



**S. 78 TOWN AND COUNTRY PLANNING ACT 1990  
TOWN AND COUNTRY PLANNING (INQUIRIES PROCEDURE) (ENGLAND) RULES 2000  
S.28 WILDLIFE AND COUNTRYSIDE ACT 1981  
THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017**

**Appeal By  
Dandara Southern Ltd and Elstree Land Ltd**

**Against Refusal of Planning Permission for Residential development  
at  
Land North of Reading Road, Arborfield**

**STATEMENT ON BEHALF OF NATURAL  
ENGLAND**

**3 March 2026**

Application reference: 243099

Appeal reference: APP/X0360/W/25/3371069

Our reference: 542400

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## **1. NATURAL ENGLAND**

- 1.1 Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.
- 1.2 Natural England is the statutory nature conservation advisory body who must be consulted at the appropriate assessment stage of the habitats regulation assessment process. The competent authority must consider Natural England's advice. If the competent authority disagrees with the advice then this should be recorded in the appropriate assessment with clear explanation and supporting evidence.

## 2. RELEVANT NATURE CONSERVATION INTERESTS

### **The Thames Basin Heaths Special Protection Area**

- 2.1 A 'European' or 'Habitats' site is protected by The Conservation of Habitats and Species Regulations 2017 (as amended), also known as 'The Habitats Regulations'. The designation and protection of areas of land important for natural habitat and species is safeguarded under these regulations in British law. This includes the protection of designated, and proposed, Special Protection Areas (SPAs) and Special Areas of Conservation (SACs).
- 2.2 The Habitats Regulations require that before a competent authority can undertake, give permission, consent or other authorisation for a plan or project which is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), where it is also not directly connected with, or necessary to, the management of the site, they must make an appropriate assessment of the implications of the plan or project in view of the site's conservation objectives.
- 2.3 The Thames Basin Heaths SPA holds important populations of three internationally rare bird species, namely the Dartford warbler, nightjar and woodlark, which qualified the site under Annex I of the previously applied European Habitats Directive<sup>1</sup>. The SPA was classified on the 9<sup>th</sup> March 2005 by the Secretary of State for the Department for Environment, Food and Rural Affairs. The citation is included at **Appendix 1**.
- 2.4 At designation the SPA site supported:
- a. the second largest concentration of Dartford warblers in Britain, equating to 27.8% of the British population;
  - b. the third largest number of woodlarks, 9.9% of the British population; and
  - c. the fourth largest population of breeding nightjars, 7.8% of those found in Britain.

**Appendix 2** provides a fully referenced overview of the ecology and population dynamics of the three relevant bird species. The habitat complex on the SPA is both wet and dry heathland, along with areas of mire, acid woodland and grassland, and rotational conifer plantations.

- 2.4 An SPA can incorporate several land parcels that together make an important contribution to the conservation of Annex I bird species. This SPA is made up of 13 main groups of heathland sites across the Thames Basin area, with the groups being separated by urban development, roads and other land uses. In total, the SPA extends over an area of 8,294 hectares.

### **The Sites of Special Scientific Interest**

- 2.5 Each of the 13 main groups of heathland sites comprising the SPA are separately notified by Natural England as a Site of Special Scientific Interest (SSSI), under the provisions of the *Wildlife and Countryside Act 1981*<sup>2</sup>, as amended. All public bodies have a duty to consider how they may further the conservation and enhancement of the SSSI in the exercise of their functions<sup>3</sup>.
- 2.6 When considering planning applications for developments that may damage the interest features of a SSSI, any planning authority must notify Natural England and take account of its representations. If the planning authority is minded to grant a permission that is not

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<sup>1</sup> [https://environment.ec.europa.eu/topics/nature-and-biodiversity/habitats-directive\\_en](https://environment.ec.europa.eu/topics/nature-and-biodiversity/habitats-directive_en)

<sup>2</sup> *Wildlife and Countryside Act 1981* (as amended). Section 28.

<sup>3</sup> *Wildlife and Countryside Act 1981* (as amended). Section 28G

in accordance with Natural England's advice, further statutory procedures must be followed that are designed to protect the special interests of these sites<sup>4</sup>.

- 2.7 The appeal site lies approximately 6.15 kilometers (km) linear distance from the nearest part of the boundary of the Thames Basin Heaths SPA. The nearest part of the SPA lies in the Bramshill Site of Special Scientific Interest. It also lies approximately 6.46 km linear distance from another part of the SPA, namely the Broadmoor to Bagshot Woods and Heaths Site of Special Scientific Interest.

### **Conservation Objectives of the Special Protection Area**

- 2.8 The conservation objectives for the SPA apply to the site and assemblage of species which the site has been classified for. The conservation objectives are important because they are the basis for assessment under the Habitats Regulations, see section 4 and Appendix 5 below.
- 2.9 *The objectives are to ensure that, subject to natural change, the integrity of the site is maintained or restored as appropriate, and that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring:*
- *the extent and distribution of the habitats of the qualifying features*
  - *the structure and function of the habitats of the qualifying features*
  - *the supporting processes on which the habitats of the qualifying features rely*
  - *the populations of each of the qualifying features*
  - *the distribution of qualifying features within the site*<sup>5</sup>

### **Habitats and Species of Principal Importance for Biodiversity**

- 2.11 Heathlands are a rare and declining type of habitat that is classified as being of principal importance for the conservation of biological diversity in England. The list of habitats and species of principal importance for the conservation of biological diversity is published by the Secretary of State for the Environment, Food and Rural Affairs<sup>6</sup> and public bodies should use this information to help meet the biodiversity duty. Characteristically, heathlands are on sandy, free draining and nutrient poor soils and it is these conditions, along with a history of grazing that has formed the unique assemblage of heathland plants. Adapted to this habitat are a number of specialist species, most of which are invertebrates, but also mammals, birds and reptiles. With specialist habitat requirements, these species are reliant upon the heathlands for their existence, and are therefore of nature conservation concern following the dramatic decline of heathland in the last few decades.

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<sup>4</sup> *Wildlife and Countryside Act 1981* (as amended). Section 28I.

<sup>5</sup> [Designated Sites View](#)

<sup>6</sup> *Natural Environment and Rural Communities Act 2006* Section 41. The list is available at <http://ukbars.defra.gov.uk/news/details.asp?X=45>

### 3. EFFECTS OF RESIDENTIAL DEVELOPMENT NEAR TO THE SPA

- 3.1 A review of literature relating to the effects of urban development on heathland was commissioned by Natural England and reported in 2005<sup>7</sup>. This evidence remains relevant and has been supported by subsequent studies since. **Appendix 3** provides a fully referenced overview of the effects of recreational disturbance on birds, which is briefly summarised below. **Appendix 4** provides an overview of the results of research into the recreational use of the heathlands.
- 3.2 The Thames Basin heathlands once were predominantly heathland, interspersed with woodland and pasture. The last century has been a time of unprecedented development, and the location of the heaths, being south west of London, meant that the area was, and remains a prime choice for urban growth. This process of urbanising the heathlands and the areas around them has a number of serious impacts on their ecology. In summary these are as follows.
- 3.3 **Land take, habitat loss and fragmentation** – an analysis<sup>8</sup> showed a 53% loss of the total area of heathland in the Thames Basin, over 100 years, a disproportionately higher loss compared to other types of open land. The fragmented areas of remaining heathland are ecologically more isolated and because they are smaller they are less able to perform their ecological function of supporting the populations of birds for which they are classified.
- 3.4 **Increases in heathland edges** - the separation and fragmentation of the heathland blocks increases the length of 'edges' or boundaries and in turn this increases the exposure and vulnerability of the heaths to the influence of external pressures, making the remaining heaths more sensitive to disturbance.
- 3.5 **Hydrological changes** – including increases in hard surfacing around the heaths so that water is no longer absorbed over a wide area at a slow rate, rather the water rushes off roofs and across hard surfacing, and is either channelled away or re-enters the ground water system at specific points in large quantities; in turn this can lead to alterations in plant and animal assemblages on the heaths.
- 3.6 **Increased incidence of fires** - uncontrolled fires on heathland sites can destroy suitable breeding habitat, reduce food availability and result in the direct loss of both nests and birds, as well as other plants and animals. Both malicious and accidental fires, often related to the increased presence of children, become more frequent with an increase in the human population in close proximity to the sites.
- 3.7 **Noise and light pollution** - increased noise and light pollution from nearby development can have an adverse effect on the bird species by altering behaviour or causing the expenditure of more energy in order to avoid the disturbance or the lights at night. Exacerbated by recreational disturbance, this leads to reduced foraging times, avoidance of previous foraging or breeding sites and increased stress as a result of regular fleeing from disturbance. These affect the life span and breeding success of the birds.
- 3.8 **Effects of increased traffic** - new development generally brings more people into an area, whether it is to live, work or undertake recreational activities. This brings a greater volume of traffic to existing roads, increasing the effects of air pollution that can alter the

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<sup>7</sup> Underhill-Day, J.C. 2005. *A literature review of urban effects on lowland heaths and their wildlife*. Natural England Research Report 623. Natural England, Peterborough.

