

CABINET

15 FEBRUARY 2018

SOLENT RECREATION MITIGATION STRATEGY (DECEMBER 2017)

Report of the Strategy Lead (Housing & Development) & Lead Specialist for Housing and Development

Recommendations:

It is recommended that Cabinet:

- (1)** endorses the updated Solent Recreation Mitigation Strategy as a mechanism to mitigate the effects of increased recreational visits on the Solent Special Protection Areas (SPAs) arising from planned new housebuilding in the vicinity of the coast;
- (2)** continues to adopt the approach of the Solent Recreation Mitigation Partnership so that all relevant new residential development is required to mitigate against the harm caused, by either the submission of site specific schemes of work or payment per residential unit, prior to implementation of the development;
- (3)** approves the application of the Strategy's increased developer contribution rate to all relevant planning applications within the 5.6km zone which are determined after 1st April 2018, and endorses the transition guidance; and
- (4)** delegates the detailed mechanism for securing the planning obligations to the Lead Specialist for Housing and Development.

Summary

The purpose of this report is to update Cabinet on the Solent Recreation Mitigation Strategy (SRMS), and to seek agreement on the mechanism for securing developer contributions to fund measures identified in the Strategy.

The Solent Recreation Mitigation Partnership works to establish a strategic approach to manage recreational pressures on overwintering birds in the Solent, from an increasing residential population arising from new housebuilding. An interim Strategy was introduced in 2014 and since then work has taken place on the preparation of a longer term definitive Strategy. In December 2017 the Partnership published the updated Solent Recreation Mitigation Strategy. The Partnership anticipates that all Solent local authorities (including Eastleigh Borough Council) will have adopted the Strategy by the end of March 2018.

The Strategy enables a housebuilder to make a monetary 'developer contribution' for the strategic mitigation of recreational pressures that would otherwise occur over a wide area, instead of needing to provide bespoke mitigation themselves.

Statutory Powers

The Conservation of Habitats and Species Regulations 2017

Section 111 Local Government Act 1972

Section 106 of the Town and Country Planning Act 1990 (as amended)

Community Infrastructure Levy Regulations 2010 (as amended)

Strategic Implications

1. Implementing the Solent Recreation Mitigation Strategy supports the Council's green infrastructure objective of supporting local biodiversity and habitats, alongside the priority of ensuring a sufficient supply of new homes. Specifically, the Strategy supports the Council's objective of accelerating the delivery of new homes. Whilst a developer can still provide their own mitigation, for the vast majority it will be simpler, quicker and less costly to make a contribution towards the Strategy. The Strategy also aligns with the Council's Biodiversity Action Plan. The Strategy seeks to actively encourage all coastal visitors to enjoy their visits in a responsible manner rather than restricting access to the coast or preventing activities that take place there. This supports the Council's objective of facilitating better physical and mental health and wellbeing.

Introduction

2. The Council is one of fifteen Solent local authorities comprising the Solent Recreation Mitigation Partnership (SRMP), along with Natural England, the Royal Society for the Protection of Birds, Hampshire & Isle of Wight Wildlife Trust, and Chichester Harbour Conservancy. Since 2014 the Council has been operating a version of a disturbance avoidance strategy, with a 'flat rate' developer contribution of £181 per dwelling sought.
3. Cabinet is asked to consider the updated Strategy, and specifically the implications of an increased rate and sliding scale of developer contributions.
2. The updated Strategy endorsed by the Partnership for Urban South Hampshire (PUSH) Joint Committee on 5 December 2017 is online at: www.birdaware.org/strategy.
3. The Strategy aims to prevent bird disturbance from recreational activities through a series of management measures which encourage all coastal visitors to enjoy their visits in a responsible manner. The overall approach and benefits (including access to greenspace) is detailed in the Strategy.

Legislation and policy context

4. The Strategy provides a strategic solution to ensure the requirements of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) are met with regard to the in-combination effects of increased recreational pressure on the Solent Special Protection Areas.
5. The emerging Eastleigh Borough Local Plan 2016-36 (December 2017) policy DM11 (Nature Conservation) states the Council will work to develop and

implement a strategic approach to the protection of European sites from the direct and indirect effects of development including recreational disturbance. Specifically, the emerging Plan states the Council will contribute as required to the implementation of the SRMP's proposals, and will also implement any measures identified as part of project proposals which are not incorporated into the wider SRMP scheme.

