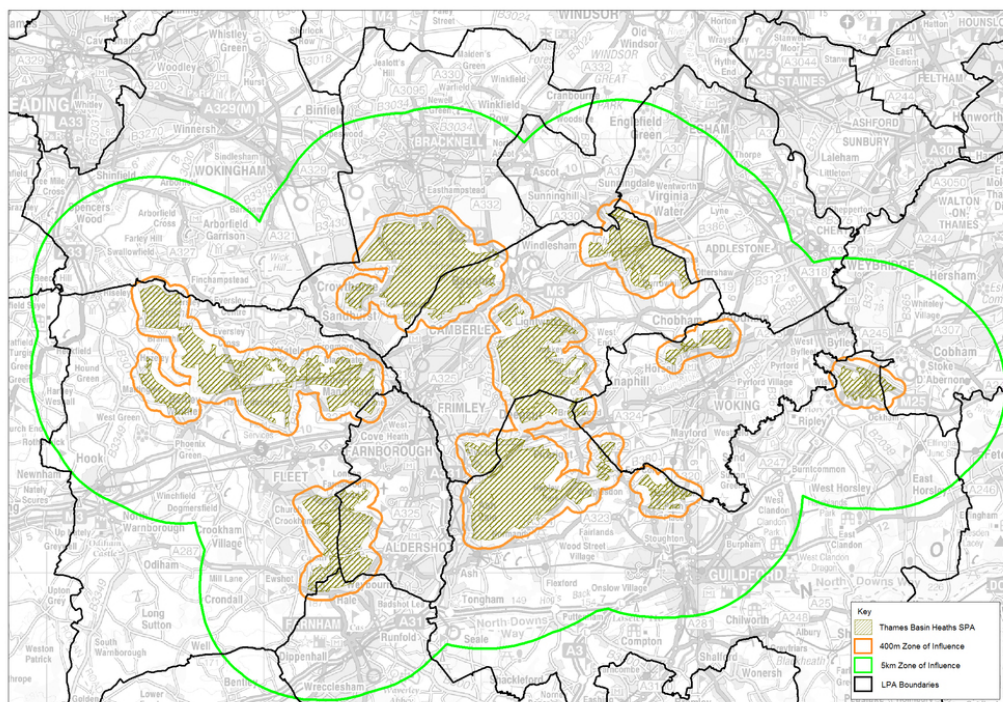


# TBH SPA Policies as Applied by Guildford Borough Council

Commentary by the Guildford Society – May 2018

## Introduction

The northern part of Guildford Borough contains part of the Thames Basin Heaths Special Protection Area (TBH SPA), which has been designated as being of international importance – specifically by supporting breeding populations of three species (Nightjar, Woodlark and Dartford Warbler) that are protected by Annex 1 of the EC Directive on the Conservation of Wild Birds. The potential effects of residential development on the SPA’s integrity, notably as a result of increased disturbance arising from greater recreational pressures, has led to the development of a strategic framework for housing development in the wider TBH area.





The Thames Basin Heath website ([www.tbhpartnership.org.uk](http://www.tbhpartnership.org.uk)) says of the TBH SPA:

*"The Thames Basin Heaths is a network of heathland sites spread over 8,200 hectares (82 square kilometres) across Hampshire, Surrey and Berkshire. It is one of the most important wildlife sites in Europe, and is a fragment of an ancient landscape that once, thousands of years ago, covered vast areas of southern England.*

*The Thames Basin Heaths is classified as a Special Protection Area (SPA), forming part of a European network of sites of international importance for nature conservation."*

The retained policy for the TBH SPA in the South East Plan (NRM6) says:

#### **POLICY NRM6: THAMES BASIN HEATHS SPECIAL PROTECTION AREA**

New residential development which is likely to have a significant effect on the ecological integrity of Thames Basin Heaths Special Protection Area (SPA) will be required to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects. Such measures must be agreed with Natural England.