<sup>8</sup> Land Use Consultants, 2005, *Going going gone: The cumulative impact of land development on biodiversity in England*, Natural England Research Report 626, Natural England Peterborough

vegetation of the heaths, and also the likelihood of new transport infrastructure requirements. It can also lead to an increased possibility of the heathland bird species colliding with traffic during flight over roads.

- 3.9 **Cat predation** - New residential development close to the SPA will be likely to increase the cat population of the area. With over 8 million domestic cats and a further 800,000 feral cats in Britain, the British cat population is a formidable addition to the natural predators of the British countryside<sup>9</sup>. Underhill-Day suggests an average figure of 320 – 330 cats per 1,000 households. Comparisons of several studies give an annual prey catch per cat of a little less than 29 items. This would imply that at least 9,200 prey will be taken per 1,000 households per year. However, this (rounded) figure is conservative because not all prey caught will be brought home by cats and recorded. The scale of the effects of domestic cat predation on the SPA is not fully understood, but it is known that cats account for significant numbers of bird deaths. Both nightjar and woodlark are ground nesters, and Dartford warblers nest relatively close to the ground. The three species are therefore vulnerable to predators. Results from a PhD research study by Murison showed significant levels of cat predation of young Dartford warblers on heathland<sup>10</sup>. The threat from cat predation is significantly higher from residential development within 400m of the SPA boundary.
- 3.10 **Off-site effects** - increasing the density and spatial extent of urban development around the SPA is potentially damaging to the bird species for which it was classified. Whilst the heaths form their main territory areas, the birds will travel in and out of the designated sites, and may rely on habitat that is outside the site boundary as feeding areas. For example, nightjar will have their nesting sites within the SPA boundary but may travel at dusk to feed around woodland or wet meadows close to the heaths. Research suggests that a foraging nightjar may travel up to 7km away from its breeding site in order to feed in suitable areas<sup>11</sup>.
- 3.11 **Effects of recreational pressure – disturbance and habitat change** – perhaps the greatest pressure now on the heathlands, however, arises from recreational pressure. The heaths are attractive natural areas for recreation, especially walking and dog walking. With increasing residential development close to the SPA heaths they will experience further pressure from people using the designated sites for recreation. A range of outdoor activities, including some that are unauthorised, are undertaken on the Thames Basin Heaths SPA, and include walking, dog-walking, cycling, horse riding, kite flying, picnicking, motor cycling, model aircraft flying, camping and barbecuing.
- 3.12 Disturbance from people directly on the SPA is likely to be the most damaging to the bird species of interest, because the disturbance is intensified by its close proximity to the birds and frequency. The two main groups of visitors to the heaths likely to cause disturbance are walkers and dog walkers, because of the nature of their activities and the frequency with which they visit the heaths.
- 3.13 Some research indicates that people with dogs can have a greater impact on birds than people walking without dogs, especially where dog walkers let their dogs off the lead,

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<sup>9</sup> Underhill-Day, J.C. 2005. *A literature review of urban effects on lowland heaths and their wildlife*. Natural England Research Report 623. Natural England, Peterborough.

<sup>10</sup> Murison, G., Bullock, J.M., Underhill-Day, J., Langston, R., Brown, A.F. & Sutherland, W.J. (2007) Habitat type determines the effects of disturbance on the breeding productivity of the Dartford Warbler *Sylvia undata*. *Ibis*, 149, 16–26.

<sup>11</sup> Alexander, I. and Cresswell, B. 1990. *Foraging by nightjars *Caprimulgus europaeus* away from nesting areas*. *Ibis*, 132, 568-574.

this is one of the main attractions for exercising dogs on the heaths<sup>12</sup>. It is, however, difficult to separate the impacts on the heaths of walkers from impacts of walkers with dogs; in general most studies have not attempted to do so.

- 3.14 Disturbance causes stress to birds, regular fleeing adds to energy expenditure and reduces the amount of time an adult bird spends at its nest. Increased time away from the nest can affect nesting success, through the nest being more frequently exposed to predators, a reduction in the amount of time eggs are incubated and a reduction in the amount of food being brought to chicks. Disturbance can also cause delays to the start of breeding and thus the number of broods that could be raised in any one season.
- 3.15 The recreational use of the SPA can also lead to physical changes to the heathland habitat. Sites with increased recreational pressure have increased management costs, because the extra use inevitably results in extra damage. Essential habitat management and improvement work, such as grazing and scrub clearance, can be impeded, or more expensive, as a result of higher levels of people on the heaths.
- 3.16 **Synergistic effects** - Any number of the above potential effects can act in combination and have a cumulative or synergistic effect on the SPA bird populations. Continual disturbance by walkers and dog walkers, for example, may eventually force the birds to utilise less suitable nest sites where there may be a greater risk of predation from domestic cats. The combined effects of disturbance and cat predation, therefore, can be greater than the simple additive effects of the two problems measured separately.

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<sup>12</sup> Underhill-Day, J.C. 2005. *A literature review of urban effects on lowland heaths and their wildlife*. Natural England Research Report 623. Natural England, Peterborough; and Taylor, K., Anderson, P., Taylor, R., Longden, K., and Fisher, P. 2005, *Dogs, access and nature conservation* Natural England Research Report No 649, Peterborough and Taylor, E. 2006 in press, *The effect of disturbance on stone curlews Ibis*, in press

## 4. THE THAMES BASIN HEATHS DELIVERY FRAMEWORK

- 4.1 In light of the research then emerging, English Nature recognised, in 2005, that there could be a serious potential conflict between the plans for major new housing provisions in the areas around the Thames Basin Heaths SPA, and the conservation objectives for the SPA birds. Furthermore, as the impacts of all new housing development on the SPA became clearer, it was necessary for planning authorities to apply the requirements of the Habitats Regulations.
- 4.2 A proposal for new residential development, whether a single new dwelling or many, and whether a conversion or a new building, is a 'plan or project' to which the Habitats Regulations apply<sup>13</sup>. The Regulations must be applied by a planning authority, when considering whether to grant planning permission, and by the Secretary of State when s/he, or an Inspector delegated to make the decision on their behalf, is considering an appeal against a refusal of planning permission.
- 4.3 The National Planning Policy Framework (NPPF) explains how the Regulations should be applied. **Appendix 5** to this statement provides a further explanation of the application of the Habitats Regulations in the context of the SPA.
- 4.4 The need to apply the regulations to every proposal for new residential development near to the SPA, rapidly became a serious impediment to the granting of planning permission for additional residential development in the area of eleven local planning authorities. This was because, firstly, the procedure was demanding and its application uncertain; and secondly, because individual proposals could not pass the tests of the regulations, because their effects had to be assessed alone and in combination with other plans and projects. Planning authorities could not ascertain, as they must do before granting consent, that the proposal would not adversely affect the integrity of the SPA, either alone or in combination with other plans or projects.
- 4.5 A solution had to be found that ensured that all new residential development could avoid a significant effect on the SPA, by incorporating avoidance and mitigation measures which would eliminate such effects, so enabling planning authorities to grant planning permission.
- 4.6 If the effects of a proposed development were avoided, then even in combination with other proposals, the development could not have a significant effect on the SPA. This led to English Nature, and later Natural England, alongside 11 Local Planning Authorities affected by the SPA zones of influence, generating the 'Thames Basin Heaths Delivery Project'.
- 4.7 This comprised a combination of proposed habitat and recreational management on the SPA itself and a series of planning measures related to new residential development, off site. It was based on the following concepts.
- 4.8 **On site habitat management**, would ensure that the habitat on which the three SPA bird species rely is in, or is returned to, good condition. This is not a short term option to which applicants can contribute but a longer term measure once the condition of the SPA is secured as favourable. This is in line with footnote 3 of the TBH Delivery Framework, see below.

