



Environmental Planning
Design & Management

BY EMAIL ONLY

Date 12/01/2018

Dear Mr Clews,

North Essex Authorities' Joint Strategic Plan Examination: LUC/NEA Comments on the Representation from Dr Chris Gibson, on behalf of Wivenhoe Town Council

This letter seeks to address the concerns raised in the representation submitted by Dr Chris Gibson in relation to the Habitats Regulations Assessment (HRA) of the Section 1 Shared Strategic Local Plan for the North Essex Authorities' (NEA's) of Braintree, Colchester and Tendring. The information provided below represents a joint response by the NEA's and LUC to the issues raised and seeks to clarify and address the issues raised to assist with the Examination.

Summary

The HRA has been undertaken in line with a best practice and standard approach which utilises the precautionary principle. Natural England were closely consulted throughout the process and agree with the conclusions reached.

Dr Gibson's main concern appears to relate to concerns over the deliverability and effectiveness of the mitigation and avoidance measures upon which the HRA relies, specifically the Recreational and Avoidance Mitigation Strategy. Since the submission of the HRA, the RAMS has been committed to and progressed further as part of a working partnership between the wider Essex Authorities and Natural England. In terms of the appropriateness and deliverability of the RAMS, this approach is now widely promoted and relied upon nationwide as the primary measure in avoiding impacts to European Sites as a result of recreational pressures and this approach has been successfully passed scrutiny as part of the Examinations of numerous other Local Plans in the UK. Furthermore, there are established mechanisms in UK planning which demonstrate the effectiveness of such an approach, including in terms of funding and implementing in perpetuity, such as the Thames Basin Heaths Delivery Framework.

As a result, there is sufficient certainty that the conclusions reached within the HRA are robust and accurate, and that the RAMS and other mitigation and avoidance measures will ensure that adverse effects on the integrity of European Sites will be avoided.

Detailed Responses

The detailed responses provided correspond to the numbering used in Dr Gibson's representation as indicated below.

3-5 – The HRA followed a precautionary approach by recognising various Zones of Influence (ZOI) for individual European Sites, based on the findings of recent survey data and as agreed with Natural England. Dr Gibson asserts that *"all new housing is likely to have a significant effect upon the Colne Estuary Sites, given the anticipated zone of impact"*. We would agree that much of the new housing, including the West of Colchester and East of Colchester Garden communities are proposed to be located within the ZOI of the Colne Estuary, and this is recognised in the HRA. Indeed, the potential for such proposals to result in a Likely Significant Effect (LSE) on the Colne Estuary could not be ruled out at the HRA screening stage and was considered in more detail at the Appropriate Assessment (AA) stage.

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Importantly, the key legal test in undertaking HRA is not whether a plan will result in LSE, but whether – taking into account mitigation and avoidance measures - the plan would result in Adverse Effects on Integrity (AEoI). The HRA, which Dr Gibson recognises was undertaken in line with standard practice, concluded that providing the recommended mitigation and avoidance measures (most notably a Recreational Avoidance and Mitigation Strategy (RAMS)) are committed to and successfully implemented the Joint Strategic Plan would not result in AEoI on any European Sites.

7a – It is acknowledged that the qualifying species of the Outer Thames Estuary SPA are susceptible to disturbance. However, it is necessary to consider the likelihood of population growth resulting from the Shared Strategic Plan resulting in a Likely Significant Effect on the qualifying features of the SPA. The SPA comprises an area of open sea covering c.3924km², extending over 40km from the coastline, and reaching as far north as Great Yarmouth. The boundary of this SPA is based on the foraging area of the qualifying species, and notably excludes most of the coastal water in close proximity to Tendring and Colchester.

Whilst feeding in the open sea, red throated diver and tern species are highly mobile, covering vast distances, whereas recreational boats would be expected to remain relatively close to the coast. Given the mobility of these species and the visibility afforded to them while feeding and loafing at sea they are unlikely to be disturbed by watercraft to any level approaching a significant effect, being able to easily maintain a distance they are comfortable with. Furthermore, the increase in usage of watercraft is unlikely to result in any discernible increase in the numbers, distribution or frequency of watercraft navigating these waters, particularly when considered in light of their existing usage and importance as established commercial fishing and shipping importance.