Priority should be given to directing development to those areas where potential adverse effects can be avoided without the need for mitigation measures. Where mitigation measures are required, local planning authorities, as Competent Authorities, should work in partnership to set out clearly and deliver a consistent approach to mitigation, based on the following principles:

- i. a zone of influence set at 5km linear distance from the SPA boundary will be established where measures must be taken to ensure that the integrity of the SPA is protected
- ii. within this zone of influence, there will be a 400m "exclusion zone" where mitigation measures are unlikely to be capable of protecting the integrity of

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the SPA. In exceptional circumstances, this may vary with the provision of evidence that demonstrates the extent of the area within which it is considered that mitigation measures will be capable of protecting the integrity of the **SPA**. These small locally determined zones will be set out in local development frameworks (LDFs) and SPA avoidance strategies and agreed with Natural England

- iii. where development is proposed outside the exclusion zone but within the zone of influence, mitigation measures will be delivered prior to occupation and in perpetuity. Measures will be based on a combination of access management, and the provision of Suitable Accessible Natural Greenspace (**SANG**).

Where mitigation takes the form of provision of **SANG** the following standards and arrangements will apply:

- iv. a minimum of 8 hectares of **SANG** land (after discounting to account for current access and capacity) should be provided per 1,000 new occupants
- v. developments of fewer than 10 dwellings should not be required to be within a specified distance of **SANG** land provided it is ensured that a sufficient quantity of **SANG** land is in place to cater for the consequent increase in residents prior to occupation of the dwellings
- vi. access management measures will be provided strategically to ensure that adverse impacts on the SPA are avoided and that **SANG** functions effectively
- vii. authorities should co-operate and work jointly to implement mitigation measures. These may include, inter alia, assistance to those authorities with insufficient **SANG** land within their own boundaries, co-operation on access management and joint development plan documents
- viii. relevant parties will co-operate with Natural England and landowners and stakeholders in monitoring the effectiveness of avoidance and mitigation

measures and monitoring visitor pressure on the SPA and review/amend the approach set out in this policy, as necessary

- ix. local authorities will collect developer contributions towards mitigation measures, including the provision of SANG land and joint contributions to the funding of access management and monitoring the effects of mitigation measures across the SPA
- x. large developments may be expected to provide bespoke mitigation that provides a combination of benefits including SANG, biodiversity enhancement, green infrastructure and, potentially, new recreational facilities.

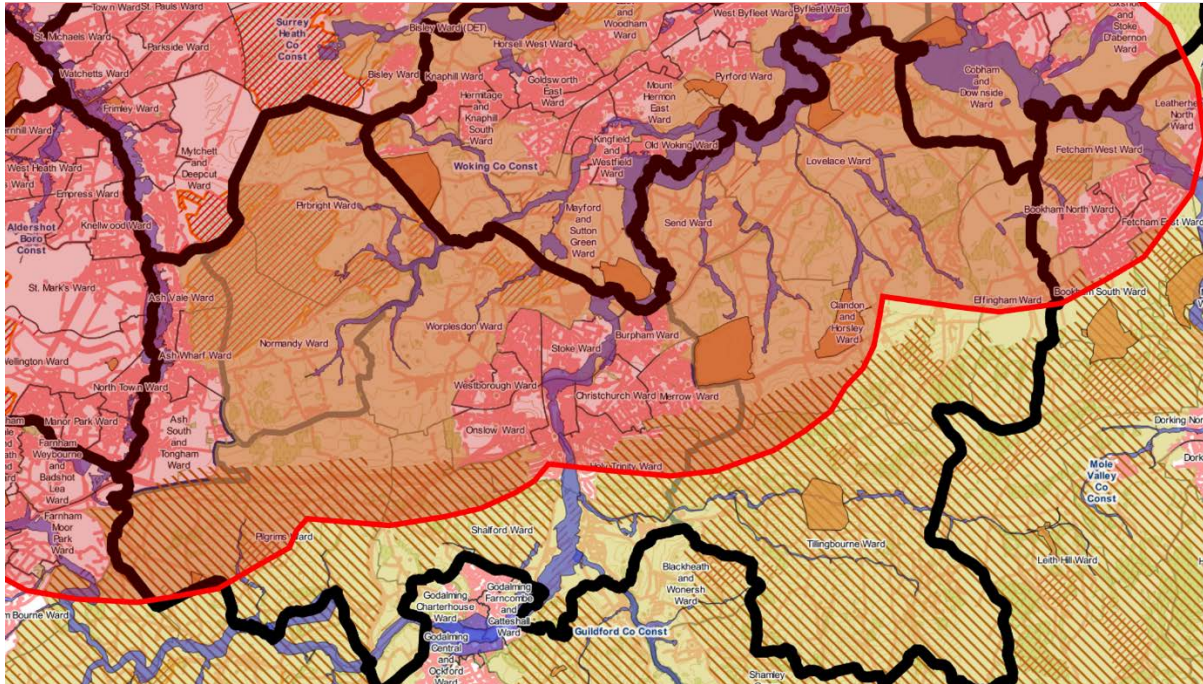
Where further evidence demonstrates that the integrity of the SPA can be protected using different linear thresholds or with alternative mitigation measures (including standards of SANG provision different to those set out in this policy) these must be agreed with Natural England.