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<sup>13</sup> *The Conservation of Habitats and Species Regulations 2017* Regulation 63(1)

- 4.9 **On site access management** would ensure that people would be able to continue to enjoy visiting the SPA for open air recreation, but in ways that would not damage the heathland wildlife and habitats; aiming to reduce unauthorised activity, guide and educate visitors to reduce preventable disturbance and to focus on protection of the most sensitive areas, and at the most sensitive times of year. This is now known as **Strategic Access Management and Monitoring (SAMM)**.
- 4.10 **Planning restrictions** on development close to the SPA combined with **off site avoidance measures** via the provision of new or upgraded suitable natural green space as an alternative to the SPA, would enable people to undertake all the activities currently enjoyed on the SPA heathlands elsewhere, thus not increasing the number of visits made to the SPA. The planning restrictions and the off-site avoidance measures were known as the 'Thames Basin Heaths Delivery Plan'.
- 4.11 Provision of Suitable Alternative Natural Greenspace (known as SANGs) should:
- a) Attract the majority of new residents coming into the area as a result of the new development, so they do not increase the number of visits to the SPA; and
  - b) Attract some existing users of the SPA, who may find the alternative natural green space either more convenient or more attractive to visit, thus off-setting the effects of the minority of new residents who may visit the SPA in preference to the SANGs.

By avoiding increasing the number of visitors to the SPA, the Delivery Plan would counter the effects of additional residents coming into the area as a result of new development.

- 4.12 The planning restrictions proposed in the Delivery Plan included an exclusion zone of 400m from the SPA boundary, in which area it was considered unlikely that avoidance and mitigation measures would work. Between 400m and 5km from the SPA boundary mitigation can be utilised with the combination of SAMM and a minimum of 8ha of SANGs provision per 1,000 population.
- 4.13 It was clear that the large majority of individual proposals would not be able to provide their own SANGs, on a case by case basis, so a strategic delivery mechanism was required whereby the SANGs provision would be made by the planning authorities. Developers would contribute to the cost of that provision on a proportional basis. The contribution would be secured by legal obligations. The commitment to making the contribution would be regarded as an avoidance and mitigation measure sufficient to eliminate any significant impacts on the integrity of SPA, either alone or in combination with other plans or projects.
- 4.14 Under the auspices of the Government Office for the South East, the Thames Basin Heaths SPA Joint Strategic Partnership Board was established, in 2007, comprising all relevant local authorities and stakeholders. The concepts of the Delivery Plan were taken forward, by the Board through a draft 'Delivery Framework' which was published for wide consultation in 2008. Following amendment as a result of consultation, the finalised [Thames Basin Heaths Delivery Framework](#) was endorsed by the Board in February 2009.
- 4.15 In conjunction with Local Development Plans, the Delivery Framework will ensure a comprehensive, consistent and effective provision of avoidance and mitigation measures, to enable new housing development to be delivered.

## 5. COMPLIANCE WITH THE PLANNING POLICY CONTEXT

- 5.1 **National Planning Policy Framework - 2024** - As explained in the NPPF<sup>14</sup>, the SPA enjoys statutory protection and appropriate weight should be attached to internationally important sites in decision making. The statutory protection is explained further in Circular 06/2005<sup>15</sup> and in Appendix 5 below.
- 5.2 **The Regional Spatial Strategy (RSS)** – The impacts of additional housing on the Thames Basin Heaths SPA was subject to the most rigorous scrutiny during the preparation and examination of the RSS. Policies were introduced and modified by the Secretary of State specifically to deal with the issue. As of February 2013, it was confirmed by the Secretary of State, that although the South East Plan was to be revoked, Policy NRM6 will be kept in place.
- 5.3 Policy NRM6 specifically deals with the Thames Basin Heaths SPA (page 99 of the South East Plan). It states that new residential development which is likely to have a significant effect on the SPA will be required to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects. Such measures must be agreed with Natural England. It establishes a zone of influence set at 5km linear distance from the SPA boundary, within which measures must be taken to ensure the integrity of the SPA is protected.
- 5.4 Within 400m of the SPA boundary, the Policy includes an ‘exclusion zone’, where new residential development will not be permitted, because other measures are unlikely to be capable of protecting the integrity of the SPA. Allowance is made for small areas where it may be possible to demonstrate that other measures would be effective, but these must be defined in LDFs and SPA avoidance strategies and agreed with Natural England.
- 5.5 Between 400m and 5km from the SPA the measures will include the provision of SANG and access management delivered prior to occupation and in perpetuity.
- 5.6 **Local planning** policies and guidance, in the 11 planning authorities directly affected, also seek to protect the SPA. In this case reference is particularly made to the:
- Wokingham’s Local Plan (updated 2024) Policy NE3 Thames Basin Heaths Special Protection Area
- 5.7 Applying the Planning and Compulsory Purchase Act 2004, proposals for new residential development are not in accordance with the development plan which:
- a) are located within the ‘exclusion zone’ within 400m of the boundary of the SPA, and are not in a locally determined zone in a LDF or SPA avoidance strategy, where it is agreed with Natural England that mitigation measures would be effective; or
  - b) are not within the exclusion zone, but which are otherwise in the 5km zone of influence, measured as a linear distance from the SPA boundary, which do not provide either:

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<sup>14</sup> [National Planning Policy Framework](#)

<sup>15</sup> Office of the Deputy Prime Minister, Circular 06/2005, Department for Environment Food and Rural Affairs, Circular 01/2005, August 2005, *Biodiversity and Geological Conservation*, - *Statutory obligations and their impact within the planning system* Part 1.

- a. an acceptable or appropriate contribution to the strategic delivery of SANGs land, access management and monitoring measures, in accordance with the Delivery Framework; or
- b. prior to occupation and in perpetuity, a bespoke mitigation that provides a combination of benefits including SANGs and access management and monitoring.

## **6. NATURAL ENGLAND'S RESPONSE TO THE APPELLANTS CASE**

6.1 In this case, Natural England's objection to the development relates to:

- Rooks Nest Wood Extension SANG is yet to be consented and has therefore not been secured in perpetuity. Natural England advise that SANG should have planning permission before other developments are allocated to it, to enable reasonable certainty that it will be delivered and operational in advance of the dwelling occupation. If there is uncertainty, then it may not be appropriate to rely on a SANG area until it has permission and funding secured in perpetuity.
- A lack of secured agreement for the proposed usage of a University of Reading owned SANG.
- Natural England have significant concern regarding the lack of certainty arising from the proposed speculative mitigation approach. Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended), the competent authority must be certain, beyond reasonable scientific doubt, that the proposal will not adversely affect the integrity of the European site. This requires mitigation measures to be clearly defined, secured, deliverable and capable of being relied upon at the point of decision. At present, there is no deliverable third party SANG solution available to the appeal scheme so therefore it is not possible to meet the level of certainty required by Regulation 63.

