

Response to request for information under the Environmental Information Regulations 2004 relating to Thames Basin Heaths Special Protection Area

1. What are the specific reasons for determining the size of the three proposed mitigation zones as being for areas within 400 metres, 2 kilometres and 5 kilometres of the Thames Basin Heaths Special Protection Area?

The draft Thames Basin Heaths Delivery Plan contains the definitions of the three proposed consultation zones and the reasoning behind these. The [REDACTED] were sent a copy of the most recent draft in May 2006, dated 26 May 2006. We would refer you to section 3.3 and section 3.4 of this draft to answer your query. A copy of the Delivery Plan can also be found on our website under the publications section at www.english-nature.org.uk/team/thamesandchilterns. If you do not have a copy of the Delivery Plan and are unable to download it from our website, please contact us and we will supply one. In Dorset ENRR 624 confirmed that the 400m distance was appropriate and proportionate as it captured just under 50% of visitors on the sites. It was felt at the time that this represented a “robust and reasonable position” and one which is broadly comparable to studies looking at other user groups use of neighbourhood facilities. (a 600m zone would have captured 80% of walkers)

2. What are the reasons for these being significantly different from those surrounding the Dorset Heathlands Special Protection Area?

The Thames Basin Heaths Area Based Project, of which the draft Delivery Plan is part, is a pilot project set up to manage the specific problems raised by the Thames Basin Heaths SPA. The SPA has particularly vulnerable features, and is spread across many local planning authorities, in a highly urbanised area. It is subject to a high level of visitor pressure, which is likely to increase substantially with the housing targets proposed in the South East Plan. These factors present a challenge that requires a tailor made solution. The Thames Basin Heaths zones have thus been developed specifically on the basis of survey evidence collected in and around the Thames Basin Heaths. The project as a pilot will in due course be reviewed and used to inform approaches elsewhere including in Dorset. The zones have a particular function in enabling a strategic approach to the provision of alternative greenspace and the linking of this to development as an impact avoidance measure. There are no zones in Dorset with an equivalent function., except for the 400m zone, for which we have provided the same reasoning in our advice to planning authorities in Dorset and the Thames Basin Heaths. The other zones which have been used in Dorset are consultation zones.

3. What studies have been conducted regarding the impact of new housing developments within 5km of the Dorset Heathlands Special Protection Area, and what were the findings?

The draft Thames Basin Heaths Delivery Plan contains a reference list that includes all the studies conducted regarding impacts on heathland birds from urban development, and the behaviour of visitors to heathlands and other semi-natural sites. For ease of reference these studies are listed below. Those studies that are English Nature Research Reports can be obtained from our website; links can be found in the

Initiatives section at www.english-nature.org.uk/team/thamesandchilterns or through searching the publications database at www.english-nature.org.uk. A copy of the study by Clarke *et al* (2005) is enclosed as this has not yet been published as a research report. We do not hold a copy of the PhD study by Giselle Murison as this has not yet been published, and would refer you to her directly at the University of East Anglia. We do not hold a copy of the Stride (2001) report and would refer you to the RSPB (The Lodge, Sandy, Bedfordshire SG19 2DL). We do not have a final version of the study by Mallord (2005) and would refer you to him directly at the University of East Anglia. We are unable to provide copies of the scientific journal papers as this would breach the copyright; copies of the papers can be easily obtained from the individual journals. The report by Liley and Underhill-Day (2006) is currently in draft form and not available for circulation.

Clarke, R., Liley, D. Underhill-Day, J. & Rose, R. (2005). *Visitor access patterns on the Dorset heathlands*. English Nature. Wareham. Dorset.

Kirby, J S & Tantrum, D A S 1999. Monitoring heathland fires in Dorset: Phase 1. Report to DETR: Wildlife and Countryside Directorate. Terra Environmental Consultancy, Northampton

Liley D and Clarke R.T. (2002). *Urban development adjacent to heathland sites in Dorset: the effect on the density and settlement patterns of Annex 1 bird species*. English Nature Research Report 463, Peterborough

Liley, D. and Clarke, R.T. 2003. The impact of urban development and human disturbance on the numbers of nightjar *Caprimulgus europaeus* on heathlands in Dorset, England. Biological Conservation 114, 219-230

Liley, D and Underhill-Day, J (2006) *Dog walkers on the Dorset Heaths, analysis of questionnaire data collected by wardens on Dorset's urban heaths*. Draft report

Mallord, J.W. (2005). Predicting the consequences of human disturbance, urbanisation and fragmentation for a woodlark *Lullula arborea* population. School of Biological Sciences. Norwich, UEA. **PhD**.

Murison G. (2002) The impact of human disturbance on the breeding success of nightjar *Caprimulgus europaeus* on heathlands in south Dorset, England English Research Report 483, Peterborough

Murison, G. On-going PhD study. Centre for Ecology, Evolution and Conservation, School of Biological Sciences, University of East Anglia, Norwich, NR4 7TJ, UK

Murison, G. 2006. Confirmed cat predation records in post-fledgling Dartford warblers. Unpublished data.

Rose R.J. & Clarke R.T. (2005). *Urban impacts on Dorset Heathlands: Analysis of the heathland visitor questionnaire survey and heathland fires incidence data sets*. English Nature Research Report 624, Peterborough

Stride, A. 2001. *Survey of heathland use: Winfrith and Sandford Heaths*. Unpub. RSPB. Wareham.

Tydesley D. and associates (2005). *Urban impacts on Dorset heaths A review of authoritative planning and related decisions*. English Nature Research Report 622, Peterborough

Underhill-Day (2005). *A literature review of urban effects on lowland heaths and their wildlife*. English Nature Research Report 623, Peterborough

Haskins, L 2000. *Heathlands in an urban setting - effects of urban development on heathlands of southeast Dorset*. British Wildlife 11: 229-237.

Urban Heaths LIFE Project 2005. Review of the effects of the actions carried out to reduce urban related impacts on the Dorset Heaths by Urban Heaths LIFE Project. English Nature, Dorset.

Urban Heaths LIFE Project (2001-2003) Combating urban pressures degrading European heathlands in Dorset, project reports.

Van den Berg, L.J.L., Bullock, J.M., Clarke, R.T., Langston, R.H.W. and Rose, R.J. (2001) *Territory selection by the Dartford Warbler *Sylvia undata* in Dorset, England: the role of vegetation type, habitat fragmentation and population size*. Biological Conservation 101:217-228.

4. What studies have been conducted into changes in the number of recreational users of the Dorset Heathlands Special Protection Area following the designation of a mitigation zone surrounding it, and what were the findings?

The consultation area covering adjacent urban areas has only been in place since 2004 and then only in East Dorset District for this length of time. In our view this is too short a period to show any change in recreational pressure that can be linked to the consultation area. Indeed there are still residential sites being re-developed that gained planning permission before 2004. Also the consultation areas are not intended as a mechanism to influence existing users from within 400m or the many users coming from further afield. But, self-evidently, if no new residential development is being built within 400m, there is less likely to be a significant increase in population within 400m. Therefore, at the present time, we can see no merit in conducting studies into changes in the number of recreational users of the Dorset heathlands from within the consultation areas.