Therefore, it is maintained that screening out the Outer Thames Estuary SPA was accurate and robust, being based on a detailed understanding of the usage of the site by its qualifying species, whilst also relying on a common sense approach which recognises the likelihood of an event occurring.

Natural England has confirmed that they agree it would be prudent to 'screen in' the Outer Thames Estuary SPA into a revised HRA. Nevertheless, the NEA remains satisfied that LSE on this SPA can be screened out for the reasons provided above. Therefore, whilst in our view it is not necessary to proceed to the test of 'AEoI', the information included herein provides sufficiently robust evidence and a suitable level of certainty to conclude that AEoI would be avoided. Particularly given the much higher threshold required for an impact to result in AEoI. This issue has also been discussed with Natural England who have confirmed that they remain satisfied that the Shared Strategic Plan would avoid AEoI for all European Sites, including the Outer Thames Estuary SPA.

7b – Figure 2 does identify sensitive areas of the Colne Estuary, but that is not to say that it implies that other areas of the wider SPA/Ramsar are not also important in maintaining the qualifying features and sensitive to disturbance. Figure 2 was not and is not intended to be considered a comprehensive map of the Colne Estuary or a comprehensive record of nesting, feeding or roosting sites for qualifying birds along the Colne estuary. Typically within a coastal SPA there will be key locations which are of increased value for birds, and which are particularly sensitive to disturbance, such as high tide roosts, favoured feeding areas, and colonial nesting sites, particularly where close to areas with human access.

Therefore the inclusion of Figure 2, which was produced by the RSPB and is based on expert local knowledge, provides essential information in understanding the potential impacts and informing the assessment. The determination and recognition of key locations for birds within the Colne, and other European Sites will be a key component of the RAMS process, and such information will continue to be updated in light of monitoring and survey results, and consultation with key stakeholders, including NE, the RSPB, the BTO, the Wildlife Trust and other land managers, for the lifetime of the plan and strategy.

Importantly, this ensures that there will be a feedback loop, whereby the provision of the RAMS is able to respond to fluctuations in bird distribution and behaviour.

Furthermore, it should be recognised that the HRA also fully considered the importance of areas of land outside the SPA boundary which may represent functionally linked land upon which SPA birds may depend. This is in accordance with a precautionary approach.

7c, & 11-15 – It is agreed that the “*continued implementation and improvement [of the RAMS] in light of experience*” is a key component of the RAMS. We also agree with Dr Gibson that a RAMS will be required “*in perpetuity and as part of an adaptive strategy*”. Dr Gibson’s key concern appears to relate to doubt that a RAMS can be effectively secured and implemented. We seek to address these concerns below.

The HRA report for the Shared Strategic Plan identified a number of mitigation measures to be implemented to ensure compliance with the Habitats Directive and Regulations. The preparation of an Essex Coastal RAMS is one of the mitigation measures proposed with a sole and specific purpose of addressing the impacts from increased recreational pressure linked to growth proposed in the emerging Essex Local Plans with a coastal boundary.

Work has already started on the Essex RAMS. Essex County Council’s Place Services team has been appointed to project manage and deliver the Essex RAMS. A project steering group comprising the following 11 coastal and near coastal authorities has been established. The participating LPAs include Braintree District Council, Tendring District Council, Colchester Borough Council, Chelmsford City Council, Maldon District Council, Rochford District Council, Castle Point Council Southend on Sea Unitary Authority, Brentwood District Council, and Basildon District Council.

A Statement of Common Ground (SOCG) (SCG001) was signed between the NEAs and Natural England on 30 November 2017 agreeing the principle of further joint working to implement an Essex Coastal RAMS by the time that the Local Plan is adopted. The SOCG sets out agreed policy commitments to produce an Essex Coast RAMS in SP6 along with policy requirements for further bird surveys to identify offsite functional land loss in the Tendring/Colchester Garden Community, along with appropriate mitigation where land is lost and a policy commitment to secure contributions to deliver mitigation identified in the RAMS in SP8. The SOCG also agrees a number of modifications to the Shared Strategic Local Plan that will strengthen the protection and enhancement of the natural environment and SSSIs, in the Vision and SP8, and strengthen policy with regards biodiversity creation and enhancement (SP6).

