

I INTRODUCTION

1.1.1 The Thames Basin Heaths Special Protection Area (SPA) is designated under the European Directive on the Conservation of Wild Birds 79/409/EEC (the Birds Directive) on account of the presence of populations of three species that are listed in Annex I of the Directive: Dartford Warbler, Nightjar and Woodlark. The SPA comprises land within 13 Sites of Special Scientific Interest (SSSI) in Surrey, Berkshire and Hampshire. Current housing projections envisage construction of some 40,000 new homes within 5km of the SPA (English Nature 2006).

1.1.2 In a speech to the Natura 2000 Conference at Tuczno, Poland on 25th August this year, the EC Environment Commissioner, Stavros Dimas, concisely explained the context for development in relation to European protected sites. He said:

“Europe’s countryside is typified by an active relationship between man and nature and the NATURA network consists of living landscapes. Farming, fishing, forestry and hunting can all continue. Even major development projects can be carried out once certain safeguards have been respected. Impact assessments have to be carried out and alternatives evaluated. Mitigation – and where appropriate – compensatory measures have to be put in place. But considering that we are talking about the most environmentally sensitive areas in Europe this level of protection is no more than basic good practice.

It is not a case of placing the interests of nature above the interests of development – it is a question of finding a model for co-existence. Although it is by no means perfect NATURA 2000 is the most effective model that exists anywhere in the world. And the experience from most Member States is that it is perfectly possible to use the flexibility provided in the directives in an intelligent manner and find a good balance between biodiversity protection and economic needs.”

1.1.3 To this end, English Nature has been consulting local planning authorities (LPAs) and other interested parties on a draft document, the Delivery Plan, which seeks to establish a decision-making procedure for new housing development around the Thames Basin Heaths SPA. The draft Delivery Plan aims to permit new residential housing in the area, whilst avoiding adverse effects on the SPA that could arise primarily through increased recreational use of the SPA and disturbance of the Annex I bird species. The current draft version of the Delivery Plan is dated 26th May 2006 (English Nature, 2006). A summary of its content is given in Section 2.

1.1.4 There are similar issues and a developing strategy in Dorset applied to residential development applications around the Dorset Heathlands SPA. Here there is an approach that small scale developments, with appropriate mitigation packages, do not receive an objection from English Nature despite the lack of an agreed strategy between the relevant LPAs (English Nature 2006b).

1.1.5 The Department for Communities and Local Government (DCLG) has commissioned this review of English Nature’s draft Delivery Plan. The specification for the work is set out in Appendix A.

1.1.6 The objectives of the review are:

- To assist Government in informing the South East Plan Examination in Public’s consideration of issues pertaining to the Thames Basin Heaths.
- To help ensure the delivery of much-needed housing in the area surrounding the Thames Basin Heaths in the immediate (0-5 years), medium (5-10 years) and longer (10-20 years) terms, by identifying practicable approaches to delivery within the requirements of the Directive whilst also supporting heathland conservation, ground nesting bird interests, and the continued use of heathland areas for recreational purposes.

1.1.7 A series of specific tasks were defined in the contract and one of the tasks, relating to flexibility in approach to criteria for decision-making, was expanded upon at the first project Steering Group meeting. This expanded task list is set out below and this forms the structure for this report:

- Review the ecological evidence base underpinning the Delivery Plan.
- Review the recreation evidence base underpinning the Delivery Plan.
- Is development within 5km of any part of the SPA likely to have a significant impact, and therefore require mitigating measures?
- Are the zones that determine the amount of mitigation required for proposed development set at the most appropriate distance (400m, 2km and 5km of the SPA)?
- Are the 16 and 8 ha greenspace land mitigation standards set at the most appropriate level?
- Could there be more flexibility in the Delivery Plan, including applying the standards, depending on site specific criteria such as:
 - military land in the SPA that is permanently inaccessible to the public;
 - conifer plantations in the SPA that will remain under forestry
 - areas of the SPA that did not support Annex I species at designation or at present
 - areas of ‘under-used’ greenspace closer to the development than the SPA
 - a development of flats rather than houses
 - a development to which restrictions on pet ownership had been applied
 - a development with restrictions on car parking spaces
 - a development with occupation restricted to elderly people
 - access to the SPA limited by travel routes (motorways, railways, rivers)
- Are there different approaches to site management that might be more suitable for the Thames Basin Heaths?
- Are there different approaches to site access control that might be more suitable for the Thames Basin Heaths?