The consultation areas set round the Dorset heathlands delineated the area in which English Nature considered that residential applications would be likely to have an adverse effect on the integrity of the heathland and where we consider mitigation associated with the developments has not, with any confidence, been demonstrated as being likely to be effective over the lifetime of the developments. English Nature has therefore maintained objections to additional residential development within these areas. The consultation areas, which have a statutory basis, are not intended to address the provision of alternative greenspace or other mitigations. This is being done

through discussions with the planning authorities on establishing strategic measures for mitigating housing development in the wider Bournemouth –Poole conurbation.

5. What studies have been conducted into the number of recreational users of the land set aside for mitigation of new housing developments surrounding the Dorset Heathlands Special Protection Area, and what were the findings?

As noted above, the measures advised by English Nature regarding residential development within 400m of the Dorset heathlands did not include alternative open space. English Nature has identified a need for a strategic approach to the mitigation of additional residential development in the wider Bournemouth – Poole conurbation and this is being taken forward in conjunction with the planning authorities.

6. What were the reasons for not using changes in access and more controlled access to the Thames Basin Heaths Special Protection Area as the means of mitigating development, instead of requirements for mitigation open space to be set aside?

As we have repeatedly discussed with the HBF, access management measures on the SPA are a key component of the three-pronged approach to avoiding or mitigating harm to the SPA from recreational pressure arising from new residential development. This is clearly stated in the draft Delivery Plan and we would refer you to section 2.2.4 in that document. We would also refer you to our letter dated 11 May 2006 to [REDACTED] of the HBF, and to our letter to [REDACTED], of EDP on 6 July 2006, who we understand is acting on your behalf; these letters answer your query.

English Nature has now set up a steering group for the access management strand of the project, which includes representatives of the Countryside Agency, Berks Bucks and Oxon Wildlife Trust, local planning authorities and RSPB. We are in the process of letting contracts to gather the information necessary to devise access management plans for each of the component SSSIs of the Thames Basin Heaths SPA; a workshop to discuss access management measures and identify any 'quick wins' has been organised for early August, to which the HBF has been invited. English Nature aims to produce the access management plans by the end of December 2006.

7. What sensitivity analysis was conducted to determine whether a different base date from that of 1997 to 1999 used for the classification of the Special Protection Area for measuring population changes would have affected assumptions about the nature and relative significance of different factors that may affect the population of (a) Dartford Warbler, (b) Woodlark and (c) Nightjar within the Thames Basin Heaths Special Protection Area?

The classification of the Thames Basin Heaths was carried out in March 2005. It was based on population statistics from 1997 to 1999. The baseline and the latest numbers counted on the SPA are presented the table below;

Species	Citation population 1997-99	Most recent population 2002- 05	Percentage change
Nightjar	251	323	22%
Woodlark	149	152	2%
Dartford warbler	445	518	17%

The SPA was originally proposed in 1994. Discussions over boundary issues meant that a second consultation had to be carried out following an instruction from the Department of the Environment to review the boundary of the pSPA in 1999. The process of consultation and classification of the SPA took until 9 March 2005, when the SPA was finally classified.

The 2002-05 figures are also shown in the table above and were derived by taking an average of complete counts from these four seasons, for each component site and then adding these together to form a total. There is a risk that this overestimates the most recent numbers, as it does not exclude the possibility that some birds shift from one site to another and are double counted. These figures are offered nevertheless as an indication of the order of magnitude of what has been recorded. The percentage changes shown in the table are not great. The change for woodlark is very slight. English Nature has funded survey work on these species on the Thames Basin Heaths since 2003. There is a possibility that the increases reflect increased recording effort since that date.

The classification of SPAs is not based on population changes, but on whether a particular site meets the selection guidelines, as summarised in The Birds Directive: Selection Guidelines for Special Protection Areas (JNCC, 1999) a copy of which is enclosed. Moreover, English Nature is concerned with the likelihood of a significant impact on the Annex 1 birds from additional recreational pressure from new residential development, not from existing residential pressure. It is clear from the available research that recreation pressure does have an impact on the Annex 1 birds; English Nature does not consider that the relatively small changes in their population from data used for classification affects our advice to local planning authorities on new residential development. We would refer you again to our letters of 11 May 2006 to [REDACTED], and to our letter to [REDACTED] of 6 July 2006.

8. How many pairs of (a) Dartford Warbler, (b) Woodlark, and (c) Nightjar, were estimated to be breeding in the Thames Basin Heaths Special Protection Area when the SPA was designated?

We would refer you to the table above for the population used in the classification of the SPA. As bird populations and recorder effort vary from year to year, population counts are taken on a five year mean count basis.

9. What estimates of the rate of population increase in the numbers of breeding (a) Dartford Warbler, (b) Woodlark, and (c) Nightjar have been made in the Thames Basin Heaths Special Protection Area since the SPA was designated?

We would refer you to our response to question 7 above.

10. What is the maximum capacity of the Thames Basin Heaths Special Protection Area estimated to be in terms of numbers of breeding pairs of (a) Dartford Warbler, (b) Woodlark, and (c) Nightjar were there to be no additional adverse impact on their habitats as a result of future new residential development within 5 kilometres of the SPA?

It is not currently possible to estimate the maximum capacity of the Thames Basin Heaths Special Protection Area were there to be no additional adverse impact on their habitats as a result of future new residential development. There are a range of factors which affect populations of birds on the heathlands, both natural and man-made. These factors already exert an influence on the SPA, including existing development. There are currently no studies which have explored the theoretical potential populations of nightjar and Dartford warbler in the absence of recreational pressure. A PhD study by Mallord (2005), currently in draft form, did examine woodlark and estimated that in the absence of recreation, 34% more woodlark chicks would be raised.

11. What other nature conservation requirements relating to the Thames Basin Heaths special Protection Area need to be balanced against the conservation of the habitats and populations of (a) Dartford Warbler, (b) Woodlark, and (c) Nightjar and what bearing do these requirements have on the capacity of the SPA to accommodate breeding pairs of the three species?

Whilst there are some additional requirements for SAC/SSSI features they will, in general, complement the habitat management carried out for the SPA features rather than have a negative effect;

Dry heath: This SAC/SSSI feature is generally covered by management for the SPA features. Less trees are generally required than are needed for nightjar, but as nightjars requirement is for woodland edge this can be balanced within the site.

Wet heath and Valley mire: These features need additional management, for example water level and quality protection. These are however entirely compatible with management for the heathland birds. As above, wetland habitats require less trees to be present which needs to be balanced with the requirements of nightjar. Nevertheless as nightjar require woodland edge, this can be balanced within the site.

Invertebrates: Where these are a SSSI feature, they generally require a habitat structure that includes bare ground and some nectar sources. These requirements can again be compatible with those of the Annex 1 birds, which need bare ground structure and some gorse. Management for other invertebrate SSSI features such as dragonfly and damselfly assemblages, and silver studded blue butterfly is also compatible with management for the Annex 1 birds.

