

**THAMES BASIN HEATHS
JOINT STRATEGIC PARTNERSHIP BOARD**

Date: 12 February 2009

Subject: Delivery Framework – update

Report of: Regional Assembly

Recommendation:

It is recommended:

- i. that the Board agrees the Delivery Framework in Annex I as a recommendation to local authorities, and
- ii. that Board members encourage their local authorities to use the Framework to guide the production or revision of mini-plans or SPD without delay to ensure continued progress towards implementation of a comprehensive set of measures to protect the SPA.

Purpose of the Report:

To provide additional information about the status of the Delivery Framework and propose an amended Framework in the light of comments raised at the last Board meeting.

1. Introduction

- 1.1 Following the legal opinion sought by the Board a revised version of the Delivery Framework was considered by members at the Board meeting in October.
- 1.2 Members made a number of detailed comments in relation to the wording of the Framework. They agreed that the item should be deferred until the next meeting to take account of detailed rewording issues and provide further information in relation to the issue of the status of the Delivery Framework and the need for appropriate assessment.
- 1.3 The Delivery Framework has been amended to take account of detailed rewording issues requested by the Board and agreed by officers. It is included in **Annex I**.

2. Status of the Delivery Framework and the need for an appropriate assessment

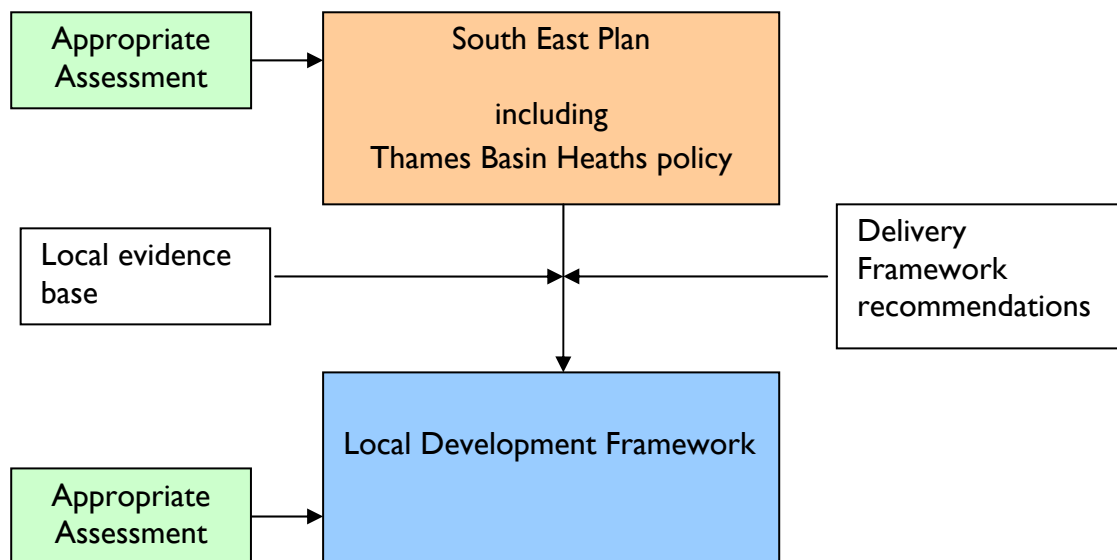
Status

- 2.1 The status of the Board is such that it can only make non-binding recommendations to local authorities about preferred courses of action. The status of the Delivery Framework is therefore limited to being a recommendation to local authorities as to avoidance and mitigation measures that should be provided.
- 2.2 Under these arrangements, local authorities retain the responsibility to develop their own local policy in relation to the provision of avoidance and mitigation measures – within the strategic policy framework set by the South East Plan, and taking into account the Board’s recommendations alongside local evidence and testing.

