

**THAMES BASIN HEATHS  
JOINT STRATEGIC PARTNERSHIP BOARD**

Date: 3 June 2008

Subject: **Items for Information**

1. **Update on Local Authority Strategy Status**
2. **Update on SANG Provision and Capacity**
3. **Update on Recent Appeal Decisions**

Report of: See individual items

**Recommendation:**

It is recommended that the Committee note the contents of this report.

---

**I. Update on Local Authority Strategy Status**

- I.1 Interim strategies (miniplans) or supplementary planning documents (SPDs) allowing for the provision of SANG are proven to be unlocking housing delivery in those authorities which have adopted such strategies. **Table I** summarises the policies and strategies currently in place across the affected local authorities and proposals for their review / adoption.

**Table I**

<b>Authority</b>	<b>Avoidance strategy in place? (Y/N)</b>	<b>Est. date of strategy review or adoption</b>	<b>Notes</b>
Bracknell Forest BC	Yes	Feb-09	
Elmbridge BC	Yes	Unknown at this stage	Review of Interim Strategy held in abeyance until visitor survey completed, and for outcome of Delivery Framework.
Guildford BC	Yes		
Hart DC	No		
RBWM	No	2009/10	
Runnymede BC	Yes		
Rushmoor BC	Yes	2009	
Surrey Heath BC	No		
Waverley BC	Yes	Unknown at this stage	

Woking BC	Yes	2011	May be updated when further info available about new SANG and outcome of Delivery Framework
Wokingham BC	No	Sep-08	

1.2 Consistent, across-the-board, delivery of the key principles set out in the Delivery Framework - and collection of strategic developer contributions - will require existing miniplans, interim strategies or SPDs to be updated and new strategies to be put in place where none currently exist. Progress towards achieving this will be regularly reported to the Board.

## 2. Update on SANG Provision and Capacity

2.1 As set out in (1) above, some authorities have adopted interim strategies or SPD that identify SANG provision for either the short or longer term respectively. Other authorities do not yet have identified SANG.

2.2 A key aspect of monitoring SANG provision is to enable an overview of:

- The number of developments that have been permitted on the basis of a SANG being present.
- The remaining capacity of that SANG to act as an avoidance measure for future development.

2.3 In the future it is anticipated that this SANG 'accounting' be one aspect of the wider monitoring strategy. However in the interim, **Annex I** - which has been pulled together on the basis of information provided by local authority officers, sets out the information currently available.

2.4 It should be noted that:

- For those authorities that partially fall within the 5km zone, it has not always been possible to estimate the proportion of the draft South East Plan housing allocation that may be delivered within the 5km zone. The column 'Estimated years SANG supply' therefore assumes that all the allocation is delivered within the 5km zone, which may be unlikely.
- In some authorities, larger sites will provide their own SANG, and will contribute significantly to the delivery of the authority's housing allocation, however this SANG has sometimes not yet been formally allocated. Therefore, again, the 'Estimated years SANG supply' may be artificially low. Particular examples include Bracknell Forest and Wokingham.

It is hoped that these data issues can be overcome in future reporting.

- 2.5 The picture varies considerably across authorities. What is clear is that there is a need to keep remaining SANG capacity under close review to ensure that SANG continues to be available in advance of housing occupation.

### **3. Update on Recent Appeal Decisions**

- 3.1 The Board member sub-group have recommended that the Board retains an overview of recent appeal decisions. In the past the views of Planning Inspectors on matters relating to the Thames Basin Heaths has varied. These regular updates will help highlight any continuing variations in approach.
- 3.2 **Annex 2** therefore sets out a summary of any recent appeal decisions (since February 2008). Prior to this date, consultants working for Natural England have prepared a summary of appeal decisions between March 2007 and February 2008. Please contact Kristoffer Hewitt at Natural England for more information.
- 3.3 High Court Challenge at Dilly Lane, Hartley Wintney, Hampshire.

#### Background

- 3.3.1 Developers (Luckmore Homes Limited and Barrett Homes Southern Ltd) applied for outline and then detailed planning permission to construct 170 houses in a greenfield site off Dilly Lane, Hartley Wintney, and to undertake associated works in the form of improvements to a footpath and the creation of recreational green spaces known as “suitable alternative natural green spaces” (SANGs).
- 3.3.2 The site in question lies approximately 1.5km from the edge of Hazeley Heath SSSI, which forms part of the SPA. It was proposed that the SANGs would avoid any net effect of an increased local population on the SPA by providing alternative recreational space for new residents and existing residents.
- 3.3.3 The procedural history of the case was complex. There were four relevant planning applications for the development, which had either been refused by the Hart District Council or not determined within the requisite time. The Second and Third Defendants accordingly appealed to the Secretary of State under s 78 Town and Country Planning Act 1990 against the refusals and deemed refusals. An inquiry was held in December 2006, and in January 2007 the Inspector recommended that the appeals be dismissed. The Secretary of State eventually rejected the Inspector’s recommendation and allowed the appeals in July 2007. That decision was the subject of the present proceedings.