Other botanical features: Some of the plants and mosses have specialist requirements which are generally met within SPA bird management, with some minor specialist and localised additions to the habitat management.

SSSI ornithologist interest: The SSSI bird interest generally requires slightly more scrub than might be required for the SAC/SPA interest features. This can however be

balanced with the SPA features. Hobby also needs some woodland on the edge of the sites, but this is compatible with the requirements of nightjar.

It should be noted that the habitat requirements of the three Annex 1 bird species themselves are somewhat different. Management of each SSSI component of the SPA therefore requires a balance to ensure appropriate habitat is present for all three species;

Nightjar is a bird primarily of the heathland/woodland edge, especially deciduous woodland but also conifer plantations. Breeding densities tend to be higher in plantations which are close to large tracts of heathland and numbers of nightjars tend to increase with greater length of woodland edge. They are aerial feeders, feeding on moths and other night-flying invertebrates. They will often feed away from heaths, travelling up to 8km from the nest each night to feed in areas such as floodplains or orchards likely to hold lots of invertebrates. Nightjars require bare ground for nesting, in some parts of the country selecting sites protected by small trees. Nest sites are typically small areas of bare ground within a former forestry plantation that has been clear felled, or in heather

Woodlarks require areas of bare ground and very low vegetation for foraging. They nest on bare ground, sheltered by tussocky vegetation. Suitable habitat can often be found along firebreaks and paths on the heaths. Woodlarks feed on foot, catching spiders and other invertebrates of bare ground. Scattered bushes and trees or brash piles are often used for song perches.

Dartford warblers prefer habitat that comprises dry heath with dense, mature heather, with thickets or scattered bushes of mature gorse. Areas with over 50% gorse cover are known to be favoured, with breeding densities over ten times higher than areas with no gorse. Although there is considerable variation between territories, gorse and heather are both important for nesting, whilst gorse is particularly important for foraging.

12. What account has been taken of overall population increase in areas within 2 and 5 kilometres of the Thames Basin Heaths Special Protection Area in the requirement for open space mitigation to be set aside by developers in the area, and what official figures for estimates of population increase have been used?

English Nature has a duty to provide advice based on the best available information at the time. Because of the strong evidence that urban development affects heathland birds and because of the evidence on where people travel from to visit the SPA, English Nature as the statutory wildlife advisor is advising local planning authorities that residential developments which would increase the number of dwellings within 5 km of the SPA are likely, in the absence of measures to avoid the effects of the development, to significantly affect the SPA when considered alone and in combination with other such developments across the SPA.

This is entirely in accordance with the requirements of the Habitats Regulations. Whereas in other regulatory regimes it is generally for the regulator to show harm in order to refuse a consent, the Habitats Regulations embody the precautionary principle by requiring the decision maker to ascertain, before granting permission, that

there would be no harm to the integrity of the site, Planning Policy Statement 9 notes that the European Court of Justice in Case C-127/02 (the Waddenzee Judgment) ruled that “a plan or project may be authorised only if a competent authority has made certain that the plan or project will not adversely affect the integrity of the site. *“That is the case where no reasonable scientific doubt remains as to the absence of such effects”*. Competent authorities must be *“convinced”* that there will not be an adverse effect and where doubt remains as to the absence of adverse effects, the plan or project must not be authorised, subject to the procedure outlined in Article 6(4) of the EC Habitats Directive regarding imperative reasons of overriding public interest.”

Furthermore, the EC guidance on the assessment of plans or projects affecting European sites¹ goes on to state that the precautionary principle requires that; *“the conservation objectives of Natura 2000 should prevail where there is uncertainty....the use of the precautionary principle presupposes:*

- *identification of potentially negative effects resulting from a phenomenon, product or procedure;*
- *a scientific evaluation of the risks which, because of the insufficiency of the data, their inconclusive or imprecise nature, makes it impossible to determine with sufficient certainty the risk in question*

It is quite clear from the above that, in light of the strong evidence of an impact on heathland bird populations from increased urbanisation, it should be assumed unless evidence is provided to the contrary that increased use of the SPA could result in an adverse effect. Current housing allocations for the 11 local planning authorities closest to the SPA consist of some 40,000 new homes; this emerging South East Regional Spatial Strategy proposes a substantial increase to this allocation. This will self-evidently result in an increased population around the SPA who may use the SPA for recreation.

The draft Delivery Plan is intended to provide one route by which compliance with the Habitats Regulations may be achieved. It is a framework designed to make it possible to grant permissions for housing development in future, and to provide a clear, simple and cost-effective approach at a strategic scale. It is therefore a generic approach. As such, we have used the national average occupancy rate of 2.36 (2.4) occupants per household. In general this averages out across the SPA as some LPAs currently have a higher general occupancy rate and some slightly lower. This occupancy rate does not however influence the greenspace standards themselves for each zone, which refer to hectares per 1000 new population, but is the rate we would generally expect local planning authorities to use in determining the amount of greenspace needed to meet their housing allocation, unless they have evidence to the contrary.

We would also note that although your question above refers to the amount of greenspace it is expected that developers will put aside as mitigation, the Delivery Plan approach is intended to be applied at a strategic scale; it is envisioned that the local planning authorities will identify and secure the necessary package of

¹ European Commission (2001) Assessment of plans or projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC.

greenspace to meeting the total housing allocation and then recoup the costs through S106 agreements with developers. Individual applications can then be linked to identified greenspace. It is not therefore envisioned that developers themselves would have to provide the greenspace, although it is entirely open for them to do so where a local authority has not identified suitable sites. This approach is currently being developed in several local planning authorities as “mini” or “interim” plans.

It has been argued that any increase in population resulting from the appeal proposals would be offset by the general reduction in population in the ward / borough that has been experienced recently. English Nature rejects this argument on two counts. Firstly, it is the population of the Planning Zone as a whole that is relevant, and all the evidence points to an increase in population as provided for in the development plan. Secondly, population dynamics are variable and the present reduction in household size and locally declining population in the existing housing stock could be reversed. It is the total residential accommodation that is available that is relevant to the long term effects on the SPA. Historic patterns may not provide an accurate indication of trends into the future, particularly as in meeting their allocations, the local planning authorities will be increasing their district’s available housing stock.

As an example, the Regional Emphasis Document, prepared by GOSE and linked to the current Regional Economic Strategy consultation document, predicts significant population growth in the inner core areas of the region, and identifies housing provision as necessary to support this growth and maintain economic strength. Census data from the Office of National Statistics website shows that the population across the affected local planning authorities for the period 1991 to 2001 increased by 12.69%. Hampshire County Council provides a further source of information on the Hampshire part of the Thames Basin Heaths. It shows for example, for Rushmoor Borough, a growth in population of 10% from 1991 to 2001, and a predicted growth of a further 8% during the period 2001 to 2011.