6. The emerging Eastleigh Borough Local Plan 2016-36 (December 2017) policy DM11 (Nature Conservation) states that in determining planning applications, the Borough Council will require mitigation measures in connection with new residential development as identified by the Solent Recreation Mitigation Strategy unless it can be demonstrated to the satisfaction of the Borough Council that individually, or in combination with others, the development is not likely to have significant adverse impacts on the integrity of the Solent European marine sites.
7. Inspectors at recent appeals in the Borough have concluded development would be contrary to paragraphs 109 and 118 of the National Planning Policy Framework (conserving and enhancing the natural environment) in cases where mitigation was necessary and financial contributions in accordance with the Strategy were not being provided.

Securing developer contributions towards the Solent Recreation Mitigation Strategy (SRMS)

8. A proportion of the resource costs identified in the Strategy need to be funded from developer contributions. These annual costs for the PUSH area (up to the year 2034) are calculated at £1,996,000, to resource the ranger team, visitor management projects, and monitoring. Further information on the resource costs and implementation is contained in the Strategy available online at www.birdaware.org/strategy.
9. The baseline developer contribution is the equivalent of £564 per dwelling. In practice this will be charged on a sliding scale based upon bedroom numbers per dwelling (and subject to indexation). It is advised that the new developer contribution rate should apply to all relevant planning consents granted within the 5.6km zone from 1 April 2018 onwards.
10. Approximately 1,500 planned new dwellings in the Borough are in the 5.6 km zone (the Solent & Southampton Water SPA). This represents 29% of new dwellings on sites allocated in the emerging Eastleigh Borough Local Plan 2016-2036. Based on the average contribution per dwelling, these allocations would contribute approx. £904,662 towards the SRMS during the period 2018-2036.
11. The developer contribution will be required for every net additional dwelling within the 5.6km zone unless the developer can demonstrate to the satisfaction of the local planning authority and Natural England that it will provide alternative 'bespoke mitigation' which will fully mitigate the recreational impact of the development.
12. The method currently used to secure the contribution is a S106 Agreement, Unilateral Undertaking, or up-front payment, depending on whether additional

obligations are being secured, and the legal mechanism used. Contributions are paid to the Borough Council prior to commencement of development, or on a phased basis for larger schemes (except in the case of up-front payment). The contributions received by the Council are transferred quarterly to the Partnership (SRMP).

13. The contributions would fall outside the Community Infrastructure Levy (CIL). There would remain an option for developers to put forward alternative mitigation packages, which would need to be agreed with Natural England.

Facilitating housing development

14. The financial contribution in the SRMS is an increase from the interim strategy rate. The SRMS uses a sliding scale of contributions, as it is considered fairest that the developer contribution varies according to the number of bedrooms in the new property.
15. The rate ranges from £337 for a 1 bedroom dwelling up to £880 for 5 bedrooms or more, and will be kept under review. The Strategy was published for consultation with the development industry in July 2017. It is not anticipated that these rates will render development proposals unviable.
16. Development proposals cannot be consented or proceed unless there are no impacts on the integrity of European sites. If significant effects are predicted to occur, suitable measures for mitigation are required to reduce impacts to acceptable levels. The Strategy therefore seeks to enable housebuilders to mitigate recreational pressures that would otherwise occur over a wide area, instead of needing to provide bespoke mitigation themselves. The developer contribution mechanism aims to offer a simpler, quicker and less costly solution to project mitigation. To date, this approach has provided clarity and certainty for developers, and helped speed up the development approval process by avoiding objections from statutory nature conservation consultees.
17. For example, during 2016/17, planning permission was granted for 6,179 dwellings which were judged to require mitigation across the zone. All of the planning applicants opted for the developer contribution option, except one application for 14 dwellings which included a large area of managed woodland. This high rate of uptake underlines that the Strategy provides a way for developers to address the mitigation issue quickly and simply (see *Third Annual Report on Implementation, June 2017*).
18. The impact of development on a Special Protection Area is not part of the planning judgement whereby material considerations are weighed up by the planning authority in reaching a decision on a planning application. So it is not a matter of what weight will be placed on the mitigation issue. Rather it is a 'yes/no' question of whether the proposed development is legally compliant with the Habitats Regulations. Making the developer contribution means the proposal satisfies this question.
19. The Council will monitor the impact on planning negotiations however, and on the total package of obligations secured as a result. The increase in the level of financial contributions will also be factored into the economic viability

assessment undertaken as part of the evidence base for the Eastleigh Borough Local Plan.