#### The Grounds of Challenge

- 3.3.4 The Hart District Council alleged that the Secretary of State had erred in law by failing to separate the need for an Appropriate Assessment under Conservation (Natural Habitats etc) Regulations 1994 (SI 271/1994) from the mitigation provided and in consequence erroneously concluded that an Appropriate Assessment was unnecessary.

It was further claimed that the Secretary of State had erred in departing from the Inspector's conclusion that there were likely to be significant effects on the SPA<sup>1</sup>.

### Sullivan J.'s Decision

#### 3.3.5 Sullivan J. held:

- There is no absolute legal rule that mitigation measures should be disregarded in assessing the question of whether the project was likely to have significant effects on the SPA.
- If certain features are incorporated into a project, there were no sensible reasons why they should be ignored at the initial assessment stage merely because they are directed at combating the likely effects of the project on the SPA.
- The competent authority is required to assess the "project", not part of the project shorn of mitigation measures incorporated into it.
- There was nothing in the European Court of Justice's judgment in *Landelijke Vereniging tot Behoud van de Waddenzee, Nederlandse Vereniging tot Bescherming van Vogels vs. Staatssecretaris Van Landbouw, Natuurbeheer en Visserij* (Case C-127/02) [2004] Env LR 14 to undermine those conclusions, because the project or plan before the ECJ did not propose any mitigation measures.
- Anything requiring the proponent of a project to consider mitigation measures at an early stage should be encouraged.
- The similarity drawn between the Habitats Directive and the EIA Directive by the ECJ in *Waddenzee* applied in this case. In *R (Catt) vs. Brighton and Hove CC* [2007] Env LR 32 the Court of Appeal had held that mitigation measures incorporated into a project should not be disregarded at the screening stage.
- The underlying principle, as with the EIA directive, is that the Habitats Directive is an aid to effective environmental decision-making.
- The Secretary of State was entitled to depart from her Inspector. The Inspector's "serious doubts" about the proponent's scientific evidence did not mean that the Secretary of State was obliged to accept those doubts or that she could only exclude them on the basis of further objective evidence.

A transcript of the judgment is not yet available.

### Contact:

Cath Rose, Regional Planner  
South East England Regional Assembly  
Tel: 01483 555235 Email: [catherinerose@southeast-ra.gov.uk](mailto:catherinerose@southeast-ra.gov.uk)

---

<sup>1</sup> There were other grounds of challenge not relating to the SPA which also were unsuccessful.

## SANG Provision and Capacity

SANG identified			SANG allocated				Overall provision		Notes
Name of SANG site	Total discounted SANG area (ha)	Total SANG capacity (dw)	Dwellings allocated to SANG to date* (dw)	Amount of SANG allocated (ha)	Remaining unallocated SANG area (ha)	Remaining unallocated capacity (dw)	Draft SE Plan allocation (dpa)	Est years SANG supply	
<b>Bracknell Forest Borough Council</b>									
Longhill Park	9	325	136	3.8	5.2	189			BFBC currently implements a 12ha per 1000 new resident SANG standard, all calculations are based on this standard. SANG capacity is allocated on receipt of pre-app or application, and should the application be refused, is not relinquished until 6 months after the decision. This means that we have a lot of allocated SANG land, which is not shown here, as this shows those only allocations with planning permission. BFBC strategy provides for a number of large sites to come forward with bespoke SANGS - these total 5275 dwellings.
Horseshoe Lake	8.76	316	31	0.87	7.89	285			
Englemere Pond	26.4	952	200	5.6	20.8	752			
The Cut Cluster	12	432	0	0	12	432			
Shepherd Meadows	27	974	0	0	27	974			
Silver Jubilee Field	2.4	86	0	0	2.4	86			
South Hill Park	12.6	454	0	0	12.6	454			
Ambarrow Court/Hill	10.8	389	0	0	10.8	389			
<b>Total</b>	<b>109.0</b>	<b>3928</b>	<b>367</b>	<b>10.3</b>	<b>98.7</b>	<b>3561</b>	<b>539</b>	<b>6.6</b>	
<b>Elmbridge Borough Council</b>									
Brooklands Community Park	22	2100	127^	2.5	39.5	1973			^ net dwellings permitted July 06-Mar 08
Esher Common	20								
<b>Total</b>	<b>42</b>	<b>2100</b>	<b>127</b>	<b>2.5</b>	<b>39.5</b>	<b>1973</b>	<b>56^^</b>	<b>35</b>	^^ allocation within 5km zone, not whole district