Furthermore, it is relevant to consider the location of the appeal proposals relative to the area generally and the SPA, this argument has been rejected by Inspectors, for example in appeal reference APP/N1730/A94/239274 where it was argued that the population of the nearby settlement of Yateley was declining and this would offset the additional residents occupying the proposed housing. The Inspector concluded that the argument that “*Yateley is falling in its population and that the 250 or so new residents will not offset this decline (2.41). fails to take into account the fact that these new residents, unlike the majority of the Yateley population, would be within easy walking distance of the Common and therefore far more likely to visit it on a frequent basis.*” (4/IR.12.45).

13. What evidence has been used in deciding that a prohibition of the keeping of pets in the new developments within the Thames Basin Heaths Special Protection Area will not be an effective mitigation measure?

As noted in our response to question 12 above, unlike other planning decisions the Habitats Regulations apply the precautionary principle as a matter of law. The Appropriate Assessment of an application should conclude that the development proposal will not have an adverse effect on the integrity of the SPA before it is given consent. If the effects are uncertain, the precautionary principle applies and it must be

assumed that the proposal will have an adverse effect on the site (paragraphs 17 – 22 of Circular 06/2005). English Nature considers that there is no evidence that the prohibition of the keeping of pets would be an effective mitigation measure.

The reliance that can reasonably be placed on the effectiveness of such restrictions, in terms of long term compliance and enforcement is uncertain. The avoidance of disturbance effects would not, in any event, be achieved by such restrictions. It should be emphasised that, if the conditions or obligations about pet restrictions reliably led to there being no further pets within the relevant dwellings, then self-evidently they would avoid the effects of predation and disturbance arising from the keeping of the pets. This alone, however, may not remove the potential effects of disturbance on the SPA.

Taking the issue of avoiding disturbance first, we do not consider that there is currently sufficient evidence to determine that walkers on their own do not have a disturbing effect on the Annex 1 birds to be satisfied that restrictions on pets would overcome the disturbance effects on the SPA. Whilst research does suggest that dogs have more impact than people alone, this should not be interpreted as evidence that walkers alone do not cause disturbance. Most studies have not attempted to separate out the impacts of walkers alone from walkers with dogs; whilst providing clear evidence for an impact from increased urbanisation and increased recreational use on heathlands, they do not attempt to differentiate between user groups. Moreover none of the studies have attempted to quantify the level and effect of disturbance caused by walkers with dogs as opposed to walkers alone

As surveys by MORI (2004)² and Clarke *et al* (2005)³ have shown that a substantial proportion of visitors to heathlands do leave the main tracks, walkers should also be considered to have a potential disturbing effect. Furthermore, although the Thames Basin Heaths Visitor Survey found that dog walkers were the main user group, walkers alone also constituted a significant proportion of visitors; 32% of interviewees gave walking as a reason for visiting, whilst 28% of groups interviewed were without a dog.

A restriction on pet ownership, even if English Nature were to consider that such would be enforced, does not therefore remove all the likely impacts from a residential development on the SPA alone or in combination. It does not in itself remove the requirement for mitigation of those impacts. This was acknowledged by the Inspector in appeal reference APP/T0355/A/05/1180162 who stated that he “*cannot be certain that the proposed restriction on keeping dogs would, in itself, enable me to find that the scheme would have no adverse effect on the integrity of the SPA, particularly as advice in paragraph 13 of Circular 06/2005 emphasises the need for a precautionary approach.*”

Turning to the issue of enforceability, English Nature considers that restrictions on the keeping of pets relying on enforcement by the planning authority, via a condition or a S.106 planning obligation, are generally unlikely to provide an effective avoidance

² MORI. 2004. *Bourley and Long Valley Heath users survey*. MORI Social Research Institute. London.

³ Clarke, R., Liley, D. Underhill-Day, J. & Rose, R. (2005). *Visitor access patterns on the Dorset heathlands*. English Nature. Wareham. Dorset.

measure. This is because their successful enforcement cannot be relied upon to the extent necessary to ascertain that there would be no adverse effect on the integrity of the SPA. The success of these planning measures is reliant on two issues; detection and/or reporting of breaches of the restriction, and action to enforce against an offending party by the local authority. We do not believe that there is evidence to suggest that such a self-policing system is successful; rather, the temptation might be to follow suit, if one owner breached the covenant and kept a cat or a dog. There is no prospect of any planning authority being able to enforce such a condition or obligation on the large numbers of dwellings that are expected in the area, as discussed in section 6 above. Informal discussions with the Local Planning Authorities have also indicated that this would be the case.

English Nature considers that the use of conditions prohibiting the keeping of cats and dogs would fail the tests of reasonableness and enforceability. No such condition has ever been imposed by the Secretary of State or an Inspector as far as we are aware.

The use of a S.106 obligation whereby the developer covenants to impose a restriction on the conveyance of the property would similarly be unenforceable by the planning authority and unreliable as an avoidance measure.

An alternative form of restriction that could be potentially more successful, is where the accommodation would be in flats or apartments, on leasehold, with communal areas and other communal management administered by a management company where it would be for the management company to monitor and enforce the restriction. In these cases the developer would covenant to establish the management company and impose the restrictions on the leases. The planning authority would not be the enforcing authority. However, the extent to which such a restriction (in the form of a S106 obligation) would be enforced would depend firstly on the detection of such breaches, relying largely again on self-policing, and secondly on the willingness of that company to enforce. Historically, Inspectors have noted that in the event of a breach of a prohibition on keeping pets, enforcement could give rise to difficulties.

It has been suggested in a previous appeal (APP/T0355/A/05/1180162) that enforcement would be successful in flats or apartments with communal entrances and grounds, as it would be *“inappropriate for dogs to come in and out of communal entrances, that dogs defecating could be a problem in communal grounds, and that there is greater potential for disturbance from dogs in adjacent apartments.”* The Inspector agreed. English Nature considers however that there is no evidence to support the assumption either that residents would object to dogs using the communal entrance, nor that the dog owners would allow their pets to foul the communal grounds. Rather, it is equally likely that residents with dogs would endeavour to ensure their pets did not cause offence, to avoid complaints being made that would draw the presence of their pet to the attention of the relevant enforcing authority, such as the management company or local authority.

English Nature has consistently expressed concern about reliance on restrictions in respect of keeping pets. Its position is that conditions are almost certainly unreasonable and unenforceable. Where restrictive covenants are concerned, English Nature has argued that evidence is needed to demonstrate to decision makers that such covenants are effective. That evidence, presented in a rigorously systematic way or

underpinned by statistical analysis is not available. This is a pity, because developers are convinced that they are effective; it would not be a huge task of research, and it could be undertaken expeditiously. English Nature has written to the HBF suggesting joint working on such a research project. We note that the HBF have decided not to take up the offer of joint working. Given our current resource difficulties, the need to prioritise other key research such as progressing the SPA access management plans which are of key interest to partners, and because English Nature considers that joint working on this issue is likely to produce most useful results, we have decided that we cannot proactively pursue research into pet restrictions at this time. We will however seek to get this issue addressed through the peer review that is being undertaken by DCLG.

