

Examination of the Tunbridge Wells
Borough Local Plan

Tunbridge Wells Borough Council
Hearing Statement

Matter 1: Legal Compliance
Issue 2: Habitats Regulations
Assessment ('HRA')

Document Reference: TWLP/002



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Matter 1 – Legal Compliance

Issue 2 – Habitats Regulations Assessment ('HRA')

Inspector's Question 1: [re. justification for 7km zone of influence]

What is the justification for the 7km 'zone of influence' used in the HRA and Local Plan Policy EN11? Does it continue to represent an appropriate distance for considering recreational pressure?

TWBC response to Question 1

Introduction

1. The 7km zone is a key part of the Strategic Access Management and Monitoring (SAMM) Strategy for Ashdown Forest (DtC Statement Appendix A13 digital page 272-318 [[CD 3.132c\(ii\)](#)]) and has been agreed with the relevant Local Planning Authorities (LPAs) and Natural England, following extensive analysis of visitor surveys carried out in 2010 and 2016 (Ashdown Forest Visitor Survey 2016 Footprint Ecology [[CD 3.145](#)]).
2. Further details of the surveys and the analysis for Tunbridge Wells Borough is set out in the HRA [[CD 3.92a-c](#) digital pages 24 to 26], which concludes that, with the 7km mitigation zone in place, *"there will be no adverse effects upon the integrity of Ashdown Forest SPA / SAC as a result of increased recreational pressure resulting from the Borough of Tunbridge Wells Local Plan"* (section 6 digital page 27).
3. Agreement on the suitability of the 7km is covered extensively in the SoCG with the relevant LPAs and Natural England as detailed below.

Consideration

4. The visitor surveys, led by Wealden DC, were jointly commissioned by the affected Planning Authorities (Tunbridge Wells BC, Lewes DC, Mid Sussex DC Sevenoaks DC, Tandridge DC and Wealden DC) with the support of Natural England. A SoCG (Recreational Impact Statement of Common Ground for Ashdown Forest: [[CD 3.144](#)])

was signed by this group (including Natural England) in 2019 to demonstrate a common understanding and continued cooperation with regards visitor pressure on Ashdown Forest. This stated at 12 (d):

“Based on current evidence it is agreed that 7km remains the most appropriate distance for a strategic zone that all partners could support in principle as the 2016 visitor survey shows that this would capture the majority of frequent visitors to Ashdown Forest”.

5. This is evidenced in the 2016 visitor survey (Ashdown Forest Visitor Survey 2016 Footprint Ecology [[CD 3.145](#)]) by the graph on page 59 *“all transport, at least weekly visitors only”* which shows that at 7km more than 80% of frequent visitors will be captured. The survey is discussed in some detail in the HRA 2020 (digital pages 24 to 26 [[CD 3.92a-c](#)]) and this concluded that with the Ashdown Forest Policy in place for a 7km zone *“there will be no adverse effects upon the integrity of Ashdown Forest SPA / SAC as a result of increased recreational pressure resulting from the Borough of Tunbridge Wells Local Plan”* (section 6 page 27).
6. The 7km zone continues to have the full support of Natural England, who have confirmed in their SoCG (DtC Statement Appendices H to J Prescribed and other Bodies of [[CD 3.132c\(v\)](#)]) with the Council that the HRA is *“consistent with the approach of neighbouring councils and reflect the established joint working arrangements in relation to these designations”* (para 5.4 digital page 130) and that they have *“no material areas of concern”* (para 5.6 digital page 130) with regards the HRA or its conclusions.
7. The group of affected LPAs have now formed a legal partnership together with the Conservators of Ashdown Forest for the purpose of developing and administering a SAMM Strategy for the Ashdown Forest (DtC Statement Appendix A13 Ashdown Forest Working Group (Recreational Impact) SoCG digital pages 272-318 [[CD 3.132c\(ii\)](#)]) (*Please note: the proper title of this document is “Agreement relating to the delivery of a Strategic Access Management and Monitoring Programme in the Ashdown Forest”*).
8. The issue of recreational disturbance on Ashdown Forest SPA is also covered in the various SoCGs signed between TWBC and the individual members of the SAMM

