



**Review of Evidence Underpinning the English Nature  
Thames Basin Heaths Delivery Plan  
Report to the Department for Communities and Local  
Government**

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### **Notice to Interested Parties**

To achieve the objectives stated in this report, we were required to base our conclusions on the best information available during the period of the study and within the limits prescribed by our client in the agreement.

### **Document Information**

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## CONTENTS

<b>0</b>	<b>EXECUTIVE SUMMARY .....</b>	<b>5</b>
<b>1</b>	<b>INTRODUCTION.....</b>	<b>10</b>
<b>2</b>	<b>THE ENGLISH NATURE DRAFT DELIVERY PLAN.....</b>	<b>13</b>
2.1	Overview .....	13
2.2	Land Mitigation .....	14
2.3	Site (Habitat) Management.....	14
2.4	Site (Visitor) Access Management.....	14
2.5	Stakeholder reactions to the draft Delivery Plan.....	15
2.6	Mini-plans.....	15
2.7	Other relevant work.....	15
<b>3</b>	<b>INFORMATION GATHERING AND CONSULTATION ON THIS PROJECT .....</b>	<b>17</b>
3.1	Introduction .....	17
3.2	Meetings with specific information holders .....	17
3.3	Evidence provided by other stakeholders .....	17
3.4	Stakeholder Workshops .....	19
3.5	Conclusions .....	26
<b>4</b>	<b>REVIEW OF ECOLOGICAL EVIDENCE UNDERPINNING THE DRAFT DELIVERY PLAN .....</b>	<b>29</b>
4.1	Introduction .....	29
4.2	English Nature’s evidence base .....	29
4.3	The conclusions of the review .....	30
	Overview.....	30
	Nightjar.....	30
	Woodlark.....	30
	Dartford Warbler .....	31
<b>5</b>	<b>REVIEW OF RECREATION EVIDENCE UNDERPINNING THE DRAFT DELIVERY PLAN .....</b>	<b>32</b>
5.1	Introduction .....	32
5.2	The draft Delivery Plan evidence base .....	32
5.3	Conclusions .....	33
<b>6</b>	<b>THE DRAFT DELIVERY PLAN MITIGATION ZONES.....</b>	<b>34</b>
6.1	Introduction .....	34
6.2	Are the proposed draft Delivery Plan Mitigation Zones Appropriate? ..	34

6.3	Conclusions .....	36
<b>7</b>	<b>THE DRAFT DELIVERY PLAN GREENSPACE STANDARDS .....</b>	<b>37</b>
7.1	Introduction .....	37
7.2	The draft Delivery Plan’s Mitigation Standards.....	37
7.3	Considering the Evidence .....	38
7.4	The efficacy of SANGS provision in drawing existing and new users away from specific sites.....	39
7.5	Conclusions .....	40
<b>8</b>	<b>OPTIONS FOR FLEXIBILITY IN THE DRAFT DELIVERY PLAN.....</b>	<b>41</b>
8.1	Introduction .....	41
8.2	Flexibility in applying the standards due to the nature of the SPA .....	41
8.3	Flexibility in applying the standards due to access restrictions on the SPA	43
8.4	Flexibility in applying the standards due to differences in accessibility	46
8.5	Flexibility in applying the standards due to the nature of the residential development .....	48
8.6	Flexibility in applying the standards due to the nature of the surrounding recreational resource .....	50
8.7	Consideration of individual planning applications. ....	50
8.8	An alternative mechanism.....	51
8.9	Conclusions .....	53
<b>9</b>	<b>REVIEW OF APPROACHES TO HEATHLAND HABITAT MANAGEMENT</b>	<b>56</b>
9.1	The origins and historic management of heathland .....	56
9.2	The need for vegetation management.....	56
9.3	Objectives for habitat management.....	57
9.4	The habitat needs of important heathland species .....	58
9.5	The management techniques available.....	59
9.6	How management options are affected by the presence of recreational access	61
9.7	Conclusions .....	63
<b>10</b>	<b>REVIEW OF APPROACHES TO HEATHLAND ACCESS MANAGEMENT.....</b>	<b>64</b>
10.1	Introduction.....	64
10.2	Management approaches .....	64
10.3	Management measures .....	65
10.4	Conclusions.....	69
<b>11</b>	<b>THE LEGAL REQUIREMENTS OF THE BIRDS AND HABITATS DIRECTIVES.....</b>	<b>70</b>
11.1	Introduction.....	70