If such covenants are shown to be effective in almost all cases (one could reasonably expect an occasional non compliance that would not diminish the overall efficacy of the covenants generally), then they could make a useful contribution to reducing the effects of disturbance (and predation by cats). They cannot however, be relied upon as avoidance measures on their own, because they do nothing to reduce the effects of people using the heaths for recreation without dogs and, of course, they would not apply to freehold properties or leasehold properties with no management company. At best they would reduce rather than eliminate recreational pressures.

14. What figures have been used in estimating the number of household pets likely to be exercised on the Thames Basin Heaths Special Protection Area?

Estimations of the number of household pets likely to be exercised on the SPA have not been used in responses to current casework or in the draft Delivery Plan. As discussed above, English Nature advises that there is likely to be a significant effect from new residential development on the SPA owing to increased recreational pressure. There is clear evidence from available research that recreational disturbance has an adverse impact on the Annex 1 birds. The Thames Basin Heaths is an area that is targeted through the emerging RSS for growth and increased housing allocations which will increase the population in the area who are likely to use the SPA for recreation. Although dogs are an important impact, walkers alone are also likely to have a disturbing effect.

The Delivery Plan standards are based on the need to ensure that alternative open space will be sufficiently attractive to the types of users that visit the SPA.

15. How many meetings have representatives of English Nature had with the RSPB over the Thames Basin Heaths Special Protection Area issue, and what were the outcomes of those meetings?

In relation to this question and question 16, 17, and 18, we have responded for the period January 2005 to June 2006 as this is the main period of the project. We have not recorded meetings where English Nature was invited along with the relevant parties to a meeting organised by a third party such as SEERA, as we do not hold minutes of these meetings and would direct you to such bodies for such dates. We would also note that English Nature does generally not hold dates of meetings or minutes of meetings which were general discussion or update meetings, or where

minutes are held by the other attending party. We generally only have a formal record a meeting which had specific action points.

English Nature has had a large number of formal and informal meetings with the RSPB over the Thames Basin Heaths. We do not hold records of most informal meetings, and only hold dates or information on formal meetings which resulted in action points or where individuals took notes for their own use. Our records show 9 meetings with the RSPB. Those meetings to ensure both parties were up to date with events and the development of the Delivery Plan, and to discuss general issues.

16. How many meetings have representatives of English Nature had with housebuilders over the Thames Basin Heaths Special Protection Area issue, which developers were they, and what were the outcomes of those meetings?

As above, English Nature does not hold records of every meeting with housebuilders regarding the SPA as a large number were informal discussions on potential mitigation for proposed developments. Where dates were recorded, English Nature generally does not hold minutes of such meetings unless there were action points specifically for English Nature, or a development was of a significant scale.

- HBF – at least 3 meetings. This does not include meetings organised by a third party at which English Nature and the HBF were present
- Bracknell Forest Borough Council – a number of meetings were held to discuss mitigation proposals for the Town Centre proposals
- English Partnerships – meeting to discuss mitigation for Staff College should a new application be made.
- George Wimpey – various meetings regarding the Dukes Ride Public Inquiry
- Respond & Love Lane Investments Ltd and Apex Housing Group - various meetings to discuss mitigation for Franklands Drive. Mitigation agreed.
- PC Estates – one meeting to discuss use of a site for mitigation
- MoD - 4 meetings regarding mitigation for AUE, 1 meeting regarding Aborfield Garrison
- Entec – 4 meetings re AUE for MoD
- WSP - 2 meetings on Queensgate
- Westgate - 1 meeting
- Waterfront Business Park, Fleet - 1 meeting
- Barrett Homes - 2 meetings regarding mitigation for Dilly lane
- Blays Lane – 1 meeting
- Surrey University – 1 meeting regarding proposed development. Outcome to carry out visitor survey
- Crest Nicholson - 3 meetings regarding land at former DERA site, Chertsey, to agree EIA and Reg 19 response

17. How many meetings have representatives of English Nature had with the Campaign to Protect Rural England regarding the Thames Basin Heaths Special Protection Area issue, and what were the outcomes of those meetings?

English Nature has not held any meetings regarding the Thames Basin Heaths with CPRE

18. What were the dates of the meetings held respectively with the RSPB, house builders and the CPRE?

English Nature has not held any meetings regarding the Thames Basin Heaths with CPRE. As discussed above, English Nature does not generally hold dates of informal meetings and formal meetings unless action points were recorded or where individuals took notes for their own use. The meeting list below is not therefore exhaustive but includes all those which we have recorded dates for. This does not include meetings which English Nature attended that were organised by a third party as we do not hold records of those meetings.

Meeting with	Regarding	Date
Bracknell Forest BC	Bracknell Town Centre development proposals	3/3/05
RSPB	TBH general update and discussion	25/4/05
RSPB	TBH general update and discussion	26/5/05
HBF	TBH general update and discussion	1/8/05
RSPB	TBH general update and discussion	25/8/05
English Partnerships	Discussion on Staff College mitigation	8/9/05
RSPB	TBH general update and discussion	21/10/05
HBF	TBH presentation	20/10/05
RSPB	TBH general update and discussion	8/12/05
RSPB	TBH general update and discussion	21/12/05
Bracknell Forest Borough Council	Regarding the TC application	12/1/06
RSPB	TBH general update and discussion	8/2/06
Bracknell Forest Borough Council	Regarding the TC	9/2/06
George Wimpey (Martin Leay)	Regarding Dukes Ride	20/02/06
HBF	TBH general update and discussion	20/02/06
PC Estates	Proposed mitigation site	03/03/06
RSPB	TBH general update and discussion	26/6/06

19. What other bodies has English Nature held discussions with concerning the Thames Basin Heaths Special Protection Area issue?

English Nature has discussed the Thames Basin Heaths SPA with GOSE, SEERA, DCLG, CA, RDS, Wildlife Trusts, the 15 LPAs, Defra, MOD, Forestry Enterprise, EA and Crown Estates.

20. What measures will be implemented to encourage people currently using the Thames Basin Heaths Special Protection Area for recreational purposes to use the land set aside as mitigation instead?

We would note that the main purpose of the provision of alternative greenspace is to service new residents rather than existing users of the SPA and measures will be targeted at this group. Nevertheless we recognise that some new residents may always choose to visit the SPA because of its size and character, and that this may be balanced by some existing users of the SPA choosing to visit the alternative greenspace instead. Measures will be identified for each parcel of alternative greenspace for the purpose of making them more attractive to people who would otherwise visit the SPA. In addition access management measures which will be implemented on the SPA may encourage some existing users to visit the alternative greenspace. Local promotion of alternative sites could also be used.

21. What assessment has been made of the likelihood of people currently using the Thames Basin Heaths Special Protection Area for recreational purposes using the land set aside as mitigation instead?

The risks to the SPA for which alternative green space is an answer are those arising from a potential increase in visitor pressure. The approach relies on the assumption that visitors can be diverted away from the SPA by alternative green space. On the face of it, the idea that people can be diverted to more attractive places is not difficult to accept. We see attractive places attract people all the time.

