

Duty to Co-operate
Memorandum of Understanding
East Herts Council and Natural England

- 1.1. This memorandum of understanding establishes a framework for co-operation between East Herts District Council and Natural England with respect to strategic planning and development issues.
- 1.2. Local Authorities are required through the Duty to Co-operate to engage constructively and actively on an on-going basis on planning matters that impact on more than one local planning area. The NPPF sets out the requirement that public bodies should cooperate on planning issues that cross administrative boundaries particularly those which relate to the following strategic priorities:
 - The homes and jobs needed in the area.
 - The provision of retail, leisure, and other commercial development.
 - The provision of infrastructure for transport telecommunications, waste management, water supply, wastewater, flood risk and coastal change management.
 - The provision of minerals and energy (including heat).
 - The provision of health, security, community and cultural infrastructure and other local facilities.
 - Climate change mitigation and adaptation, conservation and enhancement of the natural and historic environment including landscape.
- 1.3. The NPPF requires Local Planning Authorities to work collaboratively with other bodies to make sure that strategic priorities across local boundaries are properly co-ordinated and clearly reflected in individual Local Plans. Local Planning authorities will be expected to demonstrate evidence of having effectively cooperated to plan for issues with cross- boundary impacts when their Local Plans are submitted for examination. This could be by way of plans or policies prepared as part of a joint committee, a memorandum of understanding or a jointly prepared strategy which is presented as evidence of an agreed position. Co-operation should be a continuous process of engagement from initial thinking through to implementation, resulting in a final position where plans are in place to provide the land and infrastructure necessary to support current and projected future levels of development.
- 1.4. This Memorandum of Understanding (MoU) has been prepared in the context of the publication version of the East Herts District Plan (2011-2033) which was placed on public deposit for a six week period ending 15th December 2016 (hereafter “the Plan”). The MoU was prepared in January 2017 in the period leading up to the planned submission of the plan to the Secretary of State for independent examination.

2. Parties to the Memorandum

2.1. The Memorandum is agreed by the following authorities:

- East Herts Council (hereafter “the Council”)
- Natural England

2.2. We the undersigned, set out in this memorandum those matters of joint strategic interest to both authorities as they are dealt with in the East Herts District Plan, in accordance with paragraph 181 of the National Planning Policy Framework, March 2012.

2.3. It is important to place on record that discussions between the two Authorities have embraced the full range of strategic cross-boundary matters covered by the Duty to Co-operate. Both Authorities are content that the Duty to Co-operate has been met thus far and ongoing liaison will ensure that this continuing liaison will be effectively addressed.

3. Limitations

3.1. The Parties recognise that there might not always be full agreement with respect to all the issues on which they have agreed to co-operate. For the avoidance of doubt the Memorandum will not restrict the discretion of any of the Parties in the determination of any planning application, or in the exercise of any its statutory powers and duties or in its response to consultations and is not intended to be legally binding.

4. Objectives

4.1. The Memorandum has the following broad objectives:

- To help secure a consistent approach to strategic planning and development issues.
- To identify and manage spatial planning and environmental issues that impact on natural environmental assets within East Herts District.
- To make sure that the local planning and development policies prepared by the local authority are, where appropriate, informed by the views of the Natural England and that there are agreed channels of communication between both parties in relation to proposed amendments to the Pre-Submission District Plan.
- To make sure that decisions on strategic planning applications are informed by the views of both parties by setting up an agreed approach to continued early engagement in the masterplanning of strategic sites.
- To identify and agree the need for and approach to undertaking further technical evidence to inform the submission of the District Plan and/or the examination of the District Plan.
- To make sure there is compliance with the Duty to Co-operate.

5. Matters Agreed

5.1. Engagement between the two authorities under the Duty to Co-operate has focussed on the location and quantum of development and the approach towards green infrastructure and environment policies within the East Herts District Plan. A summary of the discussions which have taken place between the authorities so far are listed in Section 8 below, while minutes of Duty to Co-operate meetings are included in Appendix 1. These have highlighted the following matters upon which both authorities agree or have an agreed approach to resolving:

- **District Plan**

Natural England has been engaged throughout the Plan-making process through various means such as through discussion on early stages of site assessment and shortlisting, through to drafting the District Plan policies. Natural England has also been involved in the production of the Habitat Regulations Assessment of the emerging District Plan, attending meetings and providing written responses as requested

- **Habitats Regulations Assessment**

Natural England made comments to the Pre-Submission District Plan consultation. They raise concern that the Habitat Regulations Assessment (HRA) contains a caveat that the conclusion of “no likely significant effects” is contingent upon the signature, adoption and implementation of the Epping Forest Special Area of Conservation (SAC) MoU between the Housing Market Area authorities. Natural England has been involved in the preparation of the Strategic Spatial Options Study. This study considers a range of development options around Harlow, which included a Habitat Regulations Assessment style appraisal of the options individually and cumulatively on the Epping Forest SAC and other European designated sites. Natural England are a signatory to the MoU for Managing the Impacts of Growth Within the West Essex/East Herts Housing Market Area on Epping Forest Special area of Conservation which has now been signed by all the authorities involved. Therefore it is considered that this addresses the concerns raised by Natural England in their representations.