- What combination(s) of measures (alternative green space/access control/site management/others) might best enable compliance with the Directive in the medium to long term?
- What combination of approaches could be adopted in the immediate short term (i.e. the next 12 months) to allow development in accordance with the Directive, before substantial quantities of potential mitigating land is likely to come on-stream? and
- What further research could be undertaken to enhance the evidence base and an indication of the time it would take to undertake it?

I.1.8 The contract was guided by a Steering Group. Its membership and meetings are listed in Appendix B.

2 THE ENGLISH NATURE DRAFT DELIVERY PLAN

2.1 Overview

2.1.1 The Thames Basin Heaths SPA supports heathland bird populations of European importance. English Nature's advice to the planning authorities has been that development that would increase the number of homes and residential population within 5km of the SPA is likely to have a significant effect on the important bird populations.

2.1.2 English Nature has published guidance on the determination of likely significant effect (English Nature 1999). This defines likely significant effect in this context as (4.1):

"...any effect that may reasonably be predicted as a consequence of a plan or project that may affect the conservation objectives of the features for which the site was designated, but excluding trivial or inconsequential effects."

2.1.3 English Nature's conservation objectives for the various SSSIs making up the Thames Basin Heaths SPA generally include that of maintaining, in favourable condition, the habitats for the populations of Annex I bird species of European importance with particular reference to lowland heathland. Maintenance is stated to imply restoration if the feature is not currently in favourable condition.

2.1.4 The favourable condition tables for the component SSSIs refer to disturbance as a factor that may affect the Annex I species, the measure of which is reduction or displacement of birds. The target for the SSSIs is generally that there should be no significant displacement of birds attributable to human disturbance in relation to a reference level. The methodology for assessing targets and the reference levels are to be determined.

2.1.5 As explained in section 4 of this report, there are likely to be existing disturbance effects which may currently be having a significant effect on the populations of the Annex I birds. The potential effects of additional recreation pressure from new housing must be considered in this context.

2.1.6 The Conservation (Natural Habitats, &c.) Regulations 1994 (the Habitats Regulations) place a requirement on LPAs before granting consent or permission to assess whether each planning application (the "plan or project") is likely to have a significant effect on the European site (English Nature's advice is that for housing this is within 5km) whether in combination with other plans or projects or alone. If there is likely to be such a significant effect, LPAs must carry out an appropriate assessment of the implications of the proposal for the European site in view of that site's conservation objectives.

- 2.1.7 Given the potentially large number of other plans or projects which could have in-combination effects, and the number of planning authorities involved, this could prevent housing or cause serious delay.
- 2.1.8 In order to allow the housing to go ahead and at the same time protect the birds, English Nature have produced guidance in a draft Delivery Plan (English Nature 2006) to assist Local Authorities in responding to residential planning applications.
- 2.1.9 The guidance proposes a 3-pronged approach namely, land mitigation, habitat and access management measures. By far the most detailed work to date has been on the land mitigation measures.

2.2 Land Mitigation

- 2.2.1 English Nature's advice is that impacts arising from increased visitor pressure could be mitigated against by provision of alternative public open space: 'Suitable Accessible Natural Green Space' (SANGS). English Nature advise that alternative green space needs to be made available at a rate of 16ha per 1000 population for new development between 400m and 2km of the SPA; and 8ha per 1000 population for development between 2km and 5km from the SPA. They advise that it is not possible to provide mitigation for any development within 400m of the SPA.

2.3 Site (Habitat) Management

- 2.3.1 English Nature is engaged in an ongoing programme of work to maintain or restore the favourable condition of the SSSIs forming the Thames Basin Heaths SPA. They are working with the relevant owners or occupiers to agree remedies to those parts of the SSSIs that are wholly or partly in unfavourable condition. Although this work will go some way towards improving the ecological condition of the SPA, English Nature say that the potential impacts posed by current and future development pressure on the SPA can only be meaningfully reduced or eliminated by bringing these management measures forward in combination with the other mitigation measures outlined in the draft Delivery Plan.

