

**THAMES BASIN HEATHS
JOINT STRATEGIC PARTNERSHIP BOARD**

Date: 21 October 2008
Subject: Delivery Framework – update
Report of: Regional Assembly

Recommendation:

That members agree the amended Delivery Framework in **Annex I** as the Board's recommendations to local authorities as to measures that can help enable the delivery of housing in the vicinity of the SPA without that development having a significant on the SPA as a whole.

Purpose of the Report:

To propose an amended Delivery Framework in the light of recent progress and new evidence, including legal advice.

1. Introduction

- 1.1 In March 2008 the Thames Basin Heaths (TBH) Joint Strategic Partnership Board ('the Board') agreed a Delivery Framework and requested that a legal opinion be sought to ensure the document was robust. Assembly officers have coordinated that process.
- 1.2 The legal opinion has now been received, and generally supports the key principles within the Delivery Framework. Counsel goes some way towards clarifying some of the concerns raised by members, and highlights a few areas where he feels the Delivery Framework could be clearer.
- 1.3 There is now the opportunity now to revisit the Delivery Framework in the light of the legal opinion and recent progress on other issues (eg Natural England's work on strategic monitoring and access management), to ensure that it sets out clear and up-to-date recommendations from the Board.
- 1.4 The following section explains the proposed amendments to the Delivery Framework. The suggested revised version is included in **Annex I**.

2. Status of the Delivery Framework

- 2.1 Some parties have raised questions about the status of the Delivery Framework. The terms of reference of the Board make it clear that the Strategic Partnership Board cannot exercise any of the functions of a planning authority, nor can it fetter any decisions made by such bodies, and that its functions include provision of advice to member and stakeholder organisations, including making non-binding recommendations for a course of action or policy for adoption.
- 2.2 The Delivery Framework should therefore be seen as a set of recommendations from the Board to local authorities within the vicinity of the SPA as to a strategic and consistent set of avoidance measures which local planning authorities should seek to include in planning policy (rather than constituting a plan in itself). As such it does not require an appropriate assessment. This approach is confirmed by Counsel.
- 2.3 However, it is suggested that the status of the Delivery Framework is more clearly set out at the start of the document; also that minor changes are made to the Board's terms of reference for clarity (see **Annex 2**).

3. What development is covered?

- 3.1 For clarity, it is proposed to distinguish in the updated Delivery Framework between 'what development is covered' and 'avoidance measures'. This is merely a re-ordering of principles set out in the Delivery Framework agreed in March.
- 3.2 The revised Delivery Framework attempts to set out more clearly that the recommended avoidance measures:
 - apply generally to a zone between 400m and 5km from the SPA (the zone of influence)
 - apply to all net new dwellings other than large scale schemes which should provide tailored avoidance measures, and
 - apply to applications for full or outline permission.

Flexibility

- 3.3 The reference to local flexibility to meet local circumstances is retained (the approach to flexibility within the identified 'zones' being supported by Counsel) as well as the recognition that for any proposed development an alternative approach to that recommended in the Delivery Framework is to go through the full Habitats Regulations Assessment process.

4. Avoidance measures

- 4.1 It is suggested that further information be provided for a couple of aspects in relation to the recommended avoidance measures. In addition to the below,

to add clarity, the rationale for key aspects of the Delivery Framework have now been included as footnotes to the document.

Cumulative impact of smaller development

- 4.2 It is suggested that further information is provided in relation to the recommended approach to developments of less than 10, and to make it clear that the cumulative impact of smaller sites adjoining or nearby one another may need to be considered by local authorities.

Perpetuity

- 4.3 Counsel agrees that SANG should be provided in perpetuity, however finding a legal definition of perpetuity is proving difficult - indeed it appears from the legal opinion that one single 'figure' does not exist and case law varies. It is suggested that further clarification be provided in relation to Delivery Framework recommendations that the 'suite' of avoidance measures should be provided for in order that it can function in the long term, but that in reality this is likely to mean that developer contributions are best calculated on the basis of the period within which payments will effectively provide for 'perpetuity'. For the avoidance of doubt it is clarified that the approach should not be to on the basis of the design life of a dwelling.

5. Conclusions

- 5.1 Since the initial version of the Delivery Framework was considered, the Government has published its Proposed Changes to the draft South East Plan, which includes a new policy in relation to the Thames Basin Heaths.
- 5.2 It is pleasing to see that the work of the Board has influenced this proposed new policy, which now reflects a number of key aspects of the Delivery Framework. Their inclusion in regional policy will mean that these will have increased weight in the development plan system, and the Delivery Framework will help provide more detailed recommendations as to how avoidance measures should be implemented, managed and delivered.
- 5.3 Members are therefore requested to agree the amended Delivery Framework in **Annex I** as the Board's recommendations to local authorities as to measures that can help enable the delivery of housing in the vicinity of the SPA without that development having a significant on the SPA as a whole.

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