

Advice on Submitting a Planning Application for Sites in The Vicinity of The Spa

In March 2005, the Thames Basin Heaths were designated as a Special Protection Area (SPA) under the European Habitats Directive. The area was designated so as to protect the habitat of three species of ground nesting birds – the Nightjar, Woodlark and Dartford Warbler.

Implications for Development

The SPA is located across the counties of Surrey, Hampshire and Berkshire and falls within the jurisdiction of 11 Local Authorities – Bracknell Forest, Elmbridge, Guildford, Hart, Royal Borough of Windsor and Maidenhead, Runnymede, Rushmoor, Surrey Heath, Waverley, Woking and Wokingham. Residential development is deemed, by English Nature (EN), to have an adverse impact on the SPA, on the basis that new developments could lead to an increase in the number of people using the heathland for general recreational purposes and dog walking. It could also lead to an increase in domestic cats in the area. All these things would potentially cause a disturbance to the ground nesting birds within the SPA.

As a result, there are strict controls on residential development within 5km of the SPA, with restrictions being lessened further from the heart of the SPA. To date, EN has designated four zones:

- SPA Heathland
- Adjacent Zone – within 400m
- Conditioned Zone 1 – within 2km
- Conditioned Zone 2 – within 5km

In order for residential development to be permitted now, it must be demonstrated that proposals will not have an adverse effect on the SPA. Where it is perceived that development will have an impact, it must be shown that efforts have been made to mitigate the effects that proposed dwellings will have on the heathland habitat.

Presently, EN is recommending that one way of ‘mitigating’ the effects of residential development on the SPA is to provide new (or improve existing) open space close to the new development, in order to discourage people from using the heathlands for recreational purposes. This land must be:

- As appealing to people as the heathlands are and,
- Capable of attracting people away from the heathlands.

The amount of open space to be provided as a result of development is determined with regards to how far the proposal site lies from the core of the SPA and the draft provisions being recommended by EN at present are as follows:

- 0-400m: No mitigation can be provided (no residential development can take place),
- 400m-2km: 16ha of semi-natural open space to be provided per 1000 increase in population,
- 2km-5km: 8ha of semi-natural open space to be provided per 1000 increase in population.

Regulation 48 of the Habitats Regulations restricts the granting of planning permission for development which is likely to significantly affect a European Site. Under this Regulation, if it is deemed that a proposal will have an adverse effect on the SPA and not enough has been done to mitigate these effects, then a Council may refuse an application on the basis of English Nature's consultation response that the development would cause harm.

It has become apparent that the SPA is causing major delays in the delivery of housing in an area which has been designated for major strategic growth over the next 20 years. Problems vary across the area covered by the SPA. In the worst cases, where a Local Authority area is largely within the SPA, a virtual moratorium has been placed on house building.

SEERA Advice

Currently, the South East England Regional Assembly is working with other relevant parties (ODPM, DEFRA, Planning Inspectorate and Local Authorities) to find a way forward. Presently, two of the South East sub-regions are affected by the designation – Western Corridor/Blackwater Valley and London Fringe. When calculating housing distribution for these regions, the SPA designation was not taken into account. As a result, it has been necessary to add an additional policy to their sub-regional strategies.

SEERA recognises that until a way forward is found, there will be major impacts on housing delivery in the two sub-regions. Following consultation and talks with the other relevant bodies, it has been agreed that a strategic review of recreational space in the area will be undertaken. This will enable them to identify the quantity of open space available as well as what is needed to bring it into line with EN requirements. This will not completely negate the need to provide an assessment for individual applications, but it should somewhat help the need to provide development specific assessments.

The Local Authorities' Stance

Each of the 11 Local Authorities are approaching the issue in a different way, with some choosing to refuse all residential development and others choosing to pay no heed to the advice of EN. The majority of the Local Authorities are waiting for further advice from EN, that is, the Delivery Plan. This document was to be published in January 2006; however, it is now looking more likely that it will be published in July or August 2006. This has resulted in the refusal of most housing development, as Local Authorities take the 'precautionary approach'.

Another issue which is causing some confusion within Local Authorities is that of mitigation. Although EN has proven that residential development will have an adverse impact on the SPA, it has yet to prove what exactly is needed to mitigate this. This is to be set out in the Delivery Plan, but until this has been consulted on and tested, there are no fixed guidelines through which appropriate mitigation can be assessed. The draft requirements for the provision of alternative open space, which have been published by EN, have yet to be tested.

Although each Local Authority has taken its own stance when it comes to making decisions on proposals, there are several factors that will have an impact on any application made within the 5km zone. These are:-

The Amount of Alternative Open Space Available:

If there is open space available as an alternative to the heathlands, which is as or more attractive to people for recreational purposes, then it should be seen that the development would not have a material impact on the SPA. This land should be capable of attracting new residents

away from the heathland habitat. If, however, there is currently no such land, then it may be possible to overcome this through the provision of alternative open space or through the provision of a contribution to improve existing open space. The amount of space which should be provided/improved depends largely on the location, type and scale of development.

Currently, however, there is no standard set out in policy guidance for the various Local Authorities to follow.

The Cumulative Effect of Developments:

A number of applications have been refused across the 11 Local Authorities on the basis that, although the proposals themselves would not cause harm to the SPA, there would be a significant effect when considered alongside other applications for residential development. This is an issue which has been tested at Appeal on several occasions. If an application goes to Appeal, it is up to the Local Authority (or objecting body, e.g. English Nature) to prove their case. If it is not demonstrated that there are other similar developments in the area, then there should be seen to be no cumulative affect on the SPA.

Summary

English Nature is a statutory consultee for all development which takes place within 5km of the Thames Basin Heaths SPA. The SPA designation has implications for residential development both in the short term and in the long term.

Short Term

In the short term, each of the 11 Local Authorities has adopted its own approach to deciding applications for residential development within the SPA. However, the result of this is that, until the EN Delivery Plan is adopted and can be used as a material consideration in making decisions, the majority of residential development is being refused.

If planning applications are being submitted in the short term, then:

- An ecological assessment should be submitted with the Application,
- Suitable land should be identified for mitigation and,
- EN should be consulted early on in the process.

Long Term

The strategic review of open recreation land which is to be undertaken by SEERA should prove to facilitate the delivery of development. This will take time to complete, but will assist residential development, as it will provide set guidelines of open space that needs to be improved and will set out specific contributions that are required for this from developers.