Appropriate assessment

- 2.3 The Delivery Framework has not, to date, been subject to an appropriate assessment (AA). As a recommendation from the Board to local authorities - - rather than a specific plan or project - it is not a legal requirement to undertake an AA on the Framework.
- 2.4 It should be noted that the South East Plan (which will include a specific policy on the Thames Basin Heaths) will be subject to an AA. This policy will set the strategic framework within which Local Development Framework policies will sit, and within which the Delivery Framework fits and provides recommendations. LDF documents will also require AA (see **diagram I**).

Diagram I



- 2.5 Given the fact the Delivery Framework - and the avoidance and mitigation measures it recommends - have not been subject to AA, when local authorities produce SPD/DPDs that include the provisions of the Delivery Framework (or other avoidance/mitigation measures) these will need to undergo an AA. The Delivery Framework now makes this clear in para 1.3. The key principles within the South East Plan policy (which reflect the Delivery Framework approach) will have undergone AA already.
- 2.6 Following discussions at the Board in October, the RSPB provided officers with their views about the implications of undertaking an AA on the Delivery Framework versus not undertaking one, in the light of legal advice they have sought. A summary of the RSPB legal advice is provided in Box 1. The officer steering group has considered these views, along with the question of whether an appropriate assessment of the Delivery Framework should be undertaken, and what undertaking an AA would mean for the status of the Framework.

Box 1 – Summary of legal advice commissioned by the RSPB

Based on its recent legal advice the RSPB suggested that to the Officer Steering group that two options exist:

Option 1 - The Board endorses the Delivery Framework without an appropriate assessment as a guidance paper of limited status which defers the detailed setting and assessment of avoidance/mitigation measures to the local level. As currently drafted, the Delivery Framework comprises a document of limited status and weight, which the RSPB's legal advice considers would not 'pass' an appropriate assessment, in particular because:

- It lacks precision about the approach to be taken for to very small and very large housing developments and
- It only sets out core elements which may (rather than will) be included in local planning documents.

The implication of this option (ie not undertaking an AA on the Delivery Framework) is that the responsibility of assessing the compliance of the Delivery Framework avoidance and mitigation measures (or local modifications to these) - and the evidence base for the measures proposed - falls to the individual local authority taking the Delivery Framework recommendations forward.

Option 2 - The Board seeks to agree a 'higher status' Delivery Framework which sets out more precise avoidance/mitigation measures capable of 'passing' an AA

In order to 'pass' an appropriate assessment, the RSPB considers that a number of relatively small changes would need to be made to the Delivery Framework, in particular:

- The wording would need to be more precise regarding the core avoidance/mitigation measures that will be brought forward unless a strong case exists for alternative approaches (which will need to be agreed with NE and subject to appropriate assessment).
- Other areas may also need to be strengthened including the definition of 'perpetuity', the SANGS quality guidelines and references to the application of the avoidance/mitigation standards to larger schemes.

However, scope for local authorities to make amendments to the core standards within the Framework would still be retained where a strong case exists for alternative approaches (subject to agreement by NE and appropriate assessment of these alternative approaches).

A strategic-level appropriate assessment of the Delivery Framework would remove the burden upon each local authority of having to assess the full evidence base and the avoidance/mitigation standards, and also avoid further serious potential difficulties with the 'in-combination' effects assessment at LDF level. Local authorities would still need to carry out a Habitats Regulations Assessment of their housing numbers and the specific LDF-measures to implement the avoidance/mitigation standards (eg availability and delivery of SANG), however this would be a greatly simplified and streamlined process.