20. Transition guidance issued by the Partnership is attached to this report and Cabinet are asked to endorse this (including dealing with reserved matters for applications charged at the lower contribution rate).
21. In addition to the SRMS financial contribution, the local planning authority, with advice from Natural England, will need to consider the mitigation requirements for some housing proposals on a case-by-case basis. Some housing schemes, when accounting for their scale or relationship with the SPAs, may need to provide additional mitigation measures in order to ensure effective avoidance/mitigation of impacts on the SPA. Separate mitigation may be required for other impacts which may arise from new housing, e.g. impacts on water quality, noise disturbance, high buildings obstructing bird flight lines, loss or damage to supporting habitats.

Alternative options

22. Continuing to rely on the interim strategy arrangements after 1 April 2018 does not provide sufficient long term mitigation to address the potential significant effects that have been identified and would result in an inconsistent approach with neighbouring authorities.
23. If the Strategy (December 2017) is not supported, it would be necessary for any planning applications for additional housing (and other relevant accommodation) within 5.6km of the SPA designations to provide bespoke mitigation measures in order to satisfy the Habitat Regulations. This is likely to be more costly for applicants and resource intensive in assessing the adequacy of such measures. In addition it could potentially affect the future delivery of housing in the area where mitigation would be required.

Financial Implications

24. The cost for administering the payment of the contributions is covered by existing budget provision. There are no financial implications for the Council in adopting the higher contributions rate as the receipts are transferred to the Partnership. For information the Council has collected £341,000 in mitigation contributions since 2014/15.
25. The Partnership produces an annual report which describes progress during the preceding year and how funds are spent. The report also sets out plans and the budget for the ensuing year.

Risk Assessment

26. The Strategy provides a strategic solution to ensure the requirements of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) are met with regard to the in-combination effects of increased recreational pressure on the Solent SPAs arising from new residential development. Failure to comply with the Habitats Regulations can affect the ability to meet housing delivery targets as planning permissions cannot

lawfully be issued. Granting permissions with unresolved Natural England objections may result in legal challenge to planning decisions.

Equality and Diversity Implications

27. The Equality Act is not relevant to the decision in this report as the decision does not relate to eliminating discrimination, advancing equality of opportunity, or fostering good relations between different people. An Equality Impact Assessment has not been carried out.

Conclusion

28. It is anticipated that all local authorities comprising the Solent Recreation Mitigation Partnership adopt and implement the Solent Recreation Mitigation Strategy (SRMS) (December 2017). This includes Eastleigh Borough Council. The Strategy aims to prevent bird disturbance from recreational activities. It seeks to do this through a series of management measures which actively encourage all coastal visitors to enjoy their visits in a responsible manner. Research has shown that housing growth will lead to more people visiting the coast for recreation, potentially causing additional disturbance to these birds.
29. Implementation of the measures and monitoring of their effectiveness will be funded by developer contributions from qualifying dwellings within the mitigation zone. It is recommended that the SRMS is endorsed by the Council and the Strategy's increased developer contribution rate is applied to new development proposals.

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Appendices Attached: 1

LOCAL GOVERNMENT ACT 1972 - SECTION 100D

The following is a list of documents which disclose facts or matters on which this report or an important part of it is based and have been relied upon to a material extent in the preparation of this report. This list does not include any published works or documents which would disclose exempt or confidential information.

Solent Recreation Mitigation Strategy (SRMS) (December 2017). Available online at <http://www.birdaware.org/strategy>

APPENDIX A Bird Aware (2017) Moving to the Strategy (Guidance note on charges)