2.4 Site (Visitor) Access Management

- 2.4.1 English Nature has let a contract to identify the most appropriate/effective strategies for managing site access on each of the SSSIs that makes up the SPA. This project commenced in September this year and will be completed in January 2007.
- 2.4.2 Thus this work is at a very early stage. Stakeholders are currently finding it difficult to determine what (if any) contribution they should be making to any site management and access controls. Furthermore, it is not clear what the optimum balance should be between alternative greenspace, site management and site access controls in providing mitigation for new development. Nor is the cost clear.

2.5 Stakeholder reactions to the draft Delivery Plan

- 2.5.1 A number of stakeholders have expressed concern about the mitigation standards set by English Nature in their draft Delivery Plan. There is a feeling amongst some LPAs and developers that they are too onerous and will be difficult to implement.

2.6 Mini-plans

- 2.6.1 English Nature is currently working with five individual LPAs (Guildford Borough Council, Woking Borough Council, Elmbridge Borough Council, Surrey Heath District Council and Waverley Borough Council) whose areas are wholly or partly within 5 km of the SPA to develop a series of “Mini Delivery Plans” – an area-specific package of measures to allow development in the short-term in accordance with the Directive.

- 2.6.2 A number of these are now at an advanced stage and should soon provide a vehicle by which planning applications can be approved. Examples of LPAs with well advanced mini-plans are Guildford Borough Council, Woking Borough Council and Waverley Borough Council. Other LPAs, such as Bracknell Forest Borough Council and Wokingham District Council are developing strategies to take forward through their Local Development Frameworks.

- 2.6.3 Some LPAs have particular difficulties in identifying suitable SANGS because of the extensive areas affected by the SPA, and the density of urban development. This is particularly the case for Surrey Heath District Council and Rushmoor Borough Council.

- 2.6.4 Where mini-plans are being progressed, these typically comprise upgrading of existing open space by a range of identified improvements with developer contributions through S106 Agreements, and provision of other open space to be put forward by developers.

2.7 Other relevant work

- 2.7.1 The South East of England Regional Assembly (SEERA) commissioned an appraisal of options to bring forward land that could potentially contribute to mitigating the effect of further housing development on the Thames Basin Heaths SPA Area. The report of this project was published in July (Land Use Consultants, 2006).

- 2.7.2 The Home Builders Federation and the Thames Valley New Homes Coalition have commissioned a review of English Nature’s draft Delivery Plan. This work is not expected to report until mid or late October 2006.

- 2.7.3 The Examination in Public of the South East Plan, starting in November 2006 is expected to test the English Nature draft Delivery Plan approach during a series of technical and sub-regional sessions.

2.7.4 Related studies that have been contracted by English Nature and are being progressed concurrently with this contract let by DCLG but will report beyond Autumn 2006:

- The relationship between visitor numbers and the distribution of breeding Annex I species on the Thames Basin Heaths SPA.
- The production of Access Management Plans for the SSSIs that make up the Thames Basin Heaths SPA.

3 INFORMATION GATHERING AND CONSULTATION ON THIS PROJECT

3.1 Introduction

3.1.1 Information gathering and consultation with stakeholders has been an important part of this project. We have sought the views of those particularly concerned with the delivery of new homes in the area affected by the Thames Basin Heaths SPA on specific matters that should be considered. We have also sought, so far as practicable, to achieve agreement regarding ways in which delivery of housing can be achieved, particularly in the short term.

3.1.2 This section summarises the process of information gathering and consultation and the key issues that have been identified as meriting consideration on the basis of these consultations.

3.2 Meetings with specific information holders

English Nature

3.2.1 A meeting was held with English Nature on 26th July 2006. The purpose of the meeting was to discuss English Nature's evidence base for the draft Delivery Plan, to ensure access to key documents and to discuss taking forward the 'areas for flexibility' identified at the Steering Group Inception Meeting.

RSPB

3.2.2 A meeting was held with RSPB on 9th August 2006. The purpose of the meeting was to ensure access to key documents and to discuss the past and ongoing research that RSPB conducts on the three key Annex I species.