3. Conclusions and recommendation

- 3.1 In the light of discussions at the officer steering group and subsequently with the member steering group the following points are commended to the Board:
- i. A considerable amount of time has been spent developing a Delivery Framework that local authorities are broadly in agreement with.
 - ii. The Delivery Framework represents a positive step towards a consistent approach to the provision of avoidance/mitigation measures across those authorities in the vicinity of the SPA, whilst importantly allowing for flexibility at a local level to take account of exceptional circumstances where these are supported by robust local evidence.
 - iii. The South East Plan, when adopted, will provide a clear strategic policy framework in relation to the Thames Basin Heaths. It is accepted by local planning authorities that - in taking forward policies in relation to the provision of avoidance/mitigation measures in the vicinity of the SPA - policy documents will need to be fully assessed under the Habitats Regulations. The Delivery Framework, although it has limited weight, can help guide a consistent approach to policy making across the affected area. It will not - on its own - be able to be used for development control purposes.
 - iv. It is important that the Board and its constituent local authorities acknowledge the importance of moving forward to focus on the key delivery and implementation issues that will ensure, ultimately, the protection of the SPA. Local authorities should seek to adopt up-to-date guidance/strategies without delay to ensure that progress towards implementing a comprehensive package of avoidance/mitigation measures across the SPA and surrounding area is maintained.
- 3.2 It is recommended:
- that the Board agrees the Delivery Framework in **Annex I** as a recommendation to local authorities, and
 - that Board members encourage their local authorities to use the Framework to guide the production or revision of mini-plans or SPD without delay to ensure continued progress towards implementation of a comprehensive set of measures to protect the SPA.

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Thames Basin Heaths Delivery Framework

Draft for consideration by the TBH Joint Strategic Partnership Board, February 2009

1. Aim

- 1.1 The aim of this Delivery Framework is to set out the Thames Basin Heaths Joint Strategic Partnership Board's recommendations to local authorities within the vicinity of the Special Protection Area (SPA) of measures that can enable the delivery of housing in the vicinity of the SPA without that development having a significant effect on the SPA as a whole. It focuses on avoiding the impact of recreation and urbanisation on the SPA habitat and interest features.
- 1.2 Local authorities should refer to this delivery framework in the preparation of local or joint mini-plans, development plan documents (DPDs) and/or supplementary planning documents (SPDs); and should ensure that appropriate references are made to the provision of SPA impact avoidance measures in their Local Development Framework (LDF) and supporting implementation documents in line with policy within the South East Plan.
- 1.3 Adopting the framework approach into SPD/DPD does not negate the need to undertake a Habitats Regulations Assessment on that document and in developing planning documents which relate to the SPA, local authorities should satisfy themselves as to whether the document requires a Habitats Regulations Assessment or should be subject to Strategic Environmental Assessment.

2. Objectives

- 2.1 The objectives of the Delivery Framework are:
 - i. To recommend a consistent approach to the protection of the SPA from the impacts of residential development.
 - ii. To recommend the type and extent of residential development that may have a significant impact alone or in combination on the SPA.
 - iii. To recommend key criteria for the delivery of avoidance measures.
- 2.2 The Delivery Framework will be accompanied by a programme of actions for the local and collective delivery and implementation of avoidance measures and a clear strategy for monitoring the SPA.

3. Key Principles

- 3.1 The following key principles summarise the overarching context for the recommendations within this Delivery Framework.

- 3.1.1 All net new residential development - when considered either alone or in combination with other plans and projects - is likely to have a significant effect on the SPA and should therefore provide or contribute to the provision of avoidance measures.
- 3.1.2 Development can provide - or make a contribution to the provision of - measures to ensure that they have no likely significant impact on the SPA. In doing so, residential development will not have to undergo an appropriate assessment.¹ The option remains for developers to undertake a habitats regulations screening assessment and where necessary a full appropriate assessment to demonstrate that a proposal will not adversely affect the integrity of the SPA.
- 3.1.3 A three prong approach to avoiding likely significant impact on the SPA is appropriate², however this framework focuses on the two prongs of SANG (suitable alternative natural greenspace) and Access Management, which the Board considers are the most appropriate forms of avoidance in the immediate term.³
- 3.1.4 This framework sets out the Board's recommended approach to the provision of avoidance measures. Its key objective is to recommend consistent standards for the application and provision of avoidance measures. However, as a strategic document it cannot address every foreseeable circumstance. It is acknowledged that there may be some exceptional circumstances where local authorities consider that a more or less prescriptive approach needs to be taken, or greater local specificity is needed, in the light of local circumstances or evidence base, or the detail of the proposed new residential development⁴. Such circumstances should be carefully justified.
- 3.1.5 It should be noted that the Joint Strategic Partnership Board has no formal control on the planning decisions which are to be made in respect of the Thames Basin nor does it set any formal planning policy. However, the Board will retain an overview of local authority mini-plans, SPDs and DPDs, and will seek to ensure that a consistent approach is being applied and sufficient avoidance measures are being provided.