11.2	Summary of the Legal Opinion .....	70
11.3	Key conclusions of the Legal Opinion .....	73
<b>12</b>	<b>CASE STUDIES OF DEVELOPMENTS IN OR ADJACENT TO SPA'S OR SAC'S .....</b>	<b>77</b>
12.1	Introduction.....	77
12.2	Approach .....	77
12.3	Results .....	77
12.4	The specific case of Belgium .....	79
12.5	Conclusion .....	80
<b>13</b>	<b>OTHER POSSIBLE APPROACHES.....</b>	<b>81</b>
13.1	Introduction.....	81
13.2	Prioritisation of alternatives .....	81
13.3	Assessment and identification of combinations.....	82
13.4	The recommended combination that is compliant with the Directives 84	
<b>14</b>	<b>OVERALL CONCLUSIONS .....</b>	<b>87</b>
14.1	Summary .....	87
14.2	Conclusions on the review of the ecological evidence base underpinning the draft Delivery Plan .....	87
14.3	Conclusions on the review of the recreation evidence base underpinning the draft Delivery Plan .....	88
14.4	Conclusion on the specific questions.....	89
14.5	The conclusion on the combination of measures that might be applied 92	
14.6	What does it mean for housing supply and SPA protection should the conclusions and recommendations of this review be accepted?.....	93
<b>15</b>	<b>RECOMMENDATIONS FOR FURTHER RESEARCH.....</b>	<b>95</b>
15.1	On the ecological issues .....	95
15.2	On visitor issues .....	96
15.3	Statement on priority.....	96
<b>16</b>	<b>RECOMMENDATIONS ON SPECIFIC ISSUES.....</b>	<b>97</b>
<b>17</b>	<b>REFERENCES .....</b>	<b>101</b>
<b>18</b>	<b>APPENDICES .....</b>	<b>107</b>
	Appendix A: Project Specification .....	108
	Appendix B: Project management and Steering Group.....	109
	Appendix C: The stakeholder workshops .....	110
	Appendix D: Review of ecological evidence underpinning the draft Delivery Plan.....	116
	Appendix E: Review of recreation evidence underpinning the draft Delivery Plan.....	132

Appendix F: The draft Delivery Plan mitigation zones .....	144
Appendix G: A Methodology for the Assessment of Site Specific Factors.....	149
Appendix H: Alternative approaches to that contained in the draft Delivery Plan.....	153
Appendix I: The publications and reports referred to in the draft Delivery Plan .....	176
Appendix J: Legal Opinion provided by Bond Pearce LLP .....	181

**TABLES**

<b>Table 7.1: Proportion of visitors who visit another site for the same purpose</b>	<b>39</b>
<b>Table 9.1: Indicators of habitat condition and management processes.....</b>	<b>57</b>
<b>Table 9.2: Heathland habitat needs of important heathland vertebrates .....</b>	<b>58</b>
<b>Table 9.3: The advantages and disadvantages of each management technique .....</b>	<b>59</b>
<b>Table 9.4: ‘Commons’ status of the component SSSIs.....</b>	<b>62</b>
<b>Table 10.1: Open access status of the component SSSIs .....</b>	<b>66</b>
<b>Table 12.1: Failure to transpose a Directive.....</b>	<b>78</b>
<b>Table 12.2: Failure to fulfil the objectives of a Directive .....</b>	<b>79</b>
<b>Table B.1: Project Steering Group membership.....</b>	<b>109</b>
<b>Table D.1: Publications and reports reviewed – draft Delivery Plan.....</b>	<b>128</b>
<b>Table D.2: Publications and reports reviewed – Appendix 6 .....</b>	<b>129</b>
<b>Table D.3: Publications and reports that were not reviewed .....</b>	<b>131</b>
<b>Table E.1: Summary of visitor travel distances .....</b>	<b>138</b>
<b>Table E.2: Distribution of travel distances .....</b>	<b>138</b>
<b>Table E.3: The proportion of dog walkers recorded on heathland sites.....</b>	<b>140</b>
<b>Table E.4: The proportion of dog walkers recorded in other studies .....</b>	<b>140</b>
<b>Table I.1: Documents and studies cited in the draft Delivery Plan .....</b>	<b>176</b>
<b>Table I.2: References listed in draft Delivery Plan Appendix 6 “A summary of the evidence base” .....</b>	<b>178</b>

**FIGURES**

<b>Figure 8.1: Potential zoning around the Pirbright Ranges closed Danger Area .....</b>	<b>45</b>
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## 0 EXECUTIVE SUMMARY

- 0.1.1 The Thames Basin Heaths SPA is classified under the Birds Directive on account of the presence of important populations of three Annex I species: Dartford Warbler, Nightjar and Woodlark. The SPA comprises land within 13 SSSIs in Surrey, Berkshire and Hampshire.
- 0.1.2 English Nature (now Natural England) has been consulting 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. Current housing projections within 5km of the SPA envisage construction of some 40,000 new homes. 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 with resultant disturbance of the Annex I bird species.
- 0.1.3 The Department for Communities and Local Government commissioned this review of English Nature’s draft Delivery Plan. Its primary objectives were:
- 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.
- 0.1.4 The review consisted of four main components:
- i. A review of the ecological evidence underpinning the draft Delivery plan.
  - ii. A review of the recreation evidence underpinning the draft Delivery Plan, including the derivation of the mitigation zones and greenspace standards.
  - iii. An examination of options for flexibility within the scope of the draft Delivery Plan.
  - iv. An exploration of other possible approaches that conform with the legal requirements of the Directives to protect the SPA and also of delivering housing supply.
- 0.1.5 The conclusions that were made upon the review of the evidence were:

### *Overall*

- 0.1.6 The draft Delivery Plan and the mini-plans that derive from it provide a Birds and Habitats Directive compliant mechanism for the consideration of residential development applications around the Thames Basin Heaths SPA.