The mechanism for this policy is set out in the TBH Delivery Framework by the TBH Joint Strategic Partnership and partners and stakeholders, the principles of which should be incorporated into local authorities' LDFs.

Although Nature England are a consultee and the text of the South Eastern Regional Plan requires applicants to agree with Natural England, the latter must act objectively and should guard against losing other areas of countryside and habitat where they would have no incremental protective effect on the protection of a handful of birds' nests in the SPAs.

Nature England are neither makers nor implementors of planning policy, they are a consultee. It should be for Local Planning Authorities to design and implement expeditious and sustainable planning policies and land allocations for housing developments.

Guildford is constrained across the entire borough by either one or a combination of the TBH SPA exclusion zones and zones of influence, the Surrey Hills Area of Outstanding Natural Beauty, and the Metropolitan Green Belt (see Map below).



Around Guildford there are several hundred acres of recreational space that are not Special Protection Areas, nor SANGs. For example, there are, within walking distance of the Guildford Urban Area

- the Chantries (Chantry Wood), 200 acres of woodlands and meadows managed by the Woodland Trust, owned by Guildford Borough Council;
- Pewley Downs, several tens of acres of open land linking to the Chantries, and adjacent to the Pewley area of Guildford;
- Merrow , 400 acres of open land and woodland adjoining Merrow, owned by Guildford Borough Council
- The Mount, 94 acres of mostly open land to the western side of Guildford.
- The River Wey corridor with surrounding walkways, parks and common lands.



Taking a conservative estimate of a total of, say, 750 acres (300 Hectares) of existing open land that should mitigate the impact on TBH SPA sites for developments in the town.

Beyond these areas of open land are Newlands Corner, St Martha's Hill, Blackheath, Albury Common, Chinthurst Hill and several other accessible areas on non-SPA open land.

In this context, whilst we understand the scope and purpose of the legislation and regulations around TBH SPA and the provision of SANG, we do not accept that this is relevant for much of Guildford Borough (between the 400m and 5km cordons around the SPAs).

It would be for the Local Plan Inspector to determine whether areas such as these could take the place of SANGs if they do not provide additional parking.

## The Guildford Society's Principal Concern

Our principal concern is that the levy for SANG and SAMM on new homes adds considerably to their cost. SANG and SAMM contributions come ahead of affordable homes and so reduces funds available for much-needed affordable housing, and ultimately restricts housing development – particularly on urban brownfield sites.

Quite apart from the amount of non-SPA publicly-accessible open space around Guildford, the Special Protection Area management strategy and the provision of alternative recreation space delivers a very large sum away from resolving major issues in Guildford Borough – such as affordable homes and infrastructure – to protect a very small number of birds (around 1,000 nests across the whole Thames Basin Heath area). The programme has had no known impact on the three species of birds it is supposed to protect. Bird nest numbers, now around 1,017 have recovered and indeed exceeded earlier levels (878 in 1998/9), but this has been widely attributed to milder weather after several were killed off in cold winters. There is no credible evidence that visitors to SPAs have caused problems for birds.