4. What development is covered?

¹ This principle has been established through the High Court Judgement of J Sullivan in Hart DC v SoS for Communities and Local Government [2008].

² That is, focusing on (i) provision of suitable alternative natural greenspace (SANG), (ii) access management; and (iii) habitat management)

³ In the longer term, habitat management may be taken to be an avoidance measure; however, the focus in the short term must be improving the quality of the SPA to favourable condition status. This is a duty of SPA landowners which falls outside the development control system.

⁴ For example, if it can be demonstrated that small scale social housing developments will cater for housing need existing within the zone of influence and will not directly or indirectly lead to an increase in population in the zone of influence.

- 4.1 This section describes the location, type and scale of development to which it is recommended the Delivery Framework be applied.

Location

- 4.2 The avoidance measures recommended in the Delivery Framework should be applied within a 'Zone of Influence'-defined as the area from 400m from the perimeter of the SPA (measured as the crow flies to nearest part of the curtilage of the dwelling) to 5km from the perimeter of the SPA, (measured as the crow flies from the primary point of access to the curtilage of the dwelling).⁵
- 4.3 In exceptional circumstances it may be appropriate for local authorities to modify the extent of this zone to take account of physical obstructions to cat, or human movement or access.
- 4.4 Applications for large scale development proposals beyond the zone of influence should be assessed on an individual basis. Where appropriate a full appropriate assessment may be required to ascertain whether the proposal could have a significant impact on the SPA.⁶
- 4.5 Within 400m of the SPA (measured as the crow flies from the SPA perimeter to the point of access on the curtilage of the dwellings) the impact of net new residential development on the SPA is likely to be such that it is not possible to conclude no likely significant effect on the SPA. There should therefore be a presumption against development within this zone – an AA will be needed to demonstrate that any development will not have an adverse effect on the SPA and/or the acceptability of any avoidance measures provided⁷. In exceptional circumstances the 400m distance may be modified by local authorities to take account of physical obstructions to cat movement and human access.

Type of development covered

- 4.6 The avoidance measures recommended in the Delivery Framework should be sought in relation to the following types of development:

⁵ The South East Plan Technical Assessor ('the Assessor') recommended that a zone of influence should be defined on the basis of travel distance. A travel distance approach was trialled by LAs, however this approach led to increased confusion and uncertainty. The Board therefore recommends that in the interests of certainty and clarity the Zone of Influence of the Delivery Framework approach to provision of avoidance measures is based on a 5km linear distance.

⁶ This is in line with the general requirements of the Habitats Regulations and reflects the approach proposed by the Assessor, who recommended that between 5 and 7km from the edge of the SPA residential developments of over 50 houses should be assessed and may be required to provide appropriate mitigation. It is recommended that such cases be considered on a case by case basis.

⁷ The Assessor recommended the retention of a 400m zone in which no development should be allowed unless it could be demonstrated that it would not lead to further recreational use of the SPA or have any other significant effect on its integrity.

- i) Proposals for 1 or more net new dwelling unit falling within Use Class C3 (residential development).⁸
- ii) Proposals for 1 or more net new units of staff residential accommodation falling within Use Class C1 and C2.⁹

except large residential development proposals which, due to their scale and potential impact and ability to offer their own alternative avoidance measures, should be considered by local authorities on a case-by-case basis. The numerical definition of 'large development proposals', and the ability of large schemes to provide their own avoidance measures, will vary depending on the particular locality of the proposals.