- 0.1.7 The draft Delivery Plan does not have a robust evidence base. It is an evidence base that triggers concern about threats to the SPA. It is not an evidence base that would allow the precautionary principle to be dismissed.
- 0.1.8 The development of a more robust evidence base would, dependent on the specific studies, allow better prediction of impacts (and hence the scale of need for avoidance or mitigation measures) or a more flexible approach to be taken to specific types or location of residential development.
- 0.1.9 Until such evidence is produced, the draft Delivery Plan (and the mini-plans that derive from it) represents the available way forward. It is still open to developers and others to put forward alternative approaches but they will need to be supported by evidence and be capable of passing the stringent tests required by the Birds and Habitats Directives.

*On the ecological evidence base*

- 0.1.10 The primary conclusion is that the statistical robustness of the relationships between measures of access pressure and bird populations in the recent studies cited in the draft Delivery Plan are only weak. This in part arises inevitably from the nature of the studies and can only be resolved by repeating the studies to increase the sample size. Although weak, they are sufficient to trigger concern and mean that the application of the precautionary principle cannot be dismissed.
- 0.1.11 The modelling work on Woodlark is the only study to provide an indication of the scale of the relationship between a bird population and an increase in recreational access. Knowledge of the scale of the relationship is needed to be able to predict the significance of the effects of additional recreational access that would result from an increase in the residential population around the SPA. This sole study indicated that a very large increase in visitors was needed to produce a significant reduction in Woodlark population. It is not known if this would also apply to Nightjar and Dartford Warbler. This emphasises both the need to take a precautionary approach and the importance of further studies to build the evidence base.
- 0.1.12 There is not the weight of evidence of no significant effect from other studies (some provide contrary results, some supportive) to be able to dismiss the need to take a precautionary approach to the application of the evidence that indicates a negative impact of existing recreational access (or indirect measures of it such as proximity to housing) on Annex I birds.

*On the recreation evidence base*

- 0.1.13 The recent classification of the SPA and the relatively recent need to address such mitigation issues that derive from the Habitats Directive mean that English Nature has, through no fault of its own, not been able to prepare and propose secure and robust mitigation zones. Further research is required, specific to the SPA, in order to provide a more secure evidence base from which to derive such zones.

- 0.1.14 The zones have been derived from the limited data available but the precautionary principle has been applied with varying caution. The derivation of Zones A and C is considered reasonable and not overly restrictive. The boundary for Zone B may be too far from the SPA, this being dependent on how a threshold for the proportion of visitors travelling by foot and by car is applied. Further work is considered necessary to strengthen the evidence base for the outer edge of Zone B.
- 0.1.15 It is reasonable to use generic mitigation zones based on straight-line distances to 'flag' English Nature's concern with the LPA. However, in considering the potential effects of individual developments on the SPA, then the actual travel distance from the development site to the SPA should be considered by the LPA.
- 0.1.16 There is a lack of robust data from which to derive new standards for greenspace provision around the Thames Basin Heaths SPA. This arises from the recent classification of the SPA and the relatively recent need to address such mitigation issues that derive from the Habitats Directive. This paucity of the evidence severely inhibits any strong analysis or proposed alternatives.
- 0.1.17 It is not possible to test robustly the proposed 16 hectares and 8 hectares standards in the draft Delivery Plan.
- 0.1.18 The effectiveness of alternative open space in drawing new residents or existing visitors away from protected sites appears untested. Testing the effectiveness of SANGS will be an important issue for the draft Delivery Plan pilot phase.
- 0.1.19 What can be concluded from the information available however is that SANGS do have theoretical support, with evidence showing that visitors to open space are not strongly faithful to any one area.
- 0.1.20 The location of SANGS is critical, with distance clearly being a key influence in peoples' choice of open space to visit. To that extent, with the size of the open space never being the highest on some visitors' list of attributes, there is cause to consider the minimum area of land/SANGS required as mitigation is too high in some circumstances but further evidence is required to substantiate a revision.

