

RSPB written representations for the Examination in Public regarding the Forest Heath Site Allocations Local Plan (SALP)

Response to Matters and Issues for the Examination

Matter 2 – Basis for the Plan (also with reference to Matters 4 & 5, Spatial Distribution of Housing in Market Towns and Key Service Centres)

2.2 Are the locations identified for development the most appropriate locations when considered against all reasonable alternatives?

The RSPB strongly supports the precautionary approach taken by the Council in the SALP, which avoids new housing allocations in the Breckland Special Protection Area (SPA) precautionary buffer. This ensures that adverse effects on the SPA from housing are avoided. Therefore, in terms of ensuring the plan is legally compliant with the Habitats Regulations, we consider the most appropriate locations have been considered by the Council.

We also wish to highlight our serious concerns regarding two alternative sites proposed during the submission stage of the plan, at Brandon and Little Eriswell. The submissions refer to evidence provided from the active planning applications for those two sites¹, claiming that outstanding ecological constraints have been addressed. However, we do not agree with these conclusions and consider that if these sites are included, it would render the plan unsound through failure to comply with the Habitats Regulations.

The RSPB agrees with the Council's statements in their response to the Inspector's questions² that '*no evidence has been found to demonstrate that the Breckland SPA constraints can be overcome to allow further growth*'. Whilst this statement refers specifically to Brandon, it can be applied equally to the proposed addition of an allocation at Little Eriswell or any other sites that may be suggested within the SPA precautionary buffer set out in Core Strategy policy CS2. In terms of avoiding adverse effects from housing on the SPA, the only reasonable alternatives would lie outside the precautionary buffer.

The reasons for our opposition to including these allocations are set out below in more detail.

Concerns regarding suggested additional allocations at Brandon and Little Eriswell

Both proposed additions to the housing allocations at Brandon and Little Eriswell are within the Breckland SPA precautionary buffer of the Core Strategy, and would be required to demonstrate that they are able to avoid adverse effects on the SPA before any they could be added to the plan. The submissions argued that a reason these sites were excluded from the housing plan to date was due to the need to safeguard the SPA and the lack of evidence that housing there would avoid an adverse effect on it. The submissions then refer to consultation responses by Natural England to the ongoing planning applications which advise that the permanent adverse effects on stone curlew breeding density in the SPA can be mitigated for (by the provision of alternative habitat, typically the conversion of arable farmland to heathland which can support higher nesting densities) elsewhere in the SPA. The submissions request that in light of this, they should be added to the site allocations.

¹ Planning applications DC/15/1072/OUT (land west of Brandon) and DC/16/1360/FUL (land at Little Eriswell).

² Forest Heath District Council's response to Inspector's letter of 2 June 2017 27.6.17

Notwithstanding any wider concerns regarding the suitability of including new major housing allocations at such a late stage in the plan, the RSPB has significant concerns regarding the advice provided by Natural England which is relied on in the above submissions. Having carefully reviewed the response from Natural England, the RSPB considers the approach to be deeply flawed. Natural England's position appears to have changed from that taken during the original adoption of the Core Strategy, and they now regard that the cumulative reduction in stone curlew nesting density that occurs when new housing is built close to the SPA now only impacts on the nesting habitat and not directly on the species itself.

This relegation of impact has led Natural England to conclude that the adverse effects on the SPA can be satisfactorily addressed by mitigation, rather than compensation as defined in the Habitats Regulations, an approach which requires far less scrutiny and is deeply flawed for three significant reasons.

Firstly, Natural England claim that the impact of new housing only impacts on the supporting habitat and not directly on the SPA breeding stone curlew population, which then would allow the use of mitigation to demonstrate avoidance of an adverse effect. This distinction is not justified.

Established, peer-reviewed research³ has identified that new housing within 1500m of the SPA leads to reduced stone-curlew nesting densities, which is an adverse effect on the SPA. This reduces the maximum density within the SPA that stone-curlews can nest at, and the effect is permanent and cumulative, with each new development effectively ratcheting down the maximum population level the SPA can sustain. As the research clearly identifies that the species suffers from reduced nesting densities following new housing development nearby, it is not clear why Natural England only regard the impact as occurring on the habitat and not the species.

Natural England claim that the impact is only on the supporting habitat which is a secondary feature. They also make reference to the Briels decision⁴ in their planning consultation response to justify their approach, suggesting there is a difference between the impact on SAC habitat in the Briels case and the impact on stone curlew nesting density in the Breckland SPA, we do not regard this as justification as the habitat and species are inextricably linked. Stone-curlews require very particular nesting conditions, on specific soils which are restricted in distribution in the UK. Because of the soil conditions the Breckland SPA is one of their last strongholds, and without the habitat the stone-curlews would not be there to breed. Therefore we can see no reason why the species and its nesting habitat could be divided as such in a Habitats Regulations Assessment. The impact of housing is to reduce the capacity of the SPA to support the species and can only be regarded as permanent damage to the SPA stone curlew population. Therefore as presented in their planning consultation response, we wholly reject Natural England's position as unjustified.