Strategy Partnership, as exemplified by the SoCG with Wealden DC (DtC Statement Appendix A10 Signed SoCG between TWBC and WDC [[CD 3.132b\(ii\)](#)] digital pages 174 to 210). There is agreement (6.3.1) that:

“The 7km zone is the appropriate zone of influence, agreed by all partner local authorities and Natural England within which to collect SAMMS contributions. This is based on technical evidence from the Ashdown Forest Visitor Survey which the SAMM Strategy partnership jointly commissioned. Applications outside of the 7km will be assessed in relation to any impact on a case-by-case basis and in accordance with the planning policies of the relevant authority”.

9. Despite the wide and continued support for the 7km which has been developed through the two surveys and continued dialogue and cooperation between the affected LPAs and Natural England, the adoption of the 7km zone has been challenged in representations by Nick Daines on behalf of CPRE Sussex (representation references PSLP_276 and PSLP_861 found in PSLP Reps in representor order D to J digital pages 1 and 5 [[CD 3.125a\(iv\)](#)]) who consider the HRA to be deficient in identifying the area from which additional visitor pressure could arise within Tunbridge Wells Borough and expressing concerns over the effectiveness of the mitigation measures proposed.
10. It should be noted that the SAMM Strategy is supported by the provision of a number of Suitable Alternative Natural Greenspaces (SANGs) that are already provided or which are in development in Wealden, Mid Sussex and Lewes districts. In terms of effectiveness of SANG and SAMM, there is considerable evidence from the Thames Basin Heaths area in particular (this being the area where the SANG and SAMM approach was first devised approximately a decade ago) for it being an effective mitigation approach for recreational pressure. The most recent Visitor Access Patterns on the Thames Basin Heaths Report (2018, EPR on behalf of Natural England) showed a statistical decrease in visitation to the SPA despite a concurrent increase in housing within 5km of the SPA (the core catchment of that SPA), confirming the effectiveness of the solution. As a result, this is now a standard approach approved by Natural England to addressing recreational pressure issues on European sites across England.
11. In determining the core catchment within which financial contributions will be sought to address recreational pressure it is agreed with Natural England that it is appropriate to

use the 75th percentile (i.e., the zone within which 75% of resident frequent visitors to the European site derive) as a cut-off point. Based on the last published visitor survey of the Ashdown Forest SAC (Ashdown Forest Visitor Survey 2016 Footprint Ecology [[CD 3.145](#)]). the 7km zone is more precautionary than this, capturing c. 81% of all frequent local visitors (graph on page 59 “All Transport at least weekly visitors only”).

12. It should be appreciated that it is never the intention for mitigation strategies for European sites to collect funds from every potential future visitor (such sites by their nature and interest will attract visitors from across the Country and even abroad); however, the competent authorities for Ashdown Forest (including Natural England) are confident that, if the zone within which at least 75% of frequent visitors derive is captured (81% in the case of Ashdown Forest), sufficient funds will be raised (or SANG delivered) to address the entire ‘in combination’ recreational pressure issue, irrespective of where the actual visitor lives.
13. In summary, the 7km zone has been derived from site specific studies and detailed analysis in collaboration with the affected LPAs and Natural England. There is a consensus evidenced by multiple Statements of Common Ground that the 7km is and remains the most appropriate distance for mitigating recreational pressure.

Inspector's Question 2: [re. timescale for review of 7km figure]

Policy EN11 suggests that the 7km figure may be subject to revision. Why and when is that likely to occur?