As above, we would note that the primary aim of the provision of alternative greenspace is to avoid the impact of new development and hence attract new residents, and is not therefore focused on diverting existing users from the SPA; a task which would be difficult to achieve in significant numbers due to the need to change well established behaviour patterns.

The key question is what people who tend to visit the SPA find attractive in the SPA and therefore what, if replicated or improved upon elsewhere, would lure new residents of similar mind to use the new or upgraded alternative greenspace.

Science simply does not, and cannot, give us a precise, quantitative answer to this question. However, we have strong evidence from visitor surveys⁴ which inform us on

⁴ Liley, D, Mallord, J. & Loble, M. J. (2005). *The "Quality" of Green Space, features that attract people to open spaces in the Thames Basin Heaths area*. English Nature Research Report XX. English Nature, Peterborough.
Liley D, Jackson D, and Underhill-Day J. (2005) Visitor Access Patterns on the Thames Basin Heaths. English Nature Research Report (in press), English Nature, Peterborough.

where people travel from to visit the SPA, how they travel, what they do once they are on the SPA and what their preferences are on the SPA and on existing alternative sites. This evidence will inform the design and location of new green spaces and the adaptation of existing green spaces, so that we can be confident of their attractiveness to the particular group of people that we are intending them to attract. Copies of the visitor surveys have been provided to the HBF but are also included with this response. We would note that both surveys are currently undergoing peer review in order to be published as English Nature Research Reports, and the drafts included here are therefore subject to change.

Even though we are confident in the alternative green space approach, further back up in the form of complementary management of the SPA will be provided. This will be in the form of both the proposed access and habitat management. Together these measures offer the certainty that is required by the Habitats Regulations in judging the likely effects on the SPA.

22. What number of recreational visitors to the Thames Basin Heaths Special Protection Area is considered to be sustainable?

English Nature does not hold this information and does not believe this information exists. The number at which the nature conservation features (habitats and species) are able to survive in a sustainable manner given external impacts depends on a great number of variables including site specific considerations. It would be difficult to reach an overall quantitative consideration without substantial research which has not been carried out to date.

23. What consideration has been given to the use of land currently occupied by conifer plantations in the Thames Basin Heaths Special Protection Area as land set aside for mitigation purposes, and if so why this idea was rejected?

The conifer plantations are in the SPA because they provide important habitat for the SPA birds. Land that is within the SPA and important to the integrity of the SPA cannot be used as mitigation; self-evidently, adversely affecting one part of the SPA to conserve another part is not mitigating the effects of the development on the integrity of the SPA and would not comply with the requirements of the Habitat Regulations.

The access management plans for each component SSSI will identify areas of each site that are less sensitive and identify management measures accordingly. In the conifer plantations within the SPA the areas of lower sensitivity are likely to change over time due to, for example, rotational forestry practices. Further information on access management as a mitigation measure is provided in relation to your question 6.

24. What assessment was made by English Nature during 2005 of the likely impact of the proposed mitigation measures for the Thames Basin Heaths Special Protection Area on development, local business and local communities?

English Nature is the Government agency established by statute to be responsible for nature conservation in England. It is financed by the Secretary of State for the

Department for Environment, Food and Rural Affairs (DEFRA), but is free to develop its own policies and to express independent views based on the best scientific evidence available. English Nature is a statutory consultee in respect of (amongst other things) proposals likely to affect a SSSI and plans or projects likely to have a significant effect on any European site.

A European Directive on the conservation of wild birds, known as the 'Birds Directive' requires member states to protect and manage populations of wild bird species. It also requires member states to identify, classify, protect and manage those sites that are the most important for the conservation of bird populations. These protected sites all across Europe are known as Special Protection Areas (SPAs); they are classified to protect large assemblages of migratory birds and to protect species of birds, listed in Annex 1 of the Directive that are vulnerable or rare in a European context. The ways in which the SPAs must be protected from development projects, as required by the Birds Directive, have been transposed into English law by the *Conservation (Natural Habitats, &c.) Regulations 1994*, known as 'The Habitats Regulations.'

The designation and protection of areas of land important for the Annex 1 bird species is therefore an international obligation as well as a matter of British law.

The UK government therefore has a duty to protect SPAs and as the statutory nature consultation advisor English Nature has a duty to advise local planning authorities and ultimately the SoS, using the best available information, on the likely impact of proposals which may adversely affect a SPA. This duty to advise on likely impacts to ensure that the UK is compliant with European and British legislation is not dependent upon social or economic factors. English Nature acknowledges that its advice in the SPA may have an impact on social and economic interests and will seek solutions which do not unduly disadvantage such interests. However, it is not English Nature's role to balance these with nature conservation interests. English Nature consults interested parties on behalf of Government before classification of an SPA. For Thames Basin Heaths this consultation took place in 2000. Government takes the views of interested parties into account in the classification process. In relation to individual plans and projects, the balancing of different interests is provided for by the Habitat Regulations. The competent authorities in this are the local planning authorities and ultimately the SoS.

We would refer you to the following taken from the template Supplementary Planning Document produced by English Nature for the local planning authorities, which sets out the stepwise tests of the Habitats Regulations which should be followed by decision makers when considering plans or projects which may affect a European site;

A proposal for new residential development, whether a single new dwelling or many, and whether a conversion or a new building, is a 'plan or project' to which the Habitats Regulations apply⁵. The Regulations must be applied by the Council when considering whether to grant planning permission, and by the Secretary of State when she, or an Inspector delegated to make the

⁵ *The Conservation (Natural Habitats &c) Regulations 1994* Regulation 48(1)

decision on the Minister's behalf, is considering an appeal against a refusal of planning permission.

Government Circular (6/2003 (ODPM) 2/2005 (DEFRA))⁶ accompanying Planning Policy Statement 9, Biodiversity and Geological Conservation⁷ explains in detail how the Regulations should be applied. An adaptation of the flowchart in the Circular is reproduced in Figure 1 below.

Essentially, the Habitats Regulations require all plans or projects with the potential to affect an SPA and not directly connected with and necessary to their management for nature conservation, to be assessed. Those that are likely to have a significant effect on the site, alone or in combination with other plans or projects, must be subject to a more detailed assessment in order to ascertain if the proposal would adversely affect the integrity of the site.

If the proposal would be likely to have a significant effect on the SPA, alone or in combination with other plans or projects, the Council must undertake an 'Appropriate Assessment' of the implications of the proposal for each of the three bird species for which the SPA is classified, in light of the conservation objectives for the SPA. The Council must consult English Nature. The Regulations restrict the grant of permission if it cannot be ascertained that the proposal, alone or in combination with others, would not have an adverse effect on the SPA. It should be noted that, unlike in most other planning decisions, the Habitats Regulations apply the precautionary principle as a matter of law. The Appropriate Assessment should conclude that the development proposal will not have an adverse effect on the integrity of the SPA before it is given consent. If the effects are uncertain, the precautionary principle applies and it must be assumed that the proposal will have an adverse effect on the site.

