effects of a strategic plan, the precautionary approach and narrowing down the likelihood of adverse effects.
- 4.9 The measures identified in the plan are considered to be necessary in the context of the growth proposed and a modest means of seeking to ensure that overall change remains below a level where it could have a significant effect, particularly in relation to cumulative impacts. A number of the arguments put forward by Freeths imply that the plan is a single development proposal rather than a complex strategic plan with many policies and proposals.

5. The Councils case for main modifications 19, 33 and 53

MM19

- 5.1 The phrase, 'does not lead to adverse effects on the ecological integrity of internationally important habitats or species assemblages within or close to the district', was used in the HRA Report of November 2015 as an indication of what the overall process is about for the general reader.

MM33

- 5.2 This is a clear statement of the aim, in the accompanying text, of seeking to ensure that the areas regularly used by SPA qualifying bird species can be protected from development and its associated impacts. This is an important element in integrating the approach to important areas of habitat into a strategic plan. The modification proposed by the Council offers a higher degree of certainty than the amendment put forward by Freeths and makes this aim clear in language appreciable to the general reader.

MM53

- 5.3 MM53 relates to avoiding the loss of important foraging land within the SPA's zone of influence and mitigating the impacts of increasing visitor numbers.
- 5.4 In the context of good practice in applying mitigation measures to a plan, the DTA Handbook states:
- 'Where the outcome of an appropriate assessment in relation to a particular policy is uncertain because the policy provides for change which could affect a European Site, if measures were not out in place to prevent such effects, the plan-making body may need to add a case-specific policy restriction.'
- 5.5 MM53 is just such an explicit policy restriction that has been added to the policy text itself, as this is considered to be appropriate in the context of good practice. The sub-area policies were the chosen location for the policy restriction as this policy text brings together proposals for residential and employment development and ancillary facilities.
- 5.6 The sub-area policy element relating to the environment identifies succinctly principles that will exercise an influence over decision-making in a language that can be appreciated by the general reader and is sufficiently qualified by use of the word important. The restriction is based on assumptions made in the further analysis of survey work and assessment of the risks associated with the levels of development that are likely to take place in relation to settlements and sub-areas.
- 5.7 This policy restriction was added to a number of other policies where there was considered to be a risk of potential land-take that had not been fully tested through survey work.
- 5.8 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 to the level of decision-making, without being unduly precautionary.