*The combination of actions and measures*

- 0.1.21 It has not been possible to find a 'radically different' standalone alternative to the draft Delivery Plan and its local implementation through a mini-plan. This is because each alternative, considered alone, either fails some element of the Directives (particularly the decision taking steps of Article 6) or, lacking a robust evidence base, fails the precautionary principle.
- 0.1.22 There are a number of measures that if used in combination with the draft Delivery Plan, a mini-plan or the existing Habitats Regulations decision making steps in a case specific decision, would provide a package that is in compliance with the Birds and Habitats Directives and would aid the delivery of housing supply alongside the protection of the SPA.

- 0.1.23 The combination of actions and measures that should be taken in the short term are:
- i. Start to address visitor management over the coming bird breeding season, recognising that this is the start of a medium term process.
  - ii. Apply the options for flexibility in case specific circumstances, where it is possible to support it with an evidence base.
  - iii. Implement the mini-plan procedures where they have been agreed and encourage other LPAs to consider using this approach.
  - iv. Target the Thames Basin Heaths SPA for green infrastructure funds.
  - v. Develop and initiate a programme of studies to increase the evidence base on visitors, effectiveness of SANGS, defining a carrying capacity and the bird response to incremental increases in visitor pressure such that it delivers results in the medium term.
- 0.1.24 The ‘options for flexibility’ approach (ii above) requires the specific application to be supported by the additional evidence to justify the case specific circumstance. It also requires the application to be assessed by the LPA in the step-wise manner required by the Habitats Regulations. The result is that ‘flexibility’ places additional burdens on the developer, LPA and Natural England compared to an application with SANGS in accordance the draft Delivery Plan or a mini-plan.
- 0.1.25 The combination of actions and measures that should be taken in the medium to long term are:
- i. Test the effectiveness of visitor management (including the twin track approach of restrictions and alternative recreation areas for those ‘pushed off’ the SPA) and develop a better evidence base on potential mitigation and compensatory actions.
  - ii. Carry out a thorough, evidence based review of the implementation of the draft Delivery Plan and agreed mini-plans after a period of two to three years.
- 0.1.26 The above testing and review processes are intended to ensure that future decisions on residential development proposals are determined in a manner that is based on positive predictions of impact, or lack of it, on the integrity of the SPA. This is in contrast to the current position of having to be potentially over cautious due to the lack of knowledge resulting in the application of the precautionary principle.

*On the position of residential property developers should the conclusions of this review be accepted*

- 0.1.27 As a result of this review we consider that the options that are available to a developer considering a residential development application around the SPA that will be compliant with the Directives’ requirements are to:
- i. Include an offer of SANGS (or funding for it) in their application, following the guidance provided in the draft Delivery Plan or a “mini-plan” where

one has been agreed between the relevant LPA and English Nature/Natural England.

- ii. Make a detailed case that their development proposal is of such a specific nature and location that, when applying the maximum flexibility indicated by English Nature/Natural England and the case specific factors identified in this review, there is evidence to conclude with certainty that the development will have no impact on the SPA. This will require the production of such evidence. As there is certainty that it has no impact then the in-combination test will not need to be applied in this case (in the same way that it does not have to be applied for an application that results in no impact because of the provision of SANGS).
- iii. Make a detailed case that their development proposal is of such a specific nature and location and that it has been assessed with sufficient scientific rigour that it can be predicted with confidence that the impact on the SPA results in no effect on the size of the Annex I bird population, their distribution or breeding productivity. They will need to include with their application sufficient information and evidence to enable a LPA to carry out an appropriate assessment. The rigour of the assessment would need to be sufficient to ensure that the precautionary principle would not need to be applied. It is currently not clear how such a rigorously assessed proposal would be treated when the in-combination test is applied.
- iv. Delay their application, wait for the studies to be completed that will reduce the degree of scientific uncertainty over recreational impacts and wait for the revision to the draft Delivery Plan (or “mini-plan” where relevant). Then make their application in the knowledge that the precautionary principle will not need to be applied and that they will have the potential impact of their proposal assessed against an evidence based method to predict the significance of impact. It is currently not clear how such a rigorously assessed proposal would be treated in the future when the in-combination test is applied. It is assumed that the South East Plan and relevant LDFs would have undergone an appropriate assessment and a mechanism would have been developed to address in-combination effects.

0.1.28 Of these options, (i) is available now. This is both in principle through the draft Delivery Plan and, in some local authority areas with mini-plans, is currently leading to the approval of residential development applications. Options (ii) and (iii) are available now through the case-by-case route. They will be onerous in terms of the provision of a case specific evidence base and likely to be slow in leading to a decision. These options do not appear very cost effective in comparison with option (i).

0.1.29 There is also the option open to a developer to put forward their application in a form and manner, with mitigation offered, based on their judgement and any professional advisers that they use. They would then await the response from the LPA and Natural England with the intent, should their application be refused, of seeking to test the decision through appeal, and if appropriate, judicial review.