3.3 Evidence provided by other stakeholders

3.3.1 At the start of the contract a letter was circulated by DCLG to interested parties. This letter requested that if anyone had any evidence that they wish to contribute then they should contact RPS. This generated responses from a number of parties. Information was also sought by the consultancy team. This is summarised below.

Planning Inspectorate

3.3.2 The Planning Inspectorate provided relevant Inspectors' decisions relating to planning applications for residential development in the area affected by the Thames Basin Heaths SPA. We have reviewed those decisions and identified the factors that Inspectors have considered to be material in those cases where they have determined that there would be no likely effect on the SPA. It should be noted that not all Inspectors have come to the same conclusions regarding the effectiveness of some of these factors. The factors, grouped by topic, are:

LPA mini-plan

- Development in accordance with 'mini-plan' with financial contribution from applicant.

Accessibility of SPA and alternative open space

- Distance from SPA for sites close to 5km.
- Intervening barriers such as electrified railway line, Motorway, dual carriageway, main road, urban area, town centre and existing residential areas.
- Recreation areas and other open space within easy reach, nearer than SPA.
- Nearby recreation areas being upgraded.

Condition of SPA

- Nearest part of the SPA is conifer plantation.
- Annex I birds not present in section of SPA closest to the development.

Visitor behaviour and management

- Visitors would walk along well-defined paths
- Access to Common Land under CROW Act requires dogs to be kept on a lead between 1 March and 31 July. Section 26 of the Act provides for other access restrictions to be imposed for nature conservation purposes if advised by EN.
- Many of the effects on the SPA were the result of illegal or criminal activities. No reason to suppose that the new residents would not behave lawfully.

SI06 Provisions

- Pet prohibition in lease would be enforceable in managed apartments.
- SI06 Contributions to improve off-site area for recreation.
- Residents' information packs concerning alternative local recreation and open space facilities.
- Provision of information leaflet.

Population change

- Forecast fall in population of the area.

Particular circumstances of the new residents

- Agricultural worker with access to extensive private land for recreation.
- Gypsy families already resident would not result in increase in population.

Home Builders' Federation (HBF)/Thames Valley New Housing Coalition (TVNHC)

3.3.3 Matters which HBF/TVNHC consider merit consideration as identified in the project brief for their review of the draft Delivery Plan are:

- Access and visitor management within the SPA.
- Habitat management within the SPA (as related to conservation objectives of individual SSSIs and the overall context of the SPA in line with Habitat Regulations).
- Where appropriate, off-site mitigation or enhancement measures for alternative or enhanced recreational provision.

3.4 Stakeholder Workshops

3.4.1 Two workshops were held on 8th and 14th September 2006. The purpose of the workshops was to explore alternative ideas to English Nature's Thames Basin Heath SPA draft Delivery Plan. This was carried out within the context of the need for such solutions to be able to deliver future housing supply commitments and to comply with the EU Birds and Habitats Directives' requirements, and also to provide for continued recreational use of the heathlands. Each workshop progressed in three phases:

- 1) A 'quickfire brainstorming' of ideas with nothing ruled out at that stage.
- 2) An assessment and evaluation of the ideas generated against the criteria of compatibility with housing supply delivery and European Directives.
- 3) The prioritisation of the leading ideas to be taken forward by the consultancy team.

3.4.2 Details of the organisations represented at these workshops are provided in Appendix C. Also set out in the Appendix are full lists of the ideas which emerged from the workshops which it was considered should be considered further. In this section of the report we provide an initial review of the ideas that emerged.

Visitor management and control of dog walking

3.4.3 Management of visitors to the SPA, particularly dog walkers, was identified as very important at both workshops. As explained earlier in this report English Nature has commissioned work to produce Access Management Plans for the individual

SSSIs that make up the Thames Basin Heaths SPA. We recommend that English Nature (Natural England) should ensure that the aspects of visitor and dog walking management identified in the workshops are considered in their study.

3.4.4 In particular we consider that important considerations should be:

- The need to ensure that visitor management is coordinated across the SPA so that improved management at one site does not result in increased impacts elsewhere.
- The use of the CROW Act to regulate visitors on land mapped as ‘open country’, in particular the provisions under section 26 of the Act regarding exclusion or restriction of access for *inter alia* preservation of fauna.
- Control of dogs on Public Rights of Way.