*Measures to avoid or reduce the effects of a development proposal on the SPA (here referred to as **avoidance measures** and **mitigation measures** respectively⁸) can be proposed as part of the planning application and the Council will take these into account in the assessment. Avoidance measures eliminate the likelihood of any effects on the SPA. Mitigation measures would be designed to reduce likely significant effects, to a level that is insignificant or in a way that makes them unlikely to occur. It may be that a project could have an adverse effect on site integrity, but conditions, restrictions or other legally enforceable obligations, would ensure mitigation measures can be included in the project to remove the potential for adverse effects on site integrity.*

The difference between avoidance and mitigation measures is not an academic one. If avoidance measures are proposed, and they are considered to be fully effective and guaranteed by way of legally enforceable conditions or

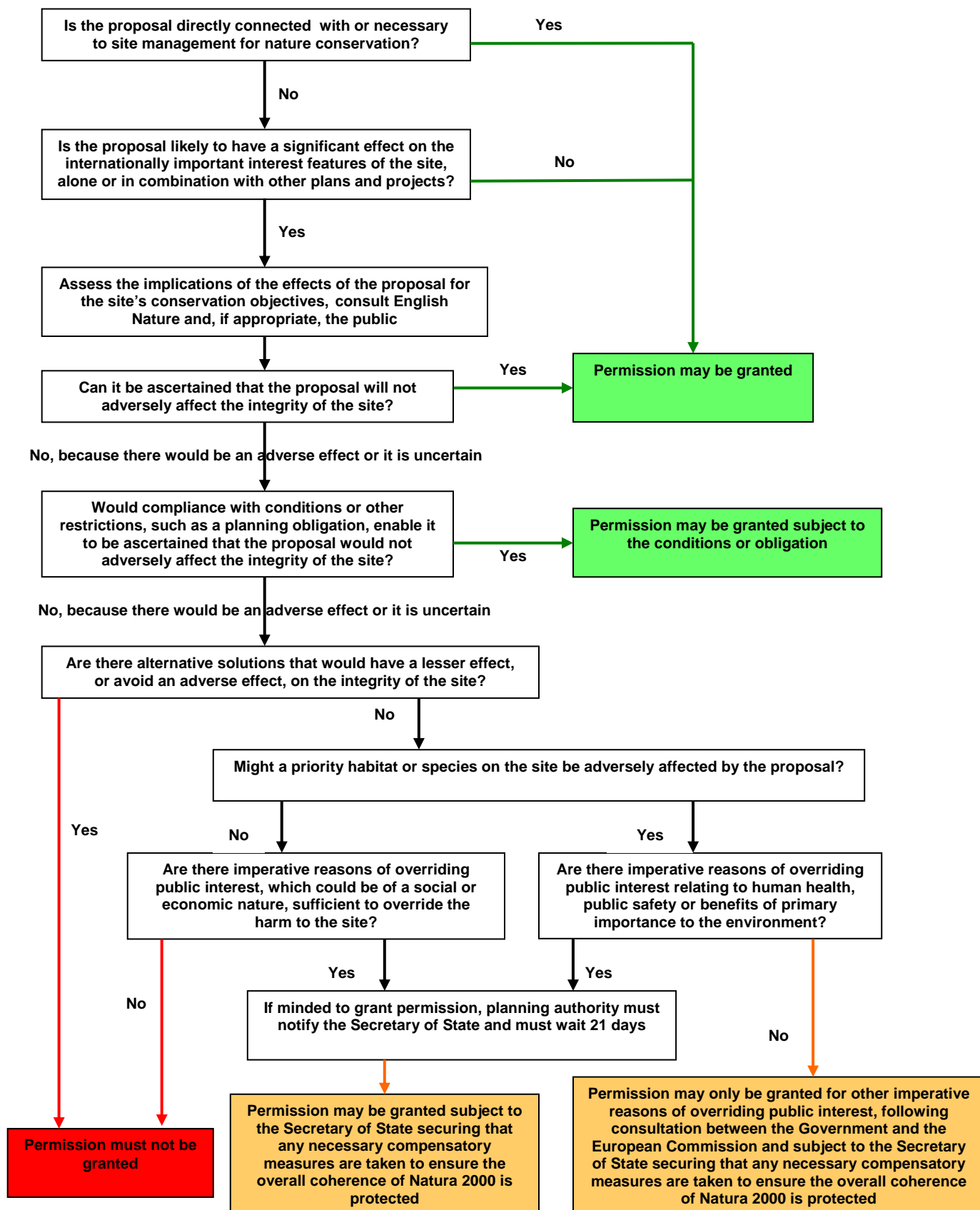
⁶ ODPM Circular 06/2005. Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System.

⁷ Office of the Deputy Prime Minister, 2005. Planning Policy Statement 9 Biodiversity and Geological Conservation.

⁸ The principle of a step-wise approach (starting with avoidance then considering mitigation then compensation measures) is incorporated into the key principles of PPS 9, at paragraph 1(vi)

obligations, then the proposal is not subject to the further tests of the Habitats Regulations. However, as explained below, because the Regulations require projects to be considered both on their own and in combination with other projects, to see if their combined effects would be likely to be significant, mitigation measures may not be enough to enable a proposal to pass the tests of the Regulations. The project's effects will still have to be combined with others and the combined effects may still be significant even though the mitigation measures reduced the effects of the one project to insignificant levels.

FIGURE 1 FLOWCHART OF THE WHOLE DECISION MAKING PROCESS UNDER THE HABITATS REGULATIONS 1994



Planning permission should not be granted for projects that

- a) are likely to have a significant effect and have not been assessed to determine whether there would be an adverse effect on the integrity of the site; or*
- b) have been assessed and it cannot be concluded that there will be no adverse effect on integrity;*

unless the project passes further stringent tests set out in Regulation 49 (see Figure 1 above).

Where it cannot be concluded that there will be no adverse effect on integrity the Council must first consider whether there are alternative solutions that will have a lesser effect or avoid an adverse effect. If such alternatives exist, planning permission cannot be granted as a matter of law⁹. For most proposals, particularly residential applications, it will be clear that there are alternative solutions that will have a lesser effect, or avoid an adverse effect on the SPA, because there will be alternative sites on which dwellings could be built. It is therefore unlikely that a residential proposal that may or would have an adverse effect on the integrity of the SPA could be permitted as a matter of law.

If alternatives do not exist, then Regulation 49 of the Habitat Regulations allows for social and economic interests to be considered at that stage; if the plan or project is considered to be of overriding public interest then planning permission may be granted subject to the Secretary of State securing compensatory measures to ensure that the integrity of the Natura 2000 suite is maintained.

English Nature would note that without the Delivery Plan, all of the current and the large number of future planning applications near to the SPA would still have to be considered for their effects on the SPA, in accordance with the requirements of the Habitats Regulations. There is strong evidence of risk of a substantial impact on the SPA arising from new housing development. Within the area of risk, new housing applications will usually trigger a response of 'likely significant effect' from English Nature. This in turn places a requirement on LPAs to undertake Appropriate Assessments, considering applications alone and in-combination, prior to determination, and only to approve applications where the LPA is able to conclude that there will be no adverse effect on the integrity of the SPA.