- **Policy DPS4 Infrastructure Requirements**

Natural England raised concern that the policy and the supporting Infrastructure Delivery Plan did not make adequate provision for green infrastructure. Since the Pre-Submission consultation, more evidence is now available with regards to green infrastructure projects and associated costs and now forms an integral part of the Infrastructure Delivery Plan. The Council is working with Countryside Management Services and site promoters to better understand the requirements, opportunities and costs of meeting the District Plan requirements in terms of green infrastructure and the natural environment.

- **Policy BISH5 Bishop’s Stortford South**

Natural England has raised concern that the policy is unclear in terms of creating “connections to existing green infrastructure assets such as

Southern Country Park and the Thorley Flood Pound SSSI and Nature reserve". They are concerned that the additional recreational pressure on the nature reserve and SSSI would be to the detriment of the reserve. The Council agrees that the addition of explanatory words would be useful in order to make it clear that such connections are not to the detriment of the ecological interest of the SSSI. The Council will engage with Natural England further on the appropriate text to be put forward as a proposed minor change to the policy or supporting text.

The main intention of this element of the policy is to utilise existing green infrastructure assets around the proposed allocation to create green routes for pedestrians and cyclists to connect through the site, for example a cycle network running between Southern Country Park and surrounding residential areas through the site across London Road through to the River Stort up to the Station, as an alternative to road-based routes. The creation of open spaces and other green infrastructure features on site is anticipated to reduce recreational pressure on the SSSI from the development, but if increased desire for access occurs that these can be through an enhanced green infrastructure network of paths, waterways and open spaces.

- **Policy WARE2 Land North and East of Ware**

Natural England commends the commitment to green infrastructure. The Council welcomes this commendation and is keen to ensure Natural England and other partners are engaged throughout the masterplanning of this site.

- **Policy GA1 The Gilston Area**

Natural England has raised a concern about this site in relation to the Epping Forest Special Area of Conservation. This has since been addressed through the commitment set out in the MoU signed by the Housing Market Area authorities and Natural England.

Natural England recommend that the policy be expanded to contain safeguards for Hunsdon Mead SSSI and should seek enhancement where appropriate. Part III(g) already refers to quality local green infrastructure and the Council agrees that additional reference to Hunsdon Mead SSSI would be proposed as a minor change to the Planning Inspector in due course.

- **Soils and Best and Most Versatile Agricultural Land**

Natural England raise concern that the Plan is silent on matters of soil and best and most versatile agricultural land. The NPPF requires (paragraph 112) that local authorities take account of best and most versatile agricultural land, but does not require a policy on the issue. The quality of agricultural land has been considered alongside the many matters taken account of in the preparation of site allocations. Soil quality is only currently referenced in terms of contaminated land. The Council is happy to work with Natural England in the formulation of supporting text or a new policy to resolve their concerns if considered appropriate. This will then be proposed to the Inspector as a change to the Plan in due course.

- **Policy WAT6 Wastewater Infrastructure**

Natural England raise concern that the use of Grampian conditions is not sufficient to ensure no likely significant effects are caused in terms of the Habitat Regulations Assessment. The capacity of Rye Meads Sewerage treatment Works is a key issue and therefore Natural England reserve their position until such time that Thames Water confirm there is sufficient capacity to accommodate development in the catchment. Development may need to be phased appropriately. The Council is working with Thames Water and will be signing a Memorandum of Understanding to this effect.

- **Policy EQ4 Air Quality**

Natural England suggest that this policy may need amendment depending upon the outcome of the MoU to address air quality concerns in the Epping Forest SAC. The Council will work with Natural England in the formulation of additional words either in the supporting text or the policy if required and will propose these as minor modifications to the Plan in due course.

- **Policy DEL2 Planning Obligations**

Natural England supports the addition of nature conservation in the list of infrastructure requirements. The Council is proposing a number of changes to the Infrastructure Delivery Plan which place greater emphasis on green infrastructure and biodiversity.