Guildford Borough Council**									
Riverside	14.7			14.0	0.7				
Effingham	34			0.1	33.9				
Lakeside	3.6			2.1	1.5				
Chantry	38			7.4	30.6				
<b>Total</b>	<b>90.3</b>			<b>23.6</b>	<b>66.7</b>			<b>322</b>	

Hart Borough Council**									
<b>Total</b>								<b>200</b>	

Royal Borough of Windsor and Maidenhead									
None									
<b>Total</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>		<b>281</b>	<b>0.0</b>

Runnymede Borough Council **									
<b>Total</b>								<b>146</b>	

Rushmoor Borough Council									
Southwood Woodlands	33	1693	1693	33	0	0			
Tongham Pools	9.42	471	0	0	9.42	471			
Aldershot Urban Extension (AUE)	86.4	4578	4578	86.4	0	0			AUE is self-mitigating
<b>Total</b>	<b>128.8</b>	<b>6742</b>	<b>6271</b>	<b>119.4</b>	<b>9.4</b>	<b>471</b>	<b>310^</b>	<b>1.5</b>	^310pa includes AUE

Surrey Heath Borough Council									
None									
<b>Total</b>	<b>0</b>	<b>0.0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0.0</b>		<b>187</b>	<b>0.0</b>

Waverley Borough Council									
Farnham Park	10.9	567	467	9	1.9	100			
<b>Total</b>	<b>10.9</b>	<b>567</b>	<b>467</b>	<b>9</b>	<b>1.9</b>	<b>100</b>	<b>230</b>	<b>0.4</b>	

Woking Borough Council									
Brookwood Country Park	20	1037	430	8.3	11.7	607			Includes 134 dwellings from Moor Lane PFI site which is likely to provide own SANGS.
White Rose Lane	8.2	425	375	7.22	0.98	50			Includes 98 dwellings from Moor Lane site which is likely to provide own SANGS.
Horsell Common (non-SPA site)	28	1452	1105	21.31	6.69	347			Includes 215 dwellings from Moor Lane site which is likely to provide own SANGS.
Martins Press	12	622	88	1.7	10.3	534			Reserved Matters application for 88 dwellings permitted 20/03/2008. Will provide additional 12 ha of SANGS. Martins Press SANGS site is not yet part of Interim Strategy.
<b>Total</b>	<b>68.2</b>	<b>3537.3</b>	<b>1998</b>	<b>38.5</b>	<b>29.7</b>	<b>1539.3</b>	<b>242</b>	<b>6.4</b>	

Wokingham Borough Council									
Keephatch Woods, Wokingham extension	3.19	156	150	3.19	0	0			Associated with application F/2007/2517
Simons Wood, Wellingtonia Ave, Crowthorne	20	980	0	20	20	980			Awaiting confirmation from National Trust that site will be available
<b>Total</b>	<b>23.2</b>	<b>1136</b>	<b>150</b>	<b>23.2</b>	<b>20</b>	<b>980</b>	<b>523</b>	<b>1.9</b>	Wokingham Core Strategy will provide for a number of large sites to come forward with their own SANG, which are not included here.

\* Permissions \*\* Full data not available at time of writing

## Recent Appeal Decisions

PINS Ref	Site Address	Proposal	Decision	Summary of Inspectors Views
<b>Bracknell Forest Borough Council</b>				
None				

<b>Elmbridge Borough Council</b>				
APP/K3605/A/07/2057933	55-57 Hanger Hill, Weybridge	Detached building comprising of four 3 storey dwellings with rooms in roofspace, detached garage block and associated parking and new vehicular access from Pine Grove following demolition of existing dwellings	Allowed	Considers the proposal would introduce more residents into the area, leading to potential use and adverse impact on TBHSPA, which could be avoided by improvement of SANGS, achieved by financial contribution in accordance with Council's Interim Mitigation Strategy. Considers the financial contribution made by the appellant would mitigate the potential harm to conservatin objectives of TBHSPA.
APP/K3605/A/07/2054213	133 Queens Road, Weybridge	Construction of 28 apartments of sheltered accommodation in a part five, part four, part three and part two floor block with rooms in the roof space, communal facilities and associated parking.	Dismissed	Applicant had completed a S106 Unilateral Undertaking to pay, inter alia, a contribution to SANGS; and ensure that no cat or dog was kept as a pet in any part of the development. Need for the SANGS contribution, sought by the Council following a change in circumstances subsequent to their determining the application, challenged by appellant. Not originally a reason for refusal as site more than 5.2km travel distance. NE Draft ISDP (25-10-07) proposed return to 5km linear distance, which informed previous Inspector decision that SANG contribution was justified. Inspector gave little weight to ISDP (Consultaion Draft), and did not consider proposal would have significant effect on SPA (age of residents, no cats/dogs policy, low ratio of car parking spaces.) If appeal were to be allowed, would not require payment of SANGS contribution.