6.2 Development proposals which are not in accordance with the Delivery Framework and the development plan, as described above, would be likely to have a significant effect on the SPA, either alone or in combination with other plans and projects. In accordance with regulation 63, before granting planning permission for such a proposal, the planning authority must undertake an appropriate assessment of the implications of the development, on the SPA, in light of the site's conservation objectives (see section 2 above). It is Natural England's advice that it cannot be ascertained that the appeal proposal would not adversely affect the integrity of the SPA. There are clearly alternative solutions (providing housing in accordance with the Delivery Framework) and there are no imperative reasons of overriding public interest that would justify a grant of planning permission in this case. The appeal proposals must therefore be refused, as a matter of law, irrespective of any other material considerations.

6.3 A wide range of matters have been previously considered in the creation of the Delivery Framework, Plan examinations and other appeal cases. This includes the rejection of points based on:

- a) the fluctuations, including increases, in bird populations generally, and on this SPA specifically;
- b) the variability of the habitats within the SPA to support the Annex I species;
- c) the lack of favourable conservation status across all management units in the SPA, and the different levels and types of habitat management necessary to achieve favourable conservation status;
- d) the opportunities that can be identified for improved access management within the SPA;
- e) the availability of other green spaces around the SPA and the extent to which they attract, or would attract, new residents in the zone of influence;

- f) the effects of new development at different distances from the SPA boundary, including the reducing influence with increasing distance;
- g) journey times within the zone of influence and how they may vary with actual rather than linear distance to the SPA boundary;
- h) the fact that individually few residential development proposals would be likely to have a significant effect on the SPA alone;
- i) the principle of effects from one development being regarded as 'de minimis' and its relationship with the requirement to assess effects of plans and projects in combination;
- j) the variations in population trends in local wards around the SPA, with some areas experiencing a decrease in population;
- k) the composition and size of households now and in the future;
- l) the possibility of people living in flats having a lesser effect on the SPA than those living in houses;
- m) the potential use and efficacy of byelaws on the SPA and other open spaces;
- n) the use of covenants or conditions prohibiting the keeping of certain pets especially cats and dogs;
- o) the use of information packs and other educational measures to inform new residents as to the vulnerability and sensitivity of the SPA to recreational visits.

6.4 Improved access management and improved habitat management on the SPA are already taken into account in the Delivery Framework. This must be done strategically and not on an ad hoc basis, otherwise access management on one part of the SPA may simply have the effect of displacing visitors to another, and increasing the density of visitors in certain parts of the SPA.

6.5 It should also be borne in mind that any increase in the capacity of the SPA achieved by access or habitat management measures may be required to offset the effects of those visitors traveling to the SPA from developments beyond the 5km zone of influence. On site access management is, effectively, an avoidance measure to enable residential development beyond the 5km zone of influence to be permitted. If capacity is taken up by development within the zone, it will nullify the effect of access management works as an avoidance measure. The consequence of this would need to be an extension of the zone of influence beyond 5km.

## 7. SITES OF SPECIAL SCIENTIFIC INTEREST

- 7.1 The Inspector, the local planning authority and Natural England, are all 'Section 28G authorities' under the provisions of S.28G of the Wildlife and Countryside Act 1981, inserted, together with other sections, by section 75 and Schedule 9 of the Countryside and Rights of Way Act 2000. Part II of Circular 06/2005 explains the implications of S.28G in the planning system.
- 7.2 All section 28G authorities have duties "*to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement*" of the features of special scientific interest in the all SSSI, so far as the exercise of their functions is likely to affect the special interests. The Defra Code of Guidance on SSSI<sup>16</sup> indicates that "*The Secretary of State expects that all public bodies will take full account of their responsibilities under this duty whenever their actions may affect SSSIs.*"
- 7.3 Further duties arise under Section 28I of the Wildlife and Countryside Act, as amended. The Inspector and Secretary of State have a duty to take account of Natural England's advice (Section 28I(5)). If minded to allow an appeal against Natural England's advice, section 28I sets out specific requirements that would need to be followed. These procedures are set out in paragraphs 62 – 64 and 66 – 67 and Figure 4 of the Circular.
- 7.4 In this case the relevant interest features are likely the same for the SSSI as the SPA, the three Annex I bird species and their habitats.

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<sup>16</sup> *Sites of Special Scientific Interest Encouraging Positive Partnerships* Code of Guidance DEFRA 2003 available at <http://www.defra.gov.uk/wildlife-countryside/ewd/sssi/sssi-code.pdf>



**APPENDICES TO THE  
STATEMENT ON BEHALF OF  
NATURAL ENGLAND**

## APPENDIX 1

### THE SPA CITATION

#### EC Directive 79/409 on the Conservation of Wild Birds Special Protection Area (SPA)

**Name:** Thames Basin Heaths

**Unitary Authority/County:** Bracknell Forest, Hampshire and Surrey; Windsor and Maidenhead

**Site description:** The Thames Basin Heaths SPA is a composite site that is located across the counties of Surrey, Hampshire and Berkshire in southern England. It encompasses all or parts of Ash to Brookwood Heaths Site of Special Scientific Interest (SSSI), Bourley and Long Valley SSSI, Bramshill SSSI, Broadmoor to Bagshot Woods and Heaths SSSI, Castle Bottom to Yatley and Hawley Commons SSSI, Chobham Common SSSI, Colony Bog and Bagshot Heaths SSSI, Eelmoor Marsh SSSI, Hazeley Heath SSSI, Horsell Common SSSI, Ockham and Wisley Commons SSSI, Sandhurst to Owlsmoor Bogs and Heaths SSSI and Whitmoor Common SSSI.

The open heathland habitats overlie sand and gravel sediments which give rise to sandy or peaty acidic soils, supporting dry heathy vegetation on well-drained slopes, wet heath on low-lying shallow slopes and bogs in valleys. The site consists of tracts of heathland, scrub and woodland, once almost continuous, but now fragmented into separate blocks by roads, urban development and farmland. Less open habitats of scrub, acidic woodland and conifer plantations dominate, within which are scattered areas of open heath and mire. The site supports important breeding populations of a number of birds of lowland heathland, especially nightjar *Caprimulgus europaeus* and woodlark *Lullula arborea*, both of which nest on the ground, often at the woodland/heathland edge, and Dartford warbler *Sylvia undata*, which often nests in gorse *Ulex* sp. Scattered trees and scrub are used for roosting.

Together with the nearby Wealden Heaths and Ashdown Forest SPAs, the Thames Basin Heaths form part of a complex of heathlands in southern England that support important breeding bird populations.

**Size of SPA:** The SPA covers an area of 8274.72 ha.

**Qualifying species:**

The site qualifies under **article 4.1** of the Directive (79/409/EEC) as it is used regularly by 1% or more of the Great Britain populations of the following species listed in Annex I in any season:

| Annex 1 species                       | Count and season              | Period  | % of GB population |
|---------------------------------------|-------------------------------|---------|--------------------|
| Nightjar <i>Caprimulgus europaeus</i> | 264 churring males – breeding | 1998/99 | 7.8%               |
| Woodlark <i>Lullula arborea</i>       | 149 pairs – breeding          | 1997    | 9.9%               |
| Dartford warbler <i>Sylvia undata</i> | 445 pairs – breeding          | 1999    | 27.8%              |

**Non-qualifying species of interest:** Hen harrier *Circus cyaneus*, merlin *Falco columbarius*, short-eared owl *Asio flammeus* and kingfisher *Alcedo atthis* (all Annex I species) occur in non-breeding numbers of less than European importance (less than 1% of the GB population).

**Status of SPA:**

Thames Basin Heaths was classified as a Special Protection Area on 9 March 2005.