- **Monitoring**

Natural England suggests that the monitoring framework is currently not sufficient to be able to identify any helpful changes and should also seek to monitor positive changes as well as losses. The Council agrees that as the Plan seeks to create net gains to biodiversity, that the monitoring framework should be able to capture these gains. The Council would welcome further engagement with Natural England on devising appropriate measuring tools for inclusion in the monitoring framework.

- **Recreational pressure on the Lee Valley Special Protection Area and Ramsar site**

Natural England suggest that the HRA does not address the potential impacts from the Plan on the Lea Valley Regional Park. The HRA for the Regional Park (dated 2007) does not take account of the latest proposed growth in the East Herts District Plan and therefore the Regional Park Authority should be consulted to ensure that any potential increase on recreational pressure is considered manageable or if mitigation will be required. The Regional Park Authority were consulted and responded to the consultation. They were supportive of the Plan, particularly where amendments had been made in response to their comments on the Preferred Options District Plan consultation, which they now consider address their previous concerns.

- **Air quality in the Lea Valley Special Protection Area and Ramsar**

Natural England raise concern that there are a number of errors in the HRA and that there is a discrepancy in its conclusions between Option C and Option E. These options are the spatial distribution options for the West

Essex and East Hertfordshire Housing Market Area. Option C comprises less development at Harlow and two new settlements in East Herts, while Option E comprises the highest level of growth across the housing market area, with considerable focus around Harlow. Therefore in terms of the East Herts HRA, focusing a greater amount of growth in two locations less well connected (Option C) would create more vehicle movements across the district, largely loading on to the A414. Whereas, given the potential to connect to public transport networks and the variety of options in terms of travel direction and access to the strategic road network, growth around Harlow would not necessarily generate the same number of vehicle movements on the A414. However, in terms of recreational pressure and other considerations, the option which maximises the amount of growth around Harlow would have the greatest level of impact in HRA terms as the growth would be closer to the Epping Forest SAC and the Lea Valley SPA and Ramsar sites.

6. Outstanding Matters

6.1 Policy NE1 International, National and Locally Designated Nature Conservation Sites

Natural England raise concern that there is insufficient distinction between the hierarchy of sites, and that international sites should enjoy the highest level of protection. The Council is keen to ensure that all designated sites benefit from protection given the vital importance they play in contributing to the wider ecological network. Regardless of this, Policy NE1 distinguishes between sites of different status, setting out different approaches to development proposals and mitigation measures commensurate to the site's status. To separate each of the three types of designated sites would result in very similar and repetitive policies. This would cause confusion given that a large number of the District's designated sites are co-located – a large Local Wildlife Site may contain distinct parcels which are also designated as a SSSI, an SPA or and SAC. Wormley-Hoddesdonpark Woods is one example of this situation.

In this regard, the Council does not agree that a change to the policy approach would add value to the Plan and is not proposing to make and suggested changes to this effect.

Natural England also raise concern that the Plan does not adequately address geological conservation interests. There is only one site within East Herts that has geological interest and that site is already designated as a SSSI. Therefore it is considered that this is appropriately covered within Policy NE1.

7. Commitment to Future Co-operation

- 7.1 Both authorities remain committed to effective co-operation on all matters relating to the Duty to Co-operate. As such, both East Herts Council and Natural England commit to review and update this agreement as appropriate, as key milestones are reached in the preparation of the District Plan, and any review, including if any amendments are proposed following the Pre-Submission District Plan consultation which may impact on designated sites of nature conservation interest.
- 7.2 Natural England are a statutory stakeholder in Plan-making, but have a less frequent involvement in planning applications and the development of masterplans.

- **Masterplanning and Decision Making**

As strategic developments sites come forward as planning applications, it may be necessary for Natural England to engage in the masterplanning process of these larger, more complex sites, particularly where there may be impacts on the natural environment. The two authorities therefore agree that Natural England will be consulted at an early stage in the masterplanning process to enable Natural England officers to determine their level of further involvement. Matters of detail may be best managed by other local stakeholders such as Herts and Middlesex Wildlife Trust and Herts Ecology, for example.

- **Approach to Plan Reviews and the Review of Evidence**

East Herts Council is committed to the early review of the District Plan as required and will therefore engage with stakeholders such as Natural England at an early stage in the process. Where new or revised evidence is required, the two authorities will engage pro-actively on the preparation of technical briefs, throughout the evidence gathering and reporting stages as appropriate. This may involve attendance at meetings or through written representation.