3.4.5 A recent report of research carried out by the University of Portsmouth on behalf of the Countryside Agency, Hampshire County Council and the Kennel Club (Edwards, V and Knight, S, 2006) provides guidance on approaches to better management of walkers with dogs. Section 6.0 of the report sets out the recommendations arising from the work, including reference to measures to improve protection of ground-nesting birds. English Nature (Natural England) should take the findings of this research into account in development of visitor management plans.

Public awareness and education

3.4.6 In order for visitor management to be effective it will be necessary to ensure that there is an effective programme to raise public awareness, of the importance and sensitivity of the heathlands and their breeding birds, and to explain the particular risks presented by dogs and cats to the breeding bird populations. Some of the LPAs have produced relevant literature and leaflets, and a number of planning applications for residential development have offered the production of such literature as part of mitigation provisions. This should be co-ordinated across the SPA.

3.4.7 An essential component of visitor management identified by the workshops is the provision of rangers to provide the contact point with visitors. Individual Local Authorities have Countryside Rangers, in some cases associated with Country Parks. It would be beneficial if there was an SPA-wide ranger service so that the raising of awareness was co-ordinated across the whole area.

3.4.8 Rangers would focus on visitor management during the bird breeding season, and undertake site habitat management and educational visits during the autumn and winter, and could thus be employed full-time throughout the year.

3.4.9 The presence of rangers would also assist in control of other adverse effects on the SPA such as fires and fly-tipping.

Identification, delivery and management of SANGS

3.4.10 A clear view arising from both workshops was that there should be an integrated approach to the identification and delivery of SANGS across the SPA. The study carried out for SEERA (LUC, 2006) provides a starting point for this and this work needs to be taken forward. We were advised at the workshops that it was currently difficult for LPAs to co-operate in the provision of SANGS across administrative boundaries.

3.4.11 ODPM Circular 05/2005 provides guidance to local authorities on the use of planning obligations. Annex B sets out in the broad policy principles, and contains guidance which is relevant to the delivery of infrastructure where the need arises from the combined impact of a number of developments. Para B21 states that in such cases:

“...it may be reasonable for the associated developers’ contributions to be pooled, in order to allow the infrastructure to be secured in a fair and equitable way. Pooling can take place both between developments and between local authorities where there is a cross-authority impact. Local authorities should set out in advance the need for this joint supporting infrastructure and the likelihood of a contribution being required, demonstrating both the direct relationship between the development and the infrastructure and the fair and reasonable scale of the contribution being sought. There should be a clear audit trail between the contribution made and the infrastructure provided.”

3.4.12 Both workshops identified the need for a body to be established which would be responsible for the identification of SANGS, and the acquisition of land to deliver it. This new body could have CPO powers. It would need the resources to acquire land and collect payments from developers retrospectively. Suggestions were made that this initial funding could be provided from a proportion of the Planning Delivery Grant, the Growth Area Fund or the Community Infrastructure Fund.

3.4.13 Para B23 of Circular 05/2005 explains that:

“In cases where an item of infrastructure necessitated by the cumulative impact of a series of developments is provided by a local authority or other body before all the developments have come forward, the later developers may still be required to contribute the relevant proportion of the costs. This practice can still meet the requirements of the Secretary of State’s policy tests if the need for the infrastructure and the proportionate contributions to be sought is set out in advance.”

3.4.14 It is envisaged that this new body would be proactive in seeking to identify SANGS and would engage with major public landowners such as MoD, the Forestry Commission and the Crown Estate, as well as private landowners. There should also be engagement with developers who may own, or have interests in land, which

would be suitable for SANGS, although we understand that such ‘landbanks’ are likely to be very limited.