Secondly, Natural England's recommendation that provision of improved habitat **within** the SPA can be considered as mitigation for the adverse effect is flawed, as this does nothing to **avoid** the permanent damage still occurring. Whilst conversion of arable farmland to heathland, if managed correctly, can be expected to increase the number of potential nesting

³ Clarke RT, Liley D, Sharp JM, Green RE (2013) Building Development and Roads: Implications for the Distribution of Stone Curlews across the Brecks. PLoS ONE 8(8): e72984. <https://doi.org/10.1371/journal.pone.0072984>

⁴ Case C-521/12 Briels v Minister van Infrastructuur en Milieu (15 May 2014).

pairs that land can support, under the terms of the Habitats Regulations for a measure to be considered as mitigation is needs to demonstrate that it reduces the adverse effect to a non-significant level. The approach recommended by Natural England does nothing to prevent the damage from the housing from occurring and so cannot be regarded as mitigation.

Provision of alternative habitat to compensate for damage to the SPA can only be properly considered under the Habitats Regulations after all the preceding legal tests have been met and it has been demonstrated that the proposal has imperative reasons of over-riding public importance. In a housing plan which can demonstrate sufficient areas away from the stone curlew buffer in which to meet its housing need, there is clearly no over-riding public interest in housing being built in these locations.

Thirdly, there is no evidence provided by Natural England to demonstrate that the SPA has the capacity to provide land for mitigation or compensation in addition to existing statutory requirements to restore and maintain the Favourable Conservation Status (FCS) of the interest features.

European sites such as the Breckland SPA are supported by a series of conservation objectives which detail the targets and measures needed to ensure that the site will be restored and properly maintained. Currently, the SPA has high-level conservation objectives⁵ which set out broad qualitative goals to restore and maintain the interest features, but no detailed objectives have been produced which would illustrate the relative contributions of the various SPA elements to the FCS of its species (e.g. for population totals, breeding productivity, habitat extent, soil condition, prey availability or other as yet undefined key variables). Without such information, and recognising that at the time of designation the stone-curlew population was (and still is) recovering from a historic low, it is not possible to suggest that there are areas of the SPA that are surplus to the statutory requirement to restore and maintain the SPA. Therefore, even if mitigation as discussed above were a satisfactory solution to avoiding the adverse effect on the SPA, there is no evidence that the SPA has the capacity to provide this.

Conclusion

The precautionary approach required by the Habitats Regulations and supported by planning policy in all four local authorities near the Breckland SPA is that new housing development can only be consented if it can be adequately demonstrated that an adverse effect on the SPA can be avoided. This requires a precautionary and evidenced approach in order to ensure that inappropriate unsustainable development does not occur that would permanently damage one of the last key breeding areas for the stone-curlew in the UK. Our position is that the impacts on nesting density directly impact on the breeding population, that under the Habitats Regulations provision of alternative habitat elsewhere in the SPA is not mitigation but compensation and that no evaluation has been carried out to demonstrate that the SPA has any capacity to provide such measures.

If Natural England's advice is to be given sufficient weight to be relied on by competent authorities, then we strongly recommend that this advice is supported by a robust evidence base, which we currently find to be lacking in their advice cited in the submissions referred to

⁵ <http://publications.naturalengland.org.uk/publication/4572292419944448> , summarised in an Annex to this response.

above. Without this, it is not possible to safely conclude that the additions of these last minute allocations to the plan would be sound or compliant with the Habitats Regulations and we strongly recommend that such proposals are rejected in favour of the precautionary approach presented by the Council in their submission draft.

Annex

Text of the European Site Conservation Objectives for Breckland SPA

With regard to the SPA and the individual species and/or assemblage of species for which the site has been classified (the 'Qualifying Features' listed below), and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;

- The extent and distribution of the habitats of the qualifying features
- The structure and function of the habitats of the qualifying features
- The supporting processes on which the habitats of the qualifying features rely
- The population of each of the qualifying features, and,
- The distribution of the qualifying features within the site.

This document should be read in conjunction with the accompanying Supplementary Advice document⁶, which provides more detailed advice and information to enable the application and achievement of the Objectives set out above.

Qualifying Features:

A133 *Burhinus oedicnemus*; Stone-curlew (Breeding)

A224 *Caprimulgus europaeus*; European nightjar (Breeding)

A246 *Lullula arborea*; Woodlark (Breeding)

⁶ This is the awaited detailed advice noted above in the main text.