TWBC response to Question 2

Introduction

14. The 7km zone is a key part of the Strategic Access Management and Monitoring (SAMM) Strategy for Ashdown Forest and, as the title suggests, it requires monitoring to ensure that it continues to be effective. The SAMM Strategy is administered by the SAMMS Partnership who have agreed to work together on monitoring and any revisions to the SAMM Strategy.
15. The SAMM Strategy is a long-term project and the factors that are being monitored, visitor numbers, nature of visit etc. by their nature need periodic surveys to establish any changes that may occur in patterns of behaviour and trends. Whilst although changes are likely to be infrequent the Local Plan is a long-term plan, up to 2038, and its policies need to be responsive to change. This is the same approach as is applied at the Thames Basin Heaths SPA (where the SANG and SAMM approach is most established).
16. Should monitoring determine that the SAMM Strategy requires any adjustment, then in discussion with Natural England consideration will be given to amending the Strategy through the SAMMS Partnership that has been established between the affected LPAs and the Conservators of Ashdown Forest. The discussions will consider the suitability of the zone and whether any changes to it are required.

Consideration

17. The 7km zone was agreed between the SAMMS Partnership and Natural England following extensive analysis of visitor surveys.
18. The SoCG for Recreational Impact [[CD 3.144](#)] between the LPAs and Natural England further agreed (para 8):

“In order to understand the pattern and origin of visitors to Ashdown Forest visitor surveys have been conducted in 2008 and 2016 and this information will be updated through monitoring and surveys in the future”.

19. The visitor surveys sought to gain an understanding of the recreational pressures by seeking information on where visitors came from, what part of the Forest they visited, how they got there, the purpose of their visit and crucially how often they visited. Should the pattern and nature of the visits undertaken significantly change over time such as the proportion of visitors coming from a particular location greatly increases (or reduces) and they stay longer or visit more frequently, then this may require reconsideration of the Zone.
20. Section 12 of the SoCG for Recreational Impact [[CD 3.144](#)] between the LPAs and Natural England further agreed that:

“The SAMMS Partnership will continue to work together on the commissioning and analysis of visitor surveys to agree strategic mitigation measures, and the strategic area where development proposals resulting in a net increase in dwellings will require mitigation to address visitor pressure upon the Ashdown Forest SPA”.
21. In line with the SAMMS partnership agreement and SAMM Strategy, a further visitor survey has very recently been completed, and is being analysed by the Partnership LPAs, who will then jointly consider the findings and any actions thought necessary.
22. In summary, it is important that the effectiveness of the zone is monitored and that if necessary, the zone is altered to ensure that suitable mitigation is in place to protect the Ashdown Forest from visitor pressure. However, while monitoring continues, there is currently no suggestion that this is likely.

Inspector's Question 3: [re. nature and clarity of 7km requirements]

As it stands, what is required of development proposals within 7km of the Ashdown Forest Special Protection Area ('SPA') and Special Area of Conservation ('SAC')? Are the necessary requirements sufficiently clear to developers, decision-makers and local communities?

TWBC response to Question 3

Introduction

23. The Policy and supporting text in the SLP are intended to provide the clarity and certainty that developers, decision makers and local communities need in respect of what is required of development within the 7km zone.
24. Whilst providing an overview, the supporting text also refers the reader to further documents as this is a complex matter with detailed and very specific requirements that would, if included in full, greatly increase the size of the Local Plan and restrict the necessary flexibility that such a policy requires.
25. The specific details of the mitigation are then best left outside of the Local Plan and are provided in guidance documents, so that they can be updated when required.

Consideration

26. The supporting text to Policy EN11 (Ashdown Forest) in the SLP (para 6.159 to 6.168) provides a suitable amount of background information on the Ashdown Forest and the reasons for which it is designated as both a SPA and SAC. It also sets out how development might affect the designations, how the Council has considered possible effects, and the conclusions.
27. In order to assist applicants in the interpretation of the Policy there is specific reference and a link to the Council's Ashdown Forest Practice Note 2018. This has recently been updated (Ashdown Forest Practice Note 2022 [[CD 3.146](#)]) and it explains the obligations on developers within 7km of the SAC/SPA in more detail.
28. The Practice Note 2022 [[CD 3.146](#), 2.3] explains that within the 7km zone, SAMMs and SANGs contributions will be required or alternatively the application will be subject

to their own appropriate assessments. It also explains that beyond the 7km zone applications must be considered on a case-by-case basis.