- 4.7 Small-scale residential developments - whilst unlikely to have an individual impact on the SPA - are likely to have an effect on the SPA in combination with other residential developments, therefore should provide a contribution towards the provision of avoidance measures.
- 4.8 The recommendations within this Delivery Framework apply only to net new residential development. It is considered that replacement dwellings will not generally lead to increased recreational pressure therefore will have no likely significant effect on the SPA.
- 4.9 All other applications for planning permission for developments in the vicinity of the SPA should be screened to assess whether they will have a likely significant impact (individually or in combination with other plans or projects) and where necessary a full habitats regulations assessment should be undertaken.
- 4.10 The recommendations in this framework apply to applications for full or outline planning permission. Reserved matters, discharge of conditions or amendments to existing planning consents should be considered on an individual basis by local authorities.

5. Avoidance measures

- 5.1 This section describes the measures recommended by the Board to avoid any likely significant effect of development on the SPA. The suite of avoidance measures should be provided for in order that it can function in perpetuity¹⁰.

⁸ See footnote 8

⁹ The principal impact on the SPA being dealt with in this framework is that resulting from recreational pressure and urbanisation impacts associated with residential development (eg cat predation). On this basis it is recommended that the delivery framework approach generally be applied to all net new development which provides permanent accommodation. It is recommended that other C1 and C2 uses are assessed on a case by case basis.

¹⁰ Perpetuity means forever and, for the avoidance of doubt, does not mean the estimated design life of the development. Where financial payments form all or part of the avoidance measures, a commuted sum will be paid to allow the avoidance measures to be provided forever through a continual annuity.

SANG (Suitable Alternative Natural Greenspace)

- 5.2 The provision of alternative recreational land to attract new residents away from the SPA is a key part of the three pronged approach set out above (para 3.13).
- 5.3 SANG should be delivered by local authorities or groups of local authorities and funded by developer contributions. To meet the requirements of the Habitats Regulations, SANG must be provided in perpetuity.
- 5.4 Joint working between authorities to provide SANG may be appropriate when:
 - i) A LPA alone is not able to provide sufficient SANG land to meet its local need.
 - ii) The catchment of a SANG extends into a neighbouring authority.
 - iii) There is the opportunity to add value and/or capacity to individual SANG by developing a network of SANGs across boundaries.
- 5.5 Opportunities for cross boundary working should be explored by local authorities.
- 5.6 SANG provision should be funded by developer contributions, collected at a local or cross authority level; the calculation of costs should take account of acquisition costs, upgrading costs, and maintenance and management costs in perpetuity¹¹. Alternatively SANG may provided by developers for individual developments.
- 5.7 Sufficient SANG should be provided in advance of housing completion¹² to ensure that there is no likely significant effect on the SPA, however, in exceptional circumstances (to be agreed by Natural England) contributions may need to be pooled to provide for the costs associated with the upgrading or maintenance of SANG
- 5.8 SANG should be provided on new or existing public open space, taking into account the availability of land and its potential for improvement. Where it is proposed to use existing public open space as SANG, the existing patterns and rights of public use must be taken into account and protected. When new land or existing public open space is proposed as SANG, any existing nature conservation interests must be taken into account.

¹¹ The Assessor recommended that only new residential development of 10 dwellings or more would have an impact on the SPA. The Board considers that this approach fails to recognise the longer term cumulative effect of small-scale developments, however accepts his conclusion that *individually* developments of less than 10 dwellings will not have a significant impact on the SPA. Thus this Delivery Framework recommends a more flexible approach to the provision of SANG in relation to smaller developments. The threshold of 10 is identified on the basis of the definition of major development in the GDPO 1995.

¹² Completion should be defined as when an *individual* dwelling is completed, rather than when a whole development is completed.