Visitor surveys are planned between February and April 2018 and stakeholder workshops are planned for March and June 2018. Work on the RAMS is scheduled to be completed by December 2018. A Supplementary Planning Document will also be prepared as part of the RAMS process that will set out the financial tariff for each LPA area participating in the project.

A Planning Delivery Funding bid was submitted to DCLG on 11 January 2018 to fund the Essex coast RAMS project. Regardless of the success of the bid, funding has already been committed from all 11 participating LPAs to deliver the RAMS. Natural England has also committed additional funding for visitor survey work in Essex.

The above demonstrates, the commitment of not only the NEA’s but the other Essex coastal LPAs outside the Shared Strategic Plan area and Natural England in delivering and implementing the RAMS.

RAMS are now regularly utilised within the UK to ensure a sufficient level of certainty that potential recreational impacts to European sites associated Local Plans can be avoided and mitigated. A key requirement of the RAMS will be to provide a flexible and responsive approach which adapts to survey and monitoring findings and ensures that refinements can be implemented in advance of LSE's (or AEOI) being realised. Crucially, the management of flagship nature reserves across the UK provides a wealth of evidence that appropriate management, which represents a crucial component of the RAMS, can successfully avoid and mitigate recreational effects on coastal habitats and species. In addition, the provision of alternative greenspace in proximity to new residential dwellings, which aims to attractive regular local recreational activities and alleviate pressures on the European Site, will also represent a key component of the RAMS. This type of approach is also frequently adopted UK wide with an established record of success. More information on this is provided below.

7d - Dr Gibson explains that he is "*not aware of any precedent where it has been demonstrated that such a large new population so close to a European site can have their recreational demands met successfully and in doing so, avoid an adverse effect upon the European Site*". A good example of a successful approach is provided by Policy NRM6 of the South East Plan (The Thames Basin Heath Delivery Framework (TBHDF)) which has been and remains crucial in facilitating population growth in the authorities located within the Thames Basin Heaths SPA zone of influence (The authorities include Bracknell Forest Borough Council, Elmbridge Borough Council, Guildford Borough Council, Hart District Council, Royal Borough of Windsor and Maidenhead, Runnymede Borough Council, Rushmoor Borough Council, Surrey Heath Borough Council, Waverley Borough Council, Woking Borough Council, Wokingham Borough Council, and Hampshire County Council). The Delivery Framework was prepared in 2008 and adopted as part of the statutory development plan for the South East Plan proposed changes in 2009. The Framework is also reflected by individual avoidance strategies produced by each of the authorities, and the key approach to avoidance and mitigation focuses on the provision of (i) strategic access management and monitoring (SAMM), and (ii) provision of suitable alternative natural greenspace (SANGs). This provides a useful example of an equivalent mechanism for the delivery and effectiveness of this approach in perpetuity.

7d & 18.22 – It is not intended to provide SANGs "*close to the impacted site*" because it is generally agreed that the "*Lure of the Sea*" cannot be recreated, and if people are travelling in a coastal direction by car, they are more likely to visit the coast than any alternative open space created nearby. Crucially, the primary purpose of SANGs is to attract those regular local activities which studies have been shown to be most likely to disturb the SPA features, including most notably dog walkers, and therefore provision of SANGs is typically, and will be, located in proximity to residential areas and managed accordingly so that it represents a viable and realistically attractive alternative for such key activities.

7e – The delivery of new green infrastructure and open space forms part of the proposals/principles in the Shared Strategic Plan for the Tendring /Colchester Borders Garden Community. One of the accepted functions of green infrastructure/new open space is to relieve reactional pressure on designated European sites. The Shared Strategic Plan establishes the principle of delivering a network of multi-functional green infrastructure and open space as part of the Garden Community.