29. In terms of how SANGs and SAMMS will be applied and the level of tariff, the policy refers to the “*prevailing SAMMs and SANGs strategy*” adopted by the Council and “*in force at the time of the application*” [SLP Policy EN11 page 363].

30. The SAMM Strategy is contained in the DtC Statement “Appendix A13: Ashdown Forest Working Group (Recreational Impact) – SoCG signed between TWBC, Lewes DC, Mid Sussex DC, Sevenoaks DC, Tandridge DC, Wealden DC” (digital page 272-318): “Agreement relating to the delivery of a Strategic Access Management and Monitoring Programme in the Ashdown Forest” [[CD 3.132c\(ii\)](#)], which is in fact a signed legal agreement between those Authorities listed and the Conservators of Ashdown Forest which states (Page 2 item (D)):

“The LPAs and the Conservators of Ashdown Forest have agreed to work together to put in place a strategic access management and monitoring programme for the Ashdown Forest SPA for the purpose of ensuring the effective avoidance and mitigation of any significant effects of new residential development and compliance with the Habitats Regulations and to finance this by means of a tariff levied in respect of residential development in their respective administrative areas that could have an impact on the Ashdown Forest”.

31. The agreement contains the details of the SAMM Strategy including the tariff and other matters such terms of governance. The SAMM tariff is set within the document at schedule 1 page 23 para 9.5 at the sum of £1,170 per dwelling.

32. In noting the limited extent of land within the 7km that falls within Tunbridge Wells Borough, and the extremely limited amount of development that is likely to occur within the 7km zone (none is planned and only one conversion from agricultural to residential has been approved that requires SANGs and SAMMS), it is not practical for TWBC to provide its own SANGs and so TWBC will be collecting “*financial contributions to SANGs elsewhere*” i.e. within the administrative area of another LPA in the SAMMS Partnership, as advised by Natural England (Regulation 18 comments on Draft Local Plan). TWBC will apply the prevailing tariff for SANGs within the SAMMS Partnership and will be subject to the agreement of the Authority where SANGs will be provided.

The Partnership Authorities have agreed to cooperate on this matter as evidenced by the SoCG with Wealden DC para 6.3.2 (DtC Statement Appendix A10 digital page 174 -210 [[CD 3.132b\(ii\)](#)]):

“WDC has also provided two Suitable Alternative Natural Greenspaces. One in Uckfield and one in Crowborough. The purpose of these are to divert dog walkers from using Ashdown Forest as a recreational location. TWBC will collect contributions for SANGS from any applicable development within the 7km zone of influence which will be used for SANGS provision. Discussions will take place with partner authorities, as appropriate, to consider the delivery of SANGs in Tunbridge Wells Borough or adjoining authorities”.

33. On the basis that it is anticipated that limited growth will take place in Tunbridge Wells Borough within the 7km zone both Wealden DC and Mid Sussex DC are willing to consider the delivery of SANGs on behalf of TWBC as part of their Duty to cooperate and in accordance with any requirements of the Habitat Regulation Assessment(s). Current charges are anticipated to be around £5,000 per dwelling. The current level of contribution then that is required within the 7km zone is £1,170 per dwelling for SAMMs and with a SANGS contribution subject to agreement with the providing authority. This is explained in the Practice Note 2022 para 2.4 [[CD 3.146](#)].

Inspector's Question 4: [re. use of SAMMs and SANGs contributions]

Where contributions to Strategic Access Management and Monitoring ('SAMM') and Suitable Alternative Natural Greenspace ('SANG's) are required, how will the Council ensure that the necessary mitigation is provided?