- 5.9 SANG should be provided on the basis of at least 8ha per 1,000 population¹³. The average occupancy rate should be assumed to be 2.4 persons per dwelling unless robust local evidence demonstrates otherwise.¹⁴
- 5.10 The size of land suitable for use as SANG will depend on the individual site characteristics and location, including its relationship within a wider accessible open space or network of green infrastructure. The preference should be for SANG to be of at least 2ha in size, and located within a wider open space or network of spaces although smaller spaces may form part of a wider SANG network. Across the affected area, a range of types and sizes of SANG should be provided, offering a range of experiences, including large SANG which have the benefit of being able to act at attractor sites.
- 5.11 The catchment of SANG will depend on the individual site characteristics and location, and their location within a wider green infrastructure network. As a guide, it should be assumed that:
- i) SANG of 2-12ha will have a catchment of 2km
 - ii) SANG of 12-20ha will have a catchment of 4km
 - iii) SANG of 20ha+ will have a catchment of 5km¹⁵
- 5.12 Developments of less than 10 dwellings do not need to be within a specified distance of SANG provided that a sufficient quantity and quality of SANG land to cater for the consequent increase in population is identified and available in that district or agreed in an adjoining district, and functional in advance of completion¹⁶. However, all net new dwellings (including on sites of less than 10 dwellings) will be required to contribute to the provision of avoidance measures. Monitoring of the available capacity of SANG must take account of this requirement.
- 5.13 Regard should be had to the cumulative impact of the small development proposals with other anticipated developments in the vicinity – for example where the local authority receives an application for planning permission for development which forms part of a more substantial proposal on the same land or adjoining land.
- 5.14 In assessing the required quality for new SANG land regard should be had to the guidance published by Natural England.
- 5.15 The Board will retain an overview of SANG provision to ensure that sufficient SANG is delivered to deliver South East Plan housing allocations.

¹³ Based on the recommendations of the South East Plan Technical Assessor.

¹⁴ Based on the occupancy rate across the 11 affected authorities in 2006.

¹⁵ These catchments are indicative and based on initial research by Natural England as set out in the draft Delivery Plan.

¹⁶ Whilst the Board considers that SANG is not required to cater for the individual impact of small developments (see footnote 8), in order to provide certainty that the overall (cumulative) impact of all small developments on the SPA is avoided, an appropriate level of SANG should be provided within the vicinity of the SPA as a whole.

Access Management

- 5.16 Access management should be delivered by existing landowners and managers and funded by developer contributions, and provided for in perpetuity.
- 5.17 Access management should be coordinated strategically, by Natural England working with local authority and land managers, in line with an overarching strategy for access management on the SPA and SANGs, which should include:
- i) A consistent SPA/SANG message - which may include signs, leaflets, educational material, etc;
 - ii) Guidance on access management on the SPA e.g. rangers, seasonal restrictions, campaigns etc;
 - iii) Guidance over access management on SANG e.g. provision of attractive facilities
- 5.18 Access management on the SPA should be funded by ensuring that the charge levied on developer contributions includes allowance for these measures being provided. The charge collected in relation to access management measures should be pooled for strategic allocation. Alternatively, where a developer is also an SPA land manager, access management measures may be provided by that developer.
- 5.19 Access management should focus on 'soft' measures - where access restriction is proposed for the purposes of the avoidance of recreational impact, this should be as a last resort, and reasons must be clearly identified and restrictions carried out with legal requirements and provisions to protect existing public or open access rights. Care must also be taken to protect other existing nature conservation interests on the SPA including SSSI interest features.
- 5.20 The JSPB will retain an overview of access management provision to ensure that sufficient measures are being taken to protect the SPA.

6. Monitoring and review

- 6.1 Monitoring the success of avoidance/mitigation measures should be carried out by local authorities, Natural England and existing landowners and managers, and funded by ensuring that the charge levied on developer contributions includes an allowance for the cost of this work. The charge collected in relation to monitoring should be pooled for strategic allocation.
- 6.2 This monitoring should address:
- i) Habitat condition and bird numbers (an existing NE responsibility).
 - ii) The provision of SANG and housing delivery
 - iii) Access Management
 - iv) Visitor Surveys

It should be coordinated strategically, in line with a Monitoring Strategy agreed by the Joint Strategic Partnership Board.