- 3.4.15 In order for this to be effective it would be necessary for the approach to SANGS provision to be less tightly linked to new development than is currently the case in the draft Delivery Plan. The plan would need to recognise that the provision of SANGS in a strategic manner across the area, focussing particularly on large sites, would be effective in attracting existing users of the SPA as well as new residents, thus providing capacity for these new residents.
- 3.4.16 This body could also be responsible for management of the strategic SANGS sites.
- 3.4.17 There are a number of current examples of strategic approaches to green space provision. For example the Thames Gateway South Essex ‘Greengrid Strategy’ is an initiative to deliver environmental infrastructure in association with the development of 43,800 homes and 55,000 jobs to be created by 2021 (Thames Gateway South Essex Partnership 2006). A similar approach to strategic green infrastructure provision is being taken forward in Cambridgeshire in association with the development of 47,500 homes to be built between 1999 and 2016 (Cambridgeshire Horizons, 2006). A strategy for green infrastructure delivery is being developed by the Partnership for Urban South Hampshire in response to the South East Plan provision of 80,000 new homes to be built in South Hampshire between 2006 and 2026.
- 3.4.18 As indicated in section 2.6, some LPAs have been successful in developing mini-plans to enable housing development to be permitted. Others are progressing strategies through their LDFs. There remain some authorities with particular difficulties. It may not be necessary for a new SPA-wide body to be established if smaller groupings of two or three LPAs could co-operate over the identification of SANGS, and then establish of cross-boundary arrangements for funding its delivery and accepting contributions from developers. As explained above, ODPM Circular 05/2005 provides guidance on such arrangements.

Release of sites for development in the short-term

- 3.4.19 The difficulties for, in particular, small sites that cannot deliver their own SANGS were recognised in both workshops. English Nature generally recognise that these sites taken individually would not be likely to have a significant effect on the SPA. It is only when considered in combination with the other housing proposed across the SPA consultation area that the potential for significant effects arises. Given that the individual sites are not likely to have a significant effect, but the in-combination effect of all 40,000 proposed homes is likely to be significant, it follows that there must be a threshold below which the in-combination effect is not likely to be significant.
- 3.4.20 Therefore a number of these small sites could be permitted without adverse effects on the integrity of the SPA provided the threshold above which in combination effects may become significant is not breached. There is however a

difficulty in setting such a threshold since there is as yet no clear evidence relating recreation pressure to the populations of the important bird species. A study commissioned by English Nature seeking to establish this is currently in progress. Once this research is complete English Nature (Natural England) should define such a threshold below which a significant effect was not likely.

- 3.4.21 The evidence that should emerge from English Nature’s current commissioned research into the relationship between recreational use of the SPA and the distribution of the relevant bird species should inform such an assessment. As indicated in section 4, on the basis of our review of the evidence base, for Woodlark at least, the research indicates that to have a significant effect on the bird population, visitor numbers would have to double, and be unmanaged such that they spread across the heathland.
- 3.4.22 In the absence of any firm evidence, we suggest that an increase in population, and an assumed increase in recreational visits to the SPA, of 1% could be considered to be an appropriate threshold. This is likely to be well within the margins of error of any measures of recreational use of the SPA.
- 3.4.23 Taking an approximate existing population of the affected areas of some 688,000, this would allow for development sufficient for some 6,880 new residents. Assuming an average occupancy of 2.4, this would allow consent for some 2,870 units. Consideration would need to be given as to how this was to allocated between the LPAs. The most straightforward allocation would be as a percentage of the outstanding housing allocation. 2,870 units is some 7% of the total allocation of some 40,000 units. LPAs would thus be able to permit up to 7% of their individual allocation before any specific SANGS had been provided. Financial contributions toward the future costs of SANGS provision would be payable by the developers. This would only apply to small developments that individually would not be predicted to be likely to have a significant effect.
- 3.4.24 To the extent that there may be consented residential developments that have yet to be implemented, and which may not have agreed mitigation measures attached, these would need to be taken into account in the release of further development.
- 3.4.25 The extent to which new or recently improved open space has created some capacity for new development should also be considered. For example, in considering the effects of the Bracknell Town Centre redevelopment, Bracknell Forest District Council took into account improvements to Lily Hill Park, much of which had already been completed (Bracknell Forest Borough Council, 2005). It is not clear whether other LPAs have considered to what extent such improvements that may have already been carried out, have effectively created a ‘bank’ of mitigation which can be drawn on.