## APPENDIX 2

### OVERVIEW OF THE ECOLOGY AND POPULATION DYNAMICS OF THE ANNEX 1 BIRD SPECIES

#### **Nightjar**

- A2.1 The nightjar is a bird primarily of the heathland/woodland edge, especially deciduous woodland but also conifer plantations. They are aerial feeders, feeding on moths and other night-flying invertebrates. They will often feed away from heaths, traveling up to 7km from the nest each night to feed in areas such as floodplains or orchards likely to hold lots of invertebrates (Alexander & Cresswell, 1990).
- A2.2 Previously the species had undergone a very long-term population decline and range contraction, associated with loss of lowland heathland and possibly climate change altering the availability of invertebrate food (Holloway, 1996; Sharrock, 1976). Our knowledge of their distribution and numbers is based on national surveys of churring males, conducted across the UK at approximately 10 year intervals since 1981. In 1981, 2,100 churring males were found. In 1992 the population was estimated to be 3,400 (Morris et al. 1994), and in 2004 a total of 4,500 were recorded. The 2004 survey found that nightjar numbers had increased most markedly in Hampshire and Dorset (with both counties holding well over 700 males each), but that declines had occurred in some parts, especially northern England and Scotland.
- A2.3 The species is a summer migrant, arriving on breeding sites from the beginning of May. The first nests appear from mid-May, reaching a peak in early June. Females will re-nest and nests occur into August. Nightjars require bare ground for nesting (Cresswell, 1996), in some parts of the country selecting sites protected by small trees (Burgess et al. 1989). Nest sites are typically small areas of bare ground within a clearfell or in heather (Liley pers obs). Typically, two eggs are laid, the nest being little more than a tiny scrape. The adult is cryptically coloured, but the eggs are pale and conspicuous when the adult is not present. The adults will remain sitting on the nest until approached to within a few metres (adults typically flying at c. 10m when eggs are present and from even as close as 2m once the eggs have hatched, (Liley pers obs).

#### **Woodlark**

- A2.4 Woodlarks require areas of bare ground and very low vegetation for foraging (Bowden & Hoblyn, 1990; Bowden, 1990). They nest on bare ground, sheltered by tussocky vegetation. Suitable habitat can often be found along firebreaks and paths, and nests will sometimes be in such areas (Liley, pers. obs.). Woodlarks feed on foot, catching spiders and other invertebrates of bare ground. Scattered bushes and trees or brash piles are often used for song perches.
- A2.5 Historically, populations of woodlarks have fluctuated, particularly as a result of habitat change and severe winter weather, from which recovery is slow (Cramp & Simmons, 1977 - 1995; Holloway, 1996). In the 1920s to 1950s, the population was expanding its range, but subsequent, rapid range contraction led to concentration in five regions of England: south west England, New Forest/Dorset, Hampshire/Surrey border, Breckland and the Suffolk Sandlings (Sharrock, 1976; Sitters, 1986; Sitters et al., 1996). Since the 1986 population census coincided with a period of low numbers (241 territories were recorded), it was expected that the optimum habitats would be occupied. There was considerable variation in habitat use between the five regions, probably reflecting availability, with the main use as follows: south west England – agricultural land, particularly unimproved grassland and marginal habitats; New Forest/Dorset and Hampshire/Surrey border – heathland; Breckland/Suffolk Sandlings – forestry plantations (Sitters et al. 1996).
- A2.6 The 1997 national survey of woodlarks showed a substantial recovery in numbers since 1986, confirming the indications of intervening sample surveys. The species has undoubtedly benefited from the availability of clear fells and restocks, and heathland restoration projects also are considered to have aided their recovery (Wotton & Gillings, 2000).
- A2.7 Woodlarks are thought to be partial migrants in the UK, most moving away from breeding areas, but at least a proportion of these birds remain in southern England (Lack, 1986). The proportion

that remains on the breeding sites can occasionally be heard singing throughout the year, but territorial activity mainly commences in early February. In optimum habitats, territories may be only 1.5–2ha (Gimingham, 1992). Apparently suitable habitat is also more likely to be colonised if it was previously occupied or close to areas used by woodlarks. The first nests appear in early March and nesting continues until July. Pairs will re-nest within the same season.

#### **Dartford warbler**

- A2.8 Primarily a bird of southwest Europe, the Dartford warbler is on the northerly edge of its range in western France and southern England (Bibby, 1979a; Gibbons, Reid & Chapman, 1993). It is one of the few warblers in Britain that do not migrate in winter. As such, it is very susceptible to severe winter weather, which causes the population to crash and contract in range (Lack 1986); prolonged snow-lie poses particular problems (Westerhoff & Tubbs, 1991).
- A2.9 The Dorset heaths and New Forest comprise the core of the range and offer the best conditions for survival as a result of milder winters even when other areas are exceptionally cold (Gibbons, Reid & Chapman, 1993; Holloway, 1996; Tubbs, 1963). In 1988, it is estimated that the New Forest alone may have accounted for nearly 75% of the British population of Dartford warblers (Westerhoff & Tubbs 1990).
- A2.10 In the nineteenth century, the breeding range extended from East Anglia and Kent west to Cornwall (Witherby et al., 1938), but in the 1960s, after a series of cold winters the population was down to just eleven pairs. Recent years have seen a rapid increase in numbers (an almost four-fold increase in numbers between the 1984 and 1994 national surveys, (Gibbons & Wotton S., 1996) and it has recently recolonised East Anglia. A series of mild winters is thought to have been at least partly responsible for the increase. The species is considered to be vulnerable to severe winters and heath fires in the short term and to habitat fragmentation in the long term (Bibby, 1979b).
- A2.11 The preferred habitat of Dartford warblers comprises dry heath with dense, mature heather, with thickets or scattered bushes of mature gorse, c. 1-2m high (Bibby & Tubbs, 1975; Moore, 1962; Tubbs, 1963; Westerhoff & Tubbs, 1991).
- A2.12 Dartford warblers are insectivorous all year round and largely resident, although they can be partial migrants (Marchant, 2003). Consequently, they require fairly large territories to supply adequate food. The average territory size is approximately 2.5 hectares (Bibby, 1979a), although large areas of heath tend to support relatively higher densities than small heaths (Bibby & Tubbs 1975). Gorse has a higher density of invertebrate fauna than heather and is used more for foraging than its relative abundance would suggest. The adults select large prey items, mostly beetles, spiders, lepidopteran larvae and bugs. Nestlings are fed on caterpillars, grasshoppers and spiders. Feeding conditions tend to improve during the summer and so later clutches tend to be larger. Although the nesting season is quite long from first egg dates, in late April, to last young fledged in early August, many pairs start too late in the season to have a chance of a second brood. Young Dartford warblers leave the nest prior to fledging, at about 12 days old, and can remain in the vicinity for several days after fledging (Cramp et al. 1992).

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## **APPENDIX 3**

### **RESEARCH INTO THE EFFECTS OF DISTURBANCE ON BIRDS**

#### **Human disturbance to birds**

- A3.1 Human disturbance involves any human activity that can potentially influence a bird's behaviour or survival. There have been many studies demonstrating such an influence, by a variety of mechanisms, and for a range of species.
- A3.2 There are a wide range of mechanisms by which disturbance could affect a species. These include direct mortality (such as trampling on nests), the avoidance of high disturbance areas and increases in nest predation levels to much more subtle or difficult-to-measure mechanisms such as increased stress levels.