TWBC response to Question 4

Introduction

34. The delivery mechanisms for both SAMMs and SANGs are well developed and operate through a well-established legal and formal Partnership with a good record of collaboration as required by DtC.
35. The Partnership includes the key players necessary for the implementation of mitigation measures in the form of Wealden DC, the administrative district within which Ashdown Forest sits, the Conservators for Ashdown Forest who have the responsibility of managing the Ashdown Forest under an Act of Parliament and Natural England who have responsibilities for the site as a SSSI and who are the statutory consultee on such matters.
36. TWBC have been an active member of the various partnerships and groups formed by LPAs concerned with development pressure on Ashdown Forest from their inception and so has a good understanding of the issues involved and the measures required and have put in place appropriate steps to ensure implementation.

Consideration

SANGS

37. Two SANGs have already been provided within Wealden District, there is one operational and one under construction in Mid Sussex with a further proposed (as part of housing allocations within the site allocations DPD which is at examination) and one in Lewes District. Wealden DC is currently considering future growth within its district as part of its emerging Local Plan and are willing to continue discussions on any future

SANGs that would allow for the limited windfall development anticipated in Tunbridge Wells 7km zone to come forward.

38. The SANG sites are provided in accordance with a specification approved by Natural England and were bought forward ahead of the occupancy of relevant development to ensure that development can take place and be mitigated at occupation.
39. As noted above, Wealden DC have, in the SoCG, agreed to discuss the future delivery of SANGS with TWBC and this is in accordance with the advice of Natural England. Given the limited extent of the 7km zone which affects Tunbridge Wells Borough [SLP Figure 8 page 364] with just one dwelling so far approved within the 7km SAMMS and SANGS zone in the borough (especially relative to the amount approved by Wealden DC and Mid Sussex DC that required SANGS and SAMMS), this is a proportionate and suitable approach.

SAMMS

40. The delivery of SAMMs is comprehensively covered in the legal agreement for the SAMMs Partnership (DtC Statement Appendix 10: Ashdown Forest Working Group (Recreational Impact) – SoCG [[CD 3.132c\(ii\)](#)]). TWBC is an equal partner under that agreement with the same rights and representation as each other LPA. This is set out in the section 6.0 Governance on page 8.
41. The SAMM Strategy has already made considerable progress in that it has funded the recent visitor surveys, the production and implementation of guidance and activities related to dog walkers and the appointment in October 2021 of a full-time post to deliver the SAMM strategy in collaboration with the Commons Conservators. Further work is in train to ensure that the SAMM Strategy is delivered effectively alongside growth and occupancy of new residential development.
42. Whilst applications for residential development have been granted consent within the 7km zone the delivery and occupancy of this development has been limited to date. So far contributions around £2.5 million have been collected for the SAMM Strategy. This mainly includes contributions relevant to Wealden and Mid Sussex District Councils.

43. In summary, there is considerable evidence of delivery of SAMMS and SANGs and of suitable mechanisms and cooperation between the relevant parties to ensure that contributions collected by TWBC in respect of SAMMs and SANGs will be put to an appropriate use. The approach being taken by TWBC is robust and proportionate to the level of contributions to SANGs and SAMMs that it is likely to receive within the Plan period.

Inspector's Question 5: [re. HRA conclusions]

The HRA concludes that there will be no adverse effects upon the integrity of the Ashdown Forest SPA/SAC as a result of increased atmospheric pollution or recreational pressure resulting from the submitted Plan. Is this conclusion reasonable and justified by appropriate evidence?

TWBC response to Question 5

Introduction

44. The HRA 2020 that supports SLP [[CD 3.92a-c](#)] has been developed over several years and it has been updated and refined several times to take account of all relevant issues that have been raised by interested parties. All affected LPAs are now in agreement on likely effects and mitigation and good progress has been made with SAMMs and SANGs.
45. The detailed work in the preparation of the HRA has been done in collaboration with partner authorities with the help and support of Natural England. The approach to atmospheric pollution and recreational pressure and the conclusion reached is based on the detailed analysis of robust evidence which has been tested at examination at Lewes DC, South Downs National Park Authority (NPA) and Mid Sussex DC.
46. There is no criticism of the HRA from any Planning Authority involved with Ashdown Forest SPA or SAC or from Natural England.