A more detailed Development Plan Document will be prepared that will provide greater details on the amount and location of new green infrastructure within the wider garden community. GI provision will be determined through masterplanning to support the preparation of the DPD and as part of these processes, the types of GI to be provided, its functionality and location will be determined. Importantly, given the location and extent of the garden community, there is a high level of certainty that such a network of connected high quality green infrastructure and open space can be provided, and serve an effective mitigatory role in reducing recreational pressure at the European Sites.

7f - It is agreed that a watercraft code of conduct would not in isolation address all the issues associated with recreational pressures. Indeed, no one single measure should be solely relied upon. The purpose of a RAMS, of which a code of conduct would form part, is to provide a suite of measures which, together, provide sufficient certainty that adverse effects on integrity would be avoided. A code of conduct would not guarantee the avoidance of AEoI on its own, but it would certainly provide an important role in encouraging people to undertake recreational activities responsibly, particularly if linked to penalties and enforcement as is intended.

Encouraging responsible recreation is a key measure endorsed by land managers of important wildlife sites across the country, including NE, RSPB and the wildlife trusts. These bodies regularly provide educational material at sites to encourage visitors to comply with key objectives. A good example is the long established mitigation strategies in place for heathland SPAs in the south of England where the use of educational material, including signage, leaflets and via wardening has been successful in encouraging people to put dogs on a lead, stick to accessible footpaths, and avoid activities which could otherwise be harmful to the SPA features.

A code of conduct approach would be targeted to the providers of recreational watercraft such as marinas, launch sites, boat yards and tourist operators, not to individual residences. And this approach is not intended to mitigate for the small proportion of irresponsible people, but rather to educate and inform the majority of people who are keen to act in responsible and sensitive manner. Indeed, most forms of disturbance to birds from watercraft are a result of ignorance rather than malice, and therefore whilst such measures will never be solely effective at eliminating potential impacts, they have a key role to play in contributing to the effectiveness of overall mitigation and avoidance, and therefore education through a code of conduct should be recognised as a key component to any RAMS.

7g (i-vi) – Dr Gibson asserts that section 6.98 and 6.99 make untenable assumptions. In fact, the information contained within these paragraphs provides important contextual information. We would agree with the points raised in section 7g including in relation to the effect of watercraft on supporting habitat, disturbance to little terns, and periods of activity. These were fully considered as part of the HRA and importantly can be effectively addressed as part of the RAMS approach.

8-10 - The HRAs of both the Shared Strategic Section 1 and the Tendring Local Plan Section 2 were based on the total proposed quantum of housing within the Plan period. The HRA of the Plan can only assess what is in the Plan in-combination with other plans and projects. Importantly, future proposals and the Plan review would be subject to further HRA, at a point when there will be additional baseline information and monitoring results. After the Plan period there will be continuing growth in the area. There is no reason to believe that RAMS will not be able to address the effects of that growth insofar as part of it is accommodated, as proposed, in the Garden Communities.

11 – We disagree with Dr Gibson’s view, and contend that there is a sufficient level of certainty in the appropriateness, deliverability and effectiveness of RAMS to enable a conclusion of no adverse effect on the integrity of European Sites. The reasoning for this is provided above.

12 – It is agreed that there is currently a lack of experience of the outcomes of RAMS specifically targeted towards coastal SPAs. However, this is an approach widely supported and promoted by Natural England, and a key element of any RAMS includes the management of people to minimise disturbance, and this is an approach which is widely accepted to be effective. Indeed, visitor management is an approach which has been demonstrated to be effective at flagship coastal wildlife reserves around the UK, at locations where visitation is actively promoted. Furthermore, as described above, the strategic approach to managing access on sites whilst also delivering alternative options is a principle which has been successfully implemented and accepted in the context of the Habitats regulations elsewhere in the

UK (e.g. TBHDF). This strategic approach has significant advantages over the way mitigation has historically been delivered in a piecemeal fashion, and this approach represents an encouraging step forward in the way such issues are effectively addressed in the UK.