#### **Nightjars**

- A3.3 Work (Liley & Clarke 2003) in Dorset looked at the relationship between the amount of urban development in the vicinity of a heathland and the numbers of nightjars that occur on the heath. It used the nightjar survey data from 1992 (when all the heaths in Dorset were surveyed for nightjars) and looked at the number of nightjars on 33 different heaths. The heaths represented a range of rural heaths, with very little housing and few people living nearby, to the more urban heaths located close or within the conurbations of Poole and Bournemouth. By using aerial photographs of each heath it was possible to calculate the amount of developed land surrounding each heath. Rural heaths would have very low percentage of surrounding land that was developed, while sites in the Poole / Bournemouth conurbation had more than 50% of the surrounding land developed, even up to 80%. The actual numbers of houses around each heath was also calculated by using postcode data (which gives the number of houses in each postcode). The analysis clearly showed that the density of nightjar was lower on those heaths that had more development around them (i.e. there was a strong negative correlation between nightjar density and each of the various measures of the amount of urban development around each heath, regardless of the size of the heath itself). In 2004 all the Dorset Heaths were again surveyed for nightjars. The above analysis was repeated (D. Liley, unpublished) and the same effect was found. The original analysis also considered the size of heaths, the amount of woodland surrounding each heath and the degree of fragmentation in order to examine the influence of other factors. Nightjar densities were also higher on heaths where there was more woodland (the preferred foraging habitat) within 500 m of the heath boundary.
- A3.4 In 2004 all the Dorset Heaths and Thames Basin Heaths were again surveyed for nightjars. Liley and Clarke (2006) conducted a similar analysis to that described above but this time for both SPAs. Again the study demonstrated that the negative correlation between the density of nightjars on a site and the amount of housing in the vicinity of the site was still present and that it occurred on both the Dorset Heaths and the Thames Basin Heaths. The correlation was found for housing at least as far away as 5km from the site boundary. As the amount of housing in different bands was highly correlated it was impossible to attribute the effect to a specific distance band.
- A3.5 In 2002 fieldwork was conducted to try and find nightjar nests, look in detail at breeding success, and explain why densities of nightjar were lower on more urban heaths. Over the summer of 2002, English Nature commissioned the RSPB in Dorset to look at nightjar breeding success on some of the heaths included in Liley & Clarke's 2003 analysis. The RSPB work (Murison, 2002) found 47 nests, on eight different heaths. Nineteen of these nests (40%) were successful and the chicks fledged. The principal cause of failure for the 60% of nests which were unsuccessful was egg predation. Although it is difficult to identify which predator has taken a nest, it was thought that most nests were predated by birds, probably crows. Mammalian predation was also important. Murison's work showed that the sites where the most nests failed were the more urban heaths, and also that nests closer to footpaths were more likely to fail. Nightjar eggs are pale, clearly visible even to the human eye, and as there is no nest as such, they are very exposed when the adult is absent. It is the adult bird incubating the eggs that provides the camouflage and protection from predators. Murison suggests that disturbance from people and especially dogs may flush the adult birds from the nest, exposing the nest to predators such as crows.

- A3.6 Follow-up work by the RSPB (Woodfield & Langston, 2004) used video-cameras on nests to determine how often adults were flushed from nests and what was flushing them. The study recorded nightjars flushed from nests twelve times, though it was not always possible to determine what had flushed the birds. Dogs were certainly responsible for flushing the adult on two occasions. The cameras recorded one predation event, by a crow. The results from this work would seem to support the results found in the other two studies, and suggests that high levels of recreational access, and in particular dogs, may reduce nightjar breeding success.
- A3.7 Liley and Clarke's 2006 research also used actual visitor data to produce a model that allowed the spatial distribution of visitors to be predicted across some 18,000 ha of heathland and forestry. The research identified 81 distinct sites or 'patches' which support some 740 nightjar territories, approximately 1/6<sup>th</sup> of the UK nightjar population. The model shows that the number of people arriving at an access point on one of those patches is dependent on the amount of housing surrounding the access point and the amount of parking available. The model was applied to existing survey data on visitor routes and the distance people 'penetrate' onto the heath from access points to give a map of visitor pressure across each 'patch'.
- A3.8 Comparing the distribution of nightjar territories with the visitor pressure map in several different ways indicated that nightjar territories are located in areas of lower visitor pressure. A plot of nightjar density against (predicted) visitor pressure shows that there is a clear trend for nightjar density to decline with increasing visitor pressure on the Thames Basin Heaths but there was not such a clear trend for Dorset sites.

#### **Woodlark**

- A3.9 In an intensive doctoral study, spread over three years, Mallord (Mallord, 2005; Mallord et al., 2007a; Mallord et al., 2007b) looked in detail at the factors accounting for the distribution and breeding success of woodlarks on heathland sites across Dorset. Using an identical approach to that used by for nightjars by Liley & Clarke (2003), Mallord (2005) also looked at the numbers of woodlarks on sites in relation to the amount of urban development surrounding each site. Once he had taken into account the habitat structure, Mallord found a negative correlation between the density of woodlarks (in suitable habitat) per site and the amount of urban development surrounding sites. This latter study therefore builds on, rather than conflicts with, the earlier study, and shows that, for woodlarks, lower numbers occur on sites surrounded by more housing. He suggests that urban development is operating in three distinct ways; firstly, increasing site isolation and thus reducing the probability of colonisation, secondly, reducing the amount of foraging habitat available to birds off-site, and thirdly, it leads to more recreational disturbance (there was a strong positive relationship between recreational disturbance and the amount of urban development).
- A3.10 In 2002 Liley and Clarke found no correlation with woodlark numbers on sites and the amount of urban development surrounding sites (Liley & Clarke, 2002). They suggested that this could be because woodlarks have very specific habitat requirements, occurring patchily within sites where short, open habitats – essentially early successional habitats - such as along firebreaks or acid grassland, occur. The presence of woodlarks on sites was therefore dependent on the necessary habitat being present, and as heaths vary markedly in the amount of suitable habitat, this would be likely to mask any urban effects.
- A3.11 Using a model of territory settlement on sites already holding breeding woodlarks, a number of hypothetical scenarios were investigated. These scenarios were chosen so as to provide a broad indication of the consequences of different levels of disturbance on woodlark population size, and in particular were designed to explore the impact of the introduction of a right of access to heathland as a result of the Countryside and Rights of Way Act (2000).
- A3.12 The model outputs show that recreational disturbance has already had a large effect, because when the model removed disturbance from all sites, it predicted a 13-48% increase in breeding woodlark population size. A doubling of recreational use at Mallord's study sites, under current access arrangements, was predicted to reduce population size by 15%, described by Mallord as a negligible effect on population size. This disproportionate change (i.e. 15% decrease from a doubling of access levels) was because either the areas most affected were already unoccupied,

or the increase in disturbance on currently undisturbed habitat patches was insufficient to cause abandonment.

- A3.13 This latter result (resulting from a doubling of visitor numbers) has been widely cited to indicate that access levels might be increased on a site with little impact on woodlark numbers. The 'negligible' impact is actually a decline in population size of 15%. Mallord's modelling is complex and it is important to understand these models fully. The models are based on Mallord's fieldwork which highlights that woodlarks do not settle where disturbance levels are high, and that there is a threshold above which no woodlarks occur. Of course, once this threshold is passed, the site is not used by woodlarks, and therefore a doubling will have no further impact, once the threshold has been passed. However, Mallord's models also assume that woodlark habitat and potential territory locations are fixed in space. His models assume each site has a single car-park, and that disturbance levels decline in a linear fashion away from the car-park. In reality sites are more complex, with multiple access points and also the distribution of woodlark habitat (early successional, open habitats) will change with time. Mallord's work actually demonstrates that an increase in people at a site will result in a greater proportion of the area of a site being pushed above the threshold level and hence the amount of woodlarks a site can support in the future is reduced.

#### **Dartford Warbler**

- A3.14 Liley & Clarke (Liley & Clarke, 2002) found no relationship between the amount of urban development surrounding heathland sites and the number of Dartford warblers present on those sites. The analysis found high numbers of Dartford warblers present on all sites, regardless of the amount of housing surrounding each site.
- A3.15 Doctoral research was conducted in Dorset to examine the breeding ecology of Dartford warblers on urban and rural heaths. This concluded that birds do settle in highly disturbed areas, but breeding success may be compromised in these areas (Murison *et al.*, 2006). Murison *et al.* describe three types of territory: heather-dominated territories, heather territories with significant areas of European gorse *Ulex europaeus* and territories containing Western gorse *U. gallii*. Breeding success was significantly affected by the timing of breeding in all habitats, but disturbance only appeared to have a significant impact on the productivity of birds in heather territories. Disturbance events in heather territories delayed breeding pairs for up to six weeks. This significantly decreased both the number of successful broods raised and the average number of chicks fledged per pair. Nests situated close to territory boundaries in heather territories, with high numbers of disturbance events, were more likely to fail outright.
- A3.16 Murison *et al.* suggest that, at those nests in which hatching was delayed until June, fledgling success was reduced both by low densities of insect prey and by disturbance-related interference, which further reduced the foraging effectiveness of birds by keeping adults from the nest for extended periods. First brood nests that hatched in July did so when invertebrate availability was less than optimal. It is also possible that a further cause of reduced breeding productivity might be associated with increased stress, as, in heather territories, disturbed breeding birds often became quickly agitated searching for suitable cover.