APP/K3605/A/07/2056977	Arawa, Cavendish Road, Weybridge	Three storey detached building comprising seven dwellings with basement level parking following demolition of existing house (Outline application with layout, scale, appearance and access being applied for)	Dismissed	Appellant declined to offer SANGS contribution since the Council did not include such a reason for refusal when determining a later application on the same site (see below). Considered it unsatisfactory for Council to adopt two different approaches, but matter not pursued as proposal unacceptable for other reasons.
APP/K3605/A/07/2056978	Arawa, Cavendish Road, Weybridge	Four storey detached building with basement car park comprising seven flats (Outline application with Layout, Appearance, Scale and Access being applied for)	Dismissed	Not given as reason for refusal as site lies outside the 5.2km travel distance defined by NE, but with return to 5km linear distance (NE Draft ISDP 25-10-07) Inspector asked to undertake appropriate assessment. Considered it unsatisfactory for Council to adopt two different approaches, but matter not pursued as proposal unacceptable for other reasons.
APP/K3605/A/07/2060785	39-43 D'Abernon Drive, Cobham	Five detached two storey dwellings with integral garages and new estate road with access from D'Abernon Drive following the demolition of existing house	Dismissed	Applicant had completed a S106 Unilateral Undertaking to pay a contribution to SANGS. Inspector considered that as this Undertaking only binds the appellant, who does not own the land, the three land owners could sell with the benefit of planning permission to a developer who would not be bound by the terms of the Undertaking. As such there would be no mitigation for the harmful effects of the proposal on the SPA, and the nature conservation objectives would be harmed.
APP/K3605/A/07/2063442	20 Stoke Road, Cobham	Two storey building with rooms in the roof space containing 9 two bedroom apartments following demolition of existing house	Dismissed	Appellant has not provided a S106 Unilateral Undertaking to pay a contribution to SANGS, as not the landowner, but would be willing to be bound by a negative condition to defer development until S106 agreement executed. But appeal failed in face of legal objection that planning conditions cannot be used to require the payment of money.

**Guildford Borough Council\*\***

**Hart District Council\*\***

Royal Borough of Windsor and Maidenhead				
APP/T0355/A/05/1189817	Land adj 142, Chobham Road, Sunningdale, Ascot. SL5 0HU	Outline application for residential dwellings	Dismissed	The site was within 15metres of the SPA - the Inspector concluded that there would, in his opinion, be an incombination effect on the SPA as a result of the development. He ruled out a legal agreement on keeping dogs and cats as being unenforceable and would not prevent owners walking on the SPA itself anyway. Because of the proximity of the site to the SPA (15 metres) this could not effectively be mitigated against.

Runnymede Borough Council**
-----------------------------

Rushmoor Borough Council				
None				

Surrey Heath Borough Council				
APP/D3640/A/08/2061422	Hoskins Place, Watchetts Road, Camberley, GU15 2PB	Outline application for a part 3 storey/ part 2 storey block of 35 one and two bed sheltered apartments	Allowed	The appellant had offered a unilateral agreement prohibiting the keeping of dogs. The Inspector concluded that the unilateral agreement would prevent adverse effect to the SPA provided a resident warden is employed to oversee activities in the building. However, neither the UA nor the Inspectors actual consent specify the provision of the resident warden. The decision was referred to NE on 22nd April by Surrey Heath.

Waverley Borough Council				
APP/R3650/A/07/2051044/NWF	Land at Waverley House, 54 Waverley Lane, Farnham	Erection of a building to provide 15 apartments following demolition of existing dwelling together with associated works	Allowed	n/a
APP/R3650/A/07/2055287/NWF	Land at Waverley House, 54 Waverley Lane, Farnham	Erection of a building to provide 13 apartments, together with associated works, following demolition of existing dwelling	Allowed	n/a

APP/R3650/A/07/2056390/NWF	Land at 6A-8 Wrecclesham Road, Farnham	Outline application for a mixed use scheme comprising 45 new dwellings and a 41 bed nursing home together with associated parking and landscaping.	Allowed	n/a
----------------------------	--	--	---------	-----

#### Woking Borough Council

None				
------	--	--	--	--

#### Wokingham Borough Council

2005139	6 Langborough Rd, Wokingham	Erect 12 flats	Dismissed	No reason why NE preferred linear distance, when site was more than 5.2km (travel). Site only 30m within 5km (linear). Not convinced site within 5km of SPA & therefore no in combination effect.
2058557	316 Finchampstead Rd, Wokingham	Demolish house & erect 3 detached dwellings	Allowed	NE switched back from travel to linear distance and therefore SPA was an issue. However, other open spaces closer to site than SPA and therefore more likely to be visited. Consequently, no significant likely effect from scheme

\*\* Data not available at time of writing