14 - At no stage do the conclusions of the assessment rely upon 'pragmatism' in reaching a decision in line with the tests of the regulations. However, a pragmatic approach is one which deals with things sensibly and realistically in a way that is based on practical rather than theoretical considerations, and therefore it serves to reason that the use of a pragmatic approach provides additional certainty in its deliverability and effectiveness.

16 - It is recognised that Dr Gibson places much emphasis on the ability of individual mitigation and avoidance measures to avoid and mitigate the effects predicted. The RAMS is intended to rely on a suite of measures and it is the strength of this suite together, rather than a reliance on individual aspects alone, which enables certainty that AEOI will be avoided. Importantly, the RAMS will be adaptable, with a commitment to a feedback loop in light of ongoing monitoring and survey. Concerns in relation to the funding, and mechanisms for implementation are detailed elsewhere herein.

17 & 18 - Details for the new Country Park will be determined through masterplanning work and to inform the individual DPDs for each Garden Community. The final design will seek to deliver multifunctional green infrastructure that will benefit wildlife, people and the environment. High level principles for the provision of green infrastructure are part of the Garden Communities charter.

The existing presence of natural greenspace provides a high level of certainty that it will represent an attractive alternative natural greenspace to visit. Crucially it is necessary to consider its role in determining whether it will represent mitigation. In this instance, if it serves, as it certainly will, to attract many of the local residents for the purposes of recreational activities such as dog walking instead of the visiting the SPA, it is justifiably considered mitigatory. Importantly, the provision of such measures is not intended to 'offset' or compensate for impacts to the SPA. Indeed compensation of an AEOI of a European site would require the derogation tests of the Habitats Regs to be met in order to be legally acceptable.

21 - It is agreed that "*within-development green infrastructure will not in itself absorb all recreational pressures: especially given the proximity of the Estuary, the 'lure of the sea'".* Indeed, it is intended that the provision to provide alternative open space and green infrastructure represents part of a multi-faceted approach which also includes management at the European Sites, including for example through wardening and enhanced visitor access facilities such as path alignment, fencing, screening and signage, plus the provision of monitoring of both recreational activities and birds to enable a feedback loop to continue to inform the RAMS in perpetuity.

22 & 26b - It is not intended to "*provide additional 'green recreational space' close to the impacted site*", for the reasons outlined above.

27 - 34 (Implications) - This section considers the derogation tests. The North Essex Authorities agree with Natural England that the Shared Strategic Local Plan will not result in adverse effects on the integrity of any European Sites, and therefore there is no requirement to consider the derogation tests.

In terms of the consideration of appropriate locations for development as part of the Plan, alternative spatial strategies for both the quantum of development and the spatial distribution have been assessed through the Sustainability Appraisal (SA). This included whether the concept of Garden Communities was appropriate.

Alternative locations for garden communities explored included the Metro Plan, North Colchester, Monks Wood, and a number of urban extensions to towns or villages. These alternatives would likely produce the same number of houses within the Zones of Influence for the European Protected Sites. Furthermore a dispersed spatial strategy is less likely to produce the high quality green infrastructure that can mitigate recreational use of coastal sites than ones based on Garden Communities principles. The assessments for a range of alternative options to Garden Communities are published in the Section 1 Sustainability Appraisal and earlier individual LPA plan proposals and supporting SAs. We disagree that the NEA authorities should search for alternatives outside of the Local Authority areas as locally assessed housing need can be sustainably met within North Essex.

The 3 Garden Communities proposed in the Shared Strategic Plan are considered by the NEAs to be the most sustainable options for future growth across North Essex.

35 & 36 - Irrespective of Dr Gibson's personal view of Natural England's current role in the planning process, it should be recognised that the UK government is legally required to ensure that plans and projects will not result in adverse effects on the integrity of European sites. Natural England is a non-departmental public body with a statutory purpose to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development. The views of Natural England are therefore critically important in this Examination of the Shared Strategic Local Plan.

This concludes our response to Dr Gibson's representation.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D Green', is positioned above the typed name and contact information.

David Green on behalf of the North Essex Authorities
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