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## APPENDIX 4

### RECREATIONAL USE OF THE HEATHLANDS

- A4.1 Various studies of the recreational use of heathland sites have been undertaken including those for Ashdown Forest, East Sussex; Cannock Chase, Staffordshire; Haldon Heath, Devon; Woolmer Forest, Hampshire; and the New Forest. The results of those surveys have been considered in a general way in the preparation of the Thames Basin Heaths Delivery Plan. However, of more direct relevance are detailed and statistically robust surveys of visitors to the Dorset and Thames Basin Heaths reported by MORI (2004)<sup>17</sup>, Rose & Clarke (2005)<sup>18</sup>, Clarke et al (2005)<sup>19</sup> and Liley et al (2005)<sup>20</sup> respectively. The Thames Basin Heaths Delivery Plan draws on all of these surveys.

#### **How people travel to the heaths for recreation**

- A4.2 In summary, in respect of the Thames Basin Heaths, it was concluded that:

- a) 83% of visitors travel by car;
- b) 13% of visitors arrive on foot;
- c) 40% of people walking to the site came from within 400m;
- d) 79% of people walking to the site came from within 1km;
- e) 6% of all visitors came from within 400m;
- f) 44% of all visitors and 36% of all car borne visitors came from within 2km;
- g) 74% of all visitors, 70% of all car borne visitors and all visitors on foot came from within 5km;
- h) 38% of all visitors travel from a starting point between 400m and 2km of the SPA boundary and 30% from a starting point between 2km and 5km of the SPA;
- i) More visitors drive to rural or semi-rural heathlands and to the urban heathlands with good parking facilities;
- j) More visitors walk to urban heathland sites than travel by car;
- k) Dog walkers, the largest user group of the heathland sites, appear to drive a shorter distance on average than other visitors driving to the heaths, with a mean distance travelled of 1.6km

#### **Why people use the heaths for recreation and their recreational activities**

- A4.3 An analysis of visitor access patterns on the Thames Basin Heaths, specifically, (Liley et al 2005)<sup>21</sup> shows that:

- i. 59% of visitors came to the heaths to walk their dogs;
- ii. 32% of visitors came to the heaths for a walk, without a dog;

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<sup>17</sup> MORI. 2004. *Bourley and Long Valley Heath users survey*. MORI Social Research Institute. London.

<sup>18</sup> Rose, R.J. & Clarke, R.T. 2005. *Urban impacts on Dorset heathlands: Analysis of the heathland visitor questionnaire survey and heathland fires incidence data sets*. Natural England Research Report 624. Natural England, Peterborough.

<sup>19</sup> Clarke, R.T., Liley, D., Underhill-Day, J.C., & Rose, R.J. 2005. *Visitor access patterns on the Dorset Heaths*. Natural England Research Report in press Natural England, Peterborough.

<sup>20</sup> Liley, D., Jackson, D., & Underhill-Day, J.C. 2005. *Visitor access patterns on the Thames Basin Heaths*. Natural England Research Report in press Natural England, Peterborough.

<sup>21</sup> Liley, D., Jackson, D., & Underhill-Day, J.C. 2005. *Visitor access patterns on the Thames Basin Heaths*. Natural England Research Report in press Natural England, Peterborough.

- iii. 72% of all individuals or groups of visitors had at least one dog;
- iv. Jogging and cycling were the next most frequent reasons for visiting the heaths (4% and 6% of all visitors respectively);
- v. Dog walkers averaged a 2.5km walk on the heath, penetrating a mean of 760m into the heath from the access point, with 4 out of 5 dog walkers not penetrating further than 1000m into the heath from the access point;
- vi. Walkers without a dog averaged a 2.3km walk on the heath, penetrating a mean of 722m into the heath from the access point;
- vii. Joggers averaged a 3.9km run, penetrating a mean of 1,174m into the site, whilst cyclists averaged a 4.9km ride and penetrated a mean of 1,336m into the site from their access points;
- viii. A significantly higher proportion of daily / regular visitors to the heaths are dog walkers compared to other users;
- ix. The spatial pattern of use by walkers and dog walkers is largely determined by the location and nature of the access point and the network of paths and tracks on site, and to a lesser extent, the nature of the site near the access point;
- x. Differences in length of stay on the heaths is related to the purpose of the visit.

#### **Visits to alternative sites**

A4.4 When asked whether they visited alternative sites, for the same purpose:

- i. 78% of dog walkers, 80% of walkers, 67% of cyclists and 54% of joggers said that they did visit other places;
- ii. 82% of dog walkers, 67% of walkers and 57% of joggers visiting the SPA on foot, who are also visiting alternative sites on foot, travelled less than 1.6km (a mile) to that site;
- iii. where dog walkers and walkers travel by car to a site, 59% of dog walkers, and 23% of walkers without a dog, will travel between 1.6km and 8km (5 miles) to reach the alternative site;
- iv. 57% of walkers who travel to sites by car, will travel more than 8km (5 miles) to reach their alternative site, whereas only 25% of dog walkers travelling by car travel that far.

## APPENDIX 5

### APPLICATION OF THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 (AS AMENDED)

#### The Requirements of the Habitats Regulations

- A5.1 A proposal for new residential development, whether a single new dwelling or many, and whether a conversion or a new building, is a 'plan or project' to which the Habitats Regulations apply<sup>22</sup>. The Regulations must be applied by the Council when considering whether to grant planning permission, and by the Secretary of State when they, or an Inspector delegated to make the decision on the Minister's behalf, are considering an appeal against a refusal of planning permission.
- A5.2 Government Circular (6/2005 (ODPM) 1/2005 (DEFRA))<sup>23</sup> accompanying Planning Policy Statement 9, *Biodiversity and Geological Conservation* <sup>24</sup>explains in detail how the Regulations should be applied. An adaptation of the flowchart in the Circular is reproduced in Figure 1 below, numbers having been added to the boxes to aid cross-referencing.
- A5.3 Essentially, the Habitats Regulations require all plans or projects with the potential to affect an SPA and not directly connected with or necessary to its management for nature conservation, to be assessed to see if effects are likely to be significant (Boxes 1 and 2 in Figure 1 and paragraphs 12 – 16 of Circular 06/2005). Those that are likely to have a significant effect on the site, alone or in combination with other plans or projects, must be subject to a more detailed assessment in order to ascertain if the proposal would adversely affect the integrity of the site (Boxes 3 - 6 in Figure 1 and paragraphs 17 – 22 of Circular 06/2005).
- A5.4 If the proposal would be likely to have a significant effect on the SPA, alone or in combination with other plans or projects, the planning authority must undertake an 'Appropriate Assessment' of the implications of the proposal for each of the three bird species for which the SPA is classified, in light of the conservation objectives for the SPA (see section 2 above). Natural England must be consulted as part of such an assessment (Box 3 in Figure 1). The Regulations restrict the grant of permission if it cannot be ascertained that the proposal, alone or in combination with others, would not have an adverse effect on the SPA (Box 4 and 6 in Figure 1). It should be noted that, unlike other planning decisions, the Habitats Regulations apply the **precautionary principle** as a matter of law. The Appropriate Assessment in Boxes 3 – 6 of Figure 1 should conclude that the development proposal will not have an adverse effect on the integrity of the SPA before it is given consent. If the effects are uncertain, the precautionary principle applies, and it must be assumed that the proposal will have an adverse effect on the site (paragraphs 17 – 22 of Circular 06/2005).
- A5.5 Measures to avoid or reduce the effects of a development proposal on the SPA, here referred to as **avoidance measures** and **mitigation measures** respectively,<sup>25</sup> can be proposed as part of the planning application and should be taken into account by the competent authority within the Appropriate Assessment stage.
- A5.6 Regulation 63(1) of the Habitats Regulations requires an authority to consider the effects of a plan or project "*before deciding to .... give any ..... permission for a plan or project ...*". It is considered that this requirement can be met at any stage before a planning permission is granted. Thus, if a planning application is submitted without avoidance or mitigation measures, it may be considered to have a likely significant effect alone or in combination with other plans or projects. However, if such measures are subsequently incorporated into the proposal, before the planning application is determined, the competent authority can take the measures into account.