Development Zones

- 3.4.26 In a later section of this report we consider the extent to which factors such as travel distance, major roads, railways, canals, MoD land and other factors may be taken into account in defining the SPA Development Zones.

Heathland Management and Bird Populations

- 3.4.27 In section 2 of this report we explain that English Nature's Delivery Plan envisages a 3-pronged approach that includes habitat and access management measures for the SPA, as well as provision of SANGS as mitigation for new residential development. In section 9 we review approaches to heathland habitat management. English Nature considers that proactive management of the SPA's heathland habitats is necessary to ensure the maintenance of the Annex I bird species present. These measures are to be led by Natural England in consultation with the relevant public and private landowners, and will proceed in parallel with the other elements of the Delivery Plan to ensure the long-term protection of the SPA.

- 3.4.28 In section 10 we review approaches to heathland access management. As we explain in our conclusions in section 14, the available evidence indicates that improved management of access to the heathlands is an important element in reducing the adverse effects of existing recreational use, as well as mitigating for the effects of new residential development. In addition to actual management measures to be implemented, the workshops identified the need for a mechanism to enable developers to contribute to the funding of such management as part of the mitigation for new housing.

Features/type of residential development

- 3.4.29 In section 8 we consider the extent to which there should be flexibility in applying the draft Delivery Plan standards due to the nature of the residential development. This includes consideration of whether the development comprises flats rather than houses, parking restrictions, residences for the elderly, and pet prohibition covenants.

Legislative change, interpretation and administration

- 3.4.30 The difficulties which have arisen regarding housing delivery in the area around the SPA derive from the need to demonstrate that there is no likelihood of a significant effect on the SPA (or if this cannot be demonstrated, no effect on integrity) taking into account the precautionary principle, and the potential for in-combination effects with other projects. These are requirements of EC law and there is no prospect of change, other than in the long-term. In a later section of this report we have provided a summary of these legal requirements, and have considered the extent to which flexibility such as that we have proposed would satisfy these requirements.

- 3.4.31 There is provision in the legislation for the requirement to protect the SPA to be overridden where development is for imperative reasons of overriding public

interest (including those of a social or economic nature) and where there is no alternative. Where harm to the SPA is accepted in such circumstances, then compensatory measures must be provided such that the overall coherence of Natura 2000 is protected.

- 3.4.32 Whilst it could be argued that provision of housing in the South East is of overriding public interest, it would be difficult to conclude that there was no alternative to provision of such housing within 5km of the SPA. It is thus likely that such an approach would fail.
- 3.4.33 We are aware that evidence likely to be presented at the South East Plan EiP will challenge the way these legal requirements have been interpreted.
- 3.4.34 To the extent that there is a need for review of English Nature’s advice, at present the competent authorities (LPAs, Planning Inspectors or Secretary of State depending on the particular circumstances) are responsible, having taken advice from English Nature, for determining whether there is likely to be a significant effect on the SPA, and, if so, carrying out an appropriate assessment of the proposals. In doing so they will usually also have information provided by the developer in support of the proposals. Whilst not always the case, in many instances, the competent authority has not questioned to any significant degree English Nature’s advice. In many instances this advice has been generic in nature and has not always taken into account the particular circumstances of the proposal.
- 3.4.35 However, we doubt there is a need for any significant change in the administrative arrangements, which have been shown to be capable of determining far more complex issues than those presented by the Thames Basin Heaths SPA. What is needed is further guidance on the degree to which flexibility may be applied in determining applications within the affected area. In section 8 of this report we have suggested a possible mechanism for introducing flexibility into the consideration of individual planning applications through the draft Delivery Plan, allowing site specific considerations to be taken into account, whilst at the same time retaining certainty regarding information requirements and outcomes which the draft Delivery Plan seeks to deliver. We have also suggested a framework for a methodology (Appendix G) that could form the basis for such guidance.
- 3.4.36 With regard to access management it has been related to us that there is not a mechanism to restrict or forbid public access to registered Common Land for ‘air and exercise’ on the grounds of nature conservation. Our limited investigations (described in section 10) concur with this. This places the SPA at risk of continuing damage if appropriate access management cannot be achieved by voluntary means.