- 6.3 Partners, including Natural England, may undertake additional monitoring and research in relation to the SPA and in order to improve the evidence base.

7. Review of the delivery framework

- 7.1 The Joint Strategic Partnership Board will review the results of the monitoring work undertaken on an annual basis. Where necessary the Board will consider amendments to the Delivery Framework that are required to address identified problems. Any amendments agreed by the Board in this way should in turn be considered by individual local planning authorities when updating mini-plans, SPDs or DPDs.

**Joint Strategic Partnership Board
October 2008**

GLOSSARY

Term	Definition
AA	See Appropriate Assessment
access management	Measures to limit the damage caused by visitors to the SPA. This can include 'soft' measures, such as education and wardening, or 'hard' measures such as limiting car parking, pathways etc.
the affected authorities / affected area	Those local authorities that surround the SPA, and that wholly or partially fall within 5km of the SPA boundary.
Appropriate Assessment, or AA	The second stage in a Habitats Regulations Assessment process, an AA assesses the implications of a plan or project on a European site's conservation interests.
the (Technical) Assessor's report	The report from the Planning Inspector who ran the draft South East Plan Examination in Public Technical Sessions looking at the Natural England draft Delivery Plan.
avoidance measures	Used to refer to the collection of measures that may be used to avoid the negative impact of new development on the SPA; that is, SANG and access management. This definition also sometimes includes monitoring.
the (Joint Strategic Partnership) Board	A forum of elected representatives from the 11 authorities that surround the SPA, and 2 county councils, and advisors from key stakeholder groups including the nature conservation sector and development industry and major landowners
competent authority	A body with responsibility for ensuring that new developments or plans do not have a negative effect on a European site. Local authorities are competent authorities.
Delivery Framework	A set of recommendations from the Board about measures that will help to enable consistent provision of avoidance measures across those local authorities within the vicinity of the SPA.
Development Plan Document (DPD)	A statutory local planning document which forms part of the LDF, prepared by a local authority, and setting out planning policies for the area
Draft Delivery Plan	The original avoidance measure framework document published by Natural England in 2006, which sets out the principles using SANG and access management to avoidance the impact of new residents on the SPA.
Habitat management	Measures to improve the quality of the heathland so that the protected bird species are able to live and breed successfully.
Habitat Regulations Assessment (HRA)	The assessment of the possible impact of a new development or plan on European Sites. A HRA comprises <ul style="list-style-type: none"> - an initial 'screening stage' to determine whether a plan or development is likely to have a significant effect on a European site and - if it is determined that there is likely to be a significant effect - a second stage called the 'appropriate assessment' which comprises an assessment of the proposal in light of the particular conservation interests of the site. <p>Only if the appropriate assessment demonstrates that there will be no adverse effect on the site as a whole can the project or plan be approved.</p>
HRA	See Habitat Regulations Assessment
Joint Strategic Partnership or JSP	A partnership of those local authorities affected by the SPA designation along with a wide range of stakeholders who have an

	interest in providing housing whilst ensuring the protection of the SPA.
Local Development Framework (LDF)	A collection of DPDs and other planning documents which form the local spatial plan for an area.
Mini-plan	A short term strategy produced by a local authority planning department to allow development in the vicinity of the SPA to go ahead through the collection of developer contributions to fund the provision of SANG by the local authority.
SANG	Suitable Alternative Natural Greenspace – alternative open space similar in character to the SPA provided to attract new residents away from the SPA. Cross boundary SANG has the potential to act as an avoidance measure for more than one authority, or for a different authority to that in which it is located.
SPA	Special Protection Area – a protected habitat designated under European law
Supplementary Planning Document (SPD)	Planning document which provides guidance on how policies in Development Plan Documents (DPDs) are implemented
TBH	Thames Basin Heaths