Consideration

47. The HRA that supported the 2010 TWBC Core Strategy [[CD 3.118](#)] identified possible effects on Ashdown Forest from recreational pressure but screened out impacts from atmospheric pollution even in combination.
48. The Inspector's report [[CD 3.118a](#)] on the Core Strategy agreed with the findings and noted (para 3.42) that "*a proportion of the additional residents would be likely to be drawn to the Forest by its intrinsic and historic appeal*" but that "*any potential impact would be outside the direct control of TWBC*" and that it was therefore appropriate "*for TWBC to monitor progress on Wealden District Council's management strategies for*

the SAC/SPA, and be ready to apply any required cross-authority management measures through a future DPD or SPD”.

49. This initiated the collaborative work on visitor pressure between TWBC, WDC and other LPAs that led to the SAMM Strategy Partnership. However, a contrary position later emerged from Wealden DC in terms of atmospheric pollution that was not supported by other LPAs or Natural England and although this was later abandoned it initiated collaborative work on atmospheric pollution by the affected LPAs that led to the Ashdown Forest Working Group. At this time TWBC collaborated closely with Lewes DC and South Downs NPA on the technical elements of air quality modelling, traffic modelling and the likely effects of atmospheric pollution on the habitats on Ashdown Forest in order to share expertise and understanding and to develop a consistent approach to the issues. That work also addressed all previous concerns raised by Wealden DC. Natural England advised on and supported this work which resulted in a signed SoCG (Statement of Common Ground Appendix 12 Ashdown Forest Working Group LPAs and Natural England [[CD 3.132c\(ii\)](#)]) facilitated by the Planning Advisory Service (PAS).
50. The work of these groups and ongoing air quality monitoring on site at Ashdown Forest by Wealden DC helped to inform the HRA for the Regulation 18 Draft Local Plan and the Regulation 19 PSLP. The work in relation to HRA matters is ongoing including discussions around SANG provision, the SAMM Strategy and also work in relation to air pollution matters at Ashdown Forest. The approach and conclusions set out in the TWBC HRA 2020 for atmospheric pollution and visitor pressure is consistent with that in the Pre-Submission South Downs Local Plan and the draft Lewes Local Plan Part 2 in 2017 and the work is by the same consultant. The South Downs Local Plan was adopted on 2 July 2019 and the Lewes Local Plan Part 2 was adopted on 24 February 2020. The same overall conclusion was reached by Mid Sussex DC in the preparation of their District Plan which was adopted on 28 March 2018.
51. Since the adopting of their most recent Development Plan Documents and the alignment of Wealden DC with the other affected LPAs, Wealden DC, Lewes DC and Mid Sussex DC have been applying the findings of their HRAs and the mitigation for SANGs and SAMMS to development management decisions permitting dwellings within the 7km zone. The matters have also been successfully tested at planning

appeals. It is clear then that approach and findings of the HRA, which has been developed over a considerable time, has been tested on numerous occasions and has been found to be acceptable. The SANG and SAMM approach to mitigation is the strategic solution and a partnership approach for recreational pressure at Ashdown Forest and has been developed with and agreed by Natural England.

Conclusion

52. The Council has provided detailed and comprehensive answers to the questions raised. The answers demonstrate a commitment by TWBC through its policies and actions to protect the Ashdown Forest from the adverse effects of development within the SLP and it is doing so in collaboration with the affected LPAs, Natural England, and the Commons Conservators.
53. The actions taken by the Council are irrespective of the very small almost insignificant effect that development in Tunbridge Wells Borough is likely to have but the Council have recognised the importance of Ashdown Forest and acted in full accordance with the legislative requirements of the Habitats Regulations, current best practice and the advice of Natural England.
54. The Council is continuing to participate in the groups concerned with atmospheric pollution and visitor pressure and is in collaboration with those groups participating in continued monitoring and review.
55. The Council has considered objections to the policy and explained why these are unfounded. It considers that the conclusion of the HRA 2020 is justified by appropriate evidence and is reasonable.