Research

- 3.4.37 In a later section of this report we recommend further research that should be carried out in relation to the delivery of housing and protection of the Thames Basin Heaths SPA. This takes account of suggestions arising from the workshops.

3.5 Conclusions

3.5.1 Information gathering and consultation with stakeholders has been an important part of this project. Meetings were held with English Nature and RSPB to discuss evidence and to ensure access to key documents. The Planning Inspectorate provided relevant Appeal Decisions that we have reviewed and identified factors that Inspectors have considered to be material in those cases where they have determined that there would be no likely effect on the SPA.

3.5.2 Matters which the Home Builders' Federation (HBF)/Thames Valley New Housing Coalition (TVNHC) consider merit consideration were identified from the project brief for their review of the draft Delivery Plan.

3.5.3 Two stakeholder workshops were held to explore alternative ideas to the draft Delivery Plan. This was carried out within the context of the need for such solutions to be able to deliver future housing supply commitments and to comply with the EU Birds and Habitats Directives' requirements, and also to provide for continued recreational use of the heathlands. The ideas that emerged from the workshops as meriting further consideration have been grouped as follows:

Visitor management and control of dog walking

3.5.4 English Nature has commissioned work to produce Access Management Plans for the individual SSSIs that make up the Thames Basin Heaths SPA. We recommend that English Nature (Natural England) should ensure that the aspects of visitor and dog walking management identified in the workshops for this contract are considered in their study.

Public awareness and education

3.5.5 An effective programme to raise public awareness, of the importance and sensitivity of the heathlands and their breeding birds, and to explain the particular risks presented by dogs and cats to the breeding bird populations is necessary. An essential component of this is the provision of rangers to provide the contact point with visitors.

Identification, delivery and management of SANGS

3.5.6 There should be an integrated approach to the identification and delivery of SANGS across the SPA. Both workshops identified the need for a body to be nominated or established which would be responsible for the identification of SANGS and the acquisition of land to deliver it.

Release of sites for development in the short-term

- 3.5.7 Small developments taken individually would generally not be likely to have a significant effect on the SPA. It is only when considered in combination with the other housing proposed across the SPA consultation area that the potential for significant effects arises. It follows that a number of these small sites could be permitted without adverse effects on the integrity of the SPA. We suggest that an increase in population of 1% could be considered to be an appropriate precautionary threshold. This is likely to be well within the margins of error of any measures of recreational use of the SPA. We do not consider that an increase in recreational use of the SPA to this degree would be likely to have a significant effect.
- 3.5.8 This would allow for development sufficient for some 6,880 new residents. Assuming an average occupancy of 2.4, this would allow consent for some 2,870 units. Financial contributions toward the future costs of SANGS provision would be payable by the developers. This would only apply to small developments that individually would not be predicted to be likely to have a significant effect.
- 3.5.9 The extent to which new or recently improved open space has created some capacity for new development should also be considered. Such improvements may have created a ‘bank’ of mitigation that can be drawn on.

Development Zones

- 3.5.10 We consider flexibility in application of development zones in a later section of this report.

Heathland management and bird populations

- 3.5.11 In a later section of this report we review approaches to heathland habitat management. The workshops identified the need for a mechanism to enable developers to contribute to the funding of such management.

Features/type of residential development

- 3.5.12 We consider the extent to which there should be flexibility in applying the draft Delivery Plan standards due to the nature of the residential development in a later section of this report.

Legislative change, interpretation and administration

- 3.5.13 The difficulties that have arisen regarding housing delivery in the area around the SPA derive from the requirements of EC law. In a later section of this report we provide a summary of these legal requirements, and have considered the extent to which flexibility and alternatives processes such as that we have proposed would satisfy these requirements.

3.5.14 We doubt there is a need for any significant change in the administrative arrangements. What is needed is further guidance on the degree to which flexibility may be applied in determining applications within the affected area. In section 8 of this report we have suggested a possible mechanism for introducing flexibility into the consideration of individual planning applications through the draft Delivery Plan. We have also suggested a framework for a methodology (Appendix G) that could form the basis for such guidance.

Research

3.5.15 In a later section we recommend further research that should be carried out in relation to the delivery of housing and protection of the Thames Basin Heaths SPA.