This is a serious resource issue with the planning authorities and, of course, English Nature. It is leading to delays in processing applications and to a high level of uncertainty in respect of the outcomes of planning applications, that is not in the public interest. It is very difficult to maintain consistency of decision making across the whole SPA in such a complex situation and in such a large volume of casework.

⁹ *The Conservation (Natural Habitats &c) Regulations 1994* Regulation 49(1)

The Thames Basin Heaths SPA is set within an area of high economic activity where there is a need to accommodate significant numbers of additional new dwellings, to meet current and predicted demands. This represents a serious challenge for spatial planning in the area, a challenge that is recognised by English Nature and the local planning authorities. It was recognised that a strategic approach that was compliant with the Habitats Regulations was urgently needed as the case by case approach to assessing applications often than not results in the assessment having to conclude that it cannot be ascertained that the development, in combination with others, will not have an adverse effect on the integrity of the SPA. Permission has to be refused under the provisions of Regulations 48 and 49. This need for a strategic approach was the basis of the Thames Basin Heaths Project which produced the draft Thames Basin Heaths Delivery Plan. The Delivery Plan is a response to the difficulties resulting from assessing residential applications under the Habitats Regulations and does not aim to restrict housing. It represents an effort to make proactive use of nature conservation legislation to avoid unnecessarily restrictive regulatory procedures being placed on developers and local planning authorities. It aims to enable housing permissions to be granted in the Thames Basin Heaths area in the long term whilst protecting the SPA.

The Delivery Plan provides an opportunity to demonstrate sustainable development; delivering infrastructure provision and providing a win:win outcome for developers, local communities, the government, and the environment. It provides one route by which compliance with the Habitats Regulations may be achieved, and does not in any way restrict or prevent alternative routes through the Habitats Regulations, though the very nature of the site and the range of impacts makes such routes onerous.

25. What account was taken of any such assessment by the Council and management board of English Nature in sanctioning the adoption of the proposed mitigation strategy for the Thames Basin Heaths Special Protection Area?

We would refer you to our response to the above question.

26. When did the Council and management board of English Nature agree the adoption of the proposed mitigation strategy for the Thames Basin Heaths Special Protection Area?

Advice on development plans (LDFs and RSS) and projects is delivered largely by English Nature area teams. This work is informed by internal guidance and experienced staff; it is quality assured by internal networks including contact with specialists within English Nature, for example specialists on town and country planning, or particular habitats, or particular sectors. We try to focus our advice on outcomes identified within English Nature's corporate plan, which is approved by Council.

Area managers take responsibility for compliance with English Nature's procedure and corporate priorities, briefing and receiving approval from Regional Managers and the Executive Board on matters of greater than area importance. Area Managers report quarterly on team achievements and risks in relation to the corporate plan.

Conception of the TBH project was at an area team level. It was subject to early discussion (from April 2004) with the head of Defra's European Wildlife Division. The discussions were led by the Regional Director of English Nature for the South East, Tom Tew, who was also the programme manager for English Nature's Designated Sites Programme (which includes all of English Nature's work relating to SPAs).

Since summer of 2004 the project has been led by Tom Tew's successor as Regional Director for the SE, Alan Law.

The Regional Director kept English Nature's then Director of Operations (Dr. Andy Clements) apprised of the project through monthly or bimonthly meetings. The Director of Operations has visited the Thames Basin Heaths for on site briefing and discussion with GOSE.

The Chief Executive, Dr. Andy Brown, has also been briefed fully on the project. Some of English Nature's advice to local authorities, MPs and the media has come directly from the Chief Executive.

English Nature's internal communication on, and authorisation of, the Thames Basin Heaths Project has been enabled by close contact between the Thames and Chilterns area team, the Thames Basin Heaths project staff in Sussex and Surrey and Hampshire teams, the regional director and the Executive Board of English Nature, including the Chief Executive and the Director of Operations. Generally, briefing of senior staff has been oral or has focussed on the drafting of advice to external parties.

English Nature's Chairman has also been briefed and has met external stakeholders specifically for the purpose of discussing the Thames Basin Heath.

Both the Chairman and the Chief Executive are part of English Nature's council.

27. What account has English Nature taken of the lack of a complete evidence base concerning (a) the potential impacts on the protected species arising from new residential development close to the Thames Basin Heaths, and (b) the effectiveness of the individual mitigation options available to it and other parties, in formulating its proposed mitigation strategy for the Thames Basin Heaths Special Protection Area?

English Nature disagrees with your statement that there is no evidence that recreational use of the SPA has an impact on the Annex 1 birds for which it is designated, and would refer you to our letter to the HBF of 11 May 2006, and our letter to [REDACTED] of 6 July 2006 which respond on this point. Our response in these letters also notes the requirements under the Habitats Regulations, we would also draw your attention again to the fact that English Nature is raising concerns about current proposals relating to the effects which they, in combination with other proposals, may have in the future, from the point of first occupation of the proposed dwellings, and not historic development.

With regard to your question 27 (b), we would refer you to our response to question 21 with regards to offsite greenspace provision, our response to question 6 with

regards to onsite access management, and our response to question 13 with regards to pet covenants. We would note also that we have consistently maintained that we will consider any form of mitigation that is proposed on its merits and that it is for the applicant to demonstrate to English Nature and the Local Planning Authority as the competent authority under the Habitats Regulations that their proposal will not have an adverse effect upon the integrity of the SPA.

28. What advice, and when, was given to the Council and management board of English Nature about the implications of the existing evidence base for the proposed mitigation strategy for the Thames Basin Heaths Special Protection Area?

We would refer you to our response to your question 26. English Nature's regional director and the Executive Board of English Nature, including the Chief Executive and the Director of Operations have been kept informed on the project throughout its development.

29. What view was taken by the Council and management board of English Nature about the limitations of the existing evidence base in agreeing the adoption of the proposed mitigation strategy for the Thames Basin Heaths Special Protection Area?

As noted in our response to question 26, conception of the Thames Basin Heaths project was at an area team level and English Nature's senior management were kept informed throughout the development of the project. English Nature considers that the available research on the impacts of urban development on heathland birds, and the research on visitor behaviour demonstrates a real risk to the SPA from new residential development. This has therefore informed our advice to the relevant competent authorities, consistent with the application of the precautionary principle enshrined in the Habitats Regulations.

30. When will the Council and management board of English Nature next review the current position on the Thames Basin Heaths Special Protection Area

English Nature considers the Thames Basin Heaths Project to be a pilot project and, once it has been implemented, intends to review the approach after three years. At this stage we are unable to anticipate how the council and board of English Nature's successor, Natural England, will participate in this review. We would note that the Delivery Plan approach and the Project should evolve to take account of new developments in research and policy and we would expect this to continue both before and during implementation.