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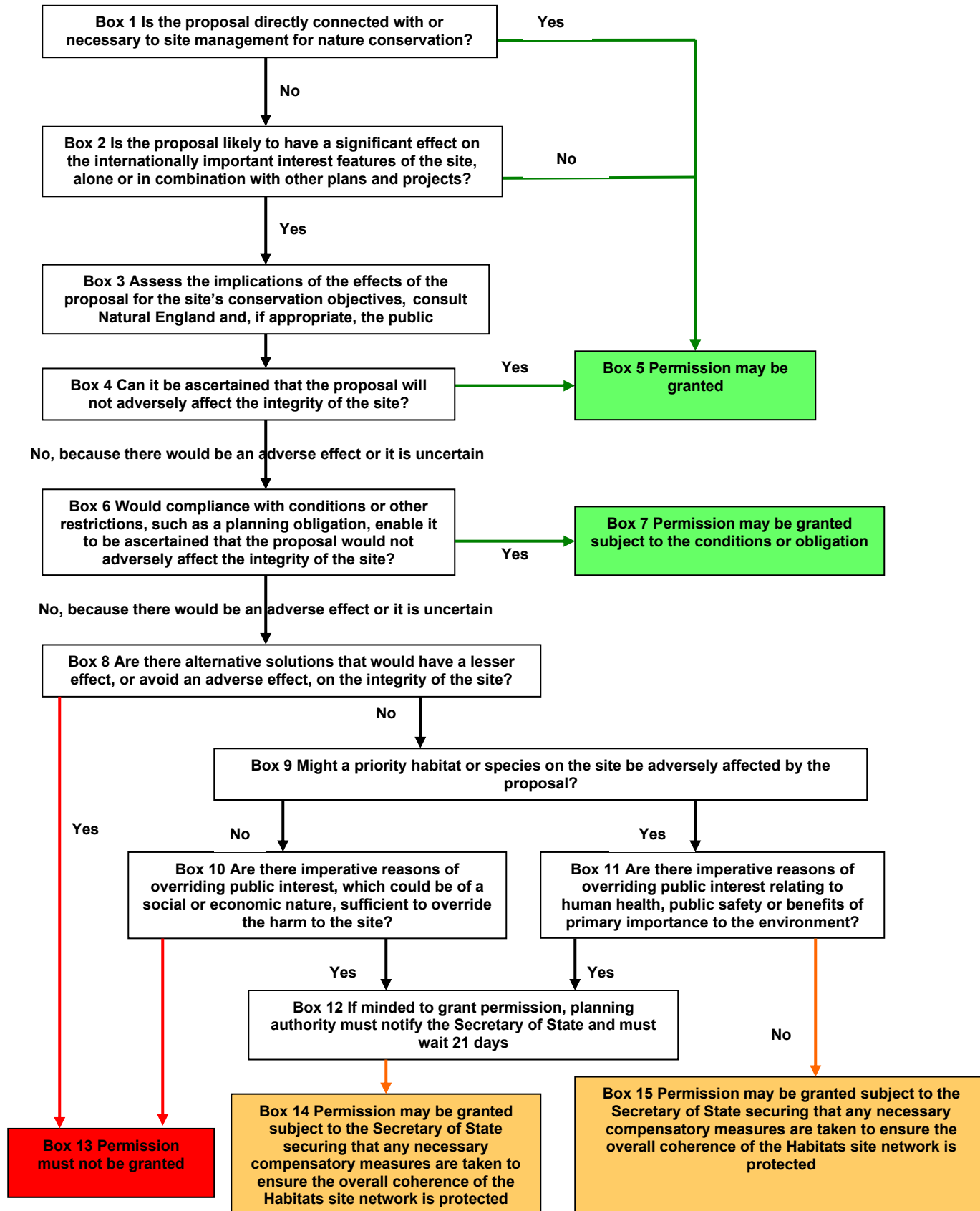
<sup>22</sup> *The Conservation of Habitats and Species Regulations 2017* Regulation 63(1)

<sup>23</sup> ODPM Circular 06/2005. *Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System*.

<sup>24</sup> Office of the Deputy Prime Minister, 2005. *Planning Policy Statement 9 Biodiversity and Geological Conservation*.

<sup>25</sup> The principle of a step-wise policy approach (starting with avoidance then considering mitigation then compensation measures) is also incorporated into the key principles of PPS 9, at paragraph 1(vi).

**FIGURE 1 FLOWCHART OF THE DECISION-MAKING PROCESS UNDER THE CONSERVATION OF HABITATS AND SPECIES REGULATIONS 2017 (AS AMENDED)**



A5.7 Planning permission should not be granted for projects that

- a) are likely to have a significant effect and have not been assessed to determine whether there would be an adverse effect on the integrity of the site; or
- b) have been assessed and it cannot be concluded that there will be no adverse effect on integrity;

unless the project passes further stringent derogation tests set out in Regulation 64 (see Boxes 8 – 15 in Figure 1).

A5.8 Where it cannot be concluded that there will be no adverse effect on integrity the competent authority must first consider whether there are alternative solutions that will have a lesser effect or avoid an adverse effect (Box 8 Figure 1 and paragraphs 23 – 24 in Circular 06/2005). If such alternatives exist, planning permission cannot be granted as a matter of law<sup>26</sup>.

A5.9 For most proposals, particularly residential applications, it will be clear that there are alternative solutions that will have a lesser effect, or avoid an adverse effect on the SPA, because there will be alternative sites on which dwellings could be built. It is therefore unlikely that a residential proposal that may or would have an adverse effect on the integrity of the SPA could be permitted as a matter of law (Boxes 6 – 8 - 13 Figure 1, and paragraphs 23 – 24 in Circular 06/2005).

A5.10 As indicated above, the Habitats Regulations require that, where a project alone would not be likely to have a significant effect on a SPA, it must be considered whether it would be likely to have a significant effect in combination with other plans or projects<sup>27</sup>. An Appropriate Assessment will then need to combine all those plans or projects deemed likely to have a significant effect in combination, in order to ascertain if there will be no adverse effect on the integrity of the SPA (Boxes 3 and 4 Figure 1).

A5.11 This is an important consideration, particularly in relation to residential developments. The Circular states<sup>28</sup> that when considering the combined effects with other proposals it is necessary to consider the following:

- a) Outstanding consents that are not fully implemented;
- b) Ongoing activities or operations that are subject to continuing regulation (e.g. discharge consents or abstraction licences);
- c) Other proposals that are subject to any kind of authorisation, licence, permission or consent.

A5.12 It is also important to consider plans and projects across the whole SPA, not merely the part, or the component SSSI, closest to the proposed development. The Circular clarifies that the 'in combination' requirement applies to those proposals that require planning permission and also to any other relevant plans and projects that may not necessarily require planning permission.

A5.16 Site allocations and policies in both adopted and draft development plans may also need to be included in the in combination assessment.

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<sup>26</sup> *The Conservation of Habitats and Species Regulations 2017* Regulation 64(1)

<sup>27</sup> *The Conservation of Habitats and Species Regulations 2017* Regulation 63(1)(a)

<sup>28</sup> ODPM Circular 06/2005. *Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System* Paragraph 16.