The Surrey Wildlife Trust noted in 2014:

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*“Dartford warblers return to Ockham Heath after an absence of 6 years.*



*Surrey Wildlife Trust (SWT) is thrilled to announce the return of Dartford warblers to Ockham Heath, near Wisley, after an absence of over 6 years.*

*The Dartford warbler is a beautiful, shy little bird that can be found on lowland heathlands across Southern England and is usually seen perched on top of gorse plants singing its unmistakable scratchy warble.*

*Ockham Heath is managed by SWT on behalf of Surrey County Council and is designated a Thames Basin Heath Special Protection Area due to its important heathland habitat and vulnerable populations of ground nesting birds. Along with nightjar and woodlark, the Dartford warbler completes the trio of specialist heathland birds for the site. Unfortunately these birds do not cope very well in extremely cold, snowy weather. A combination of these harsh temperatures and major habitat loss caused the population of Dartford warblers to crash to just a few pairs across the whole of the UK in the 1960's.*

*Since then the population and habitat range of Dartford warblers has gradually increased but it is still regarded as an Amber List species, which means that it is still of conservation concern.”*



The use of more and more countryside for SANGs will put additional burden on the natural habitats of other creatures – such as hunting grounds for owls and other birds of prey.

The tens of millions of pounds that would be raised from new homes over the course of the proposed local plan will damage countryside, prevent development of affordable homes and will, for many of the proposed developments (particularly in the town centre), be unnecessary as a mitigation for an unlikely risk.

The TBH SPA situation in Guildford is as follows:

There are effectively two Special Protection Areas in Guildford Borough to which these policies apply (there is a third at Ash Ranges but Natural England states that visitor access is limited and birds, despite military action have survived).

- Whitmoor Common is a 152 hectare SPA on which Natural England identified 6 nests in 2016 (2 Dartford Warblers, no Woodlarks and 4 Nightjars).
- Wisley and Ockley Common is much larger, 350 hectares and 16 nests were identified in 2016 (7 Dartford Warblers, 4 Woodlarks and 5 Nightjars).

Research into why the numbers were so low, secured the surprising statement from the Senior Planning Officer in GBC ***“Harsh winters in2008/10 wiped out most of the SPA population”*** (Appendix: email from Guildford Borough Council to Gordon Bridger 27<sup>th</sup> Sept 2016).

The effect of the weather on the bird populations was confirmed by a Natural England evaluation of the whole TBH SPA in 31/3/17. Visitors and SANGS are not mentioned.

Since then, Natural England has reported the endangered bird population of the THB SPA has recovered and indeed the birds are flourishing. Dr Coffey (DEFRA Minister) in a letter to Anne Milton our MP concedes that the “birds are now within their normal range (30/10/17). Their revival has been confirmed by the GBC Senior Planning Officer while the RSPB is quite euphoric in its 2017





annual report about the recovery of the Dartford Warbler – ***“Their worst winter was in 1996 – only 11 pairs – doubling the numbers in couple of years they can recover quickly”***.

The Guildford Society hopes to secure from Natural England imminently confirmation of the 2017 nest numbers. We understand that the total number at that date was 1017. This reflects that there is one nest for every 8 hectares of SPA (8,250 hectares in all). While this ratio is a crude one, it suggests there would be one nest in the equivalent area of SANG to accommodate 1,000 homes.

This average, when we take account of the amount of non-SPA open space within easy access (and in many cases within walking distance) of the town centre and Guildford Urban Area, it seems inappropriate to seek to impose the SANG contribution on all new homes, irrespective of where they are.

## The Local Plan

It is not within the remit of the Planning Inspector appointed to examine the local plan, to challenge current national environmental policy. There are, nevertheless, implementation decisions which could and should be taken for Guildford which can, within the legal framework of the TBH SPA, to temper the impact of a blanket policy to require – as the European Directive requires – the developer to demonstrate that it will not harm the Special Protection Areas.

The Inspector does have the power to drill down into the viability report to establish whether developments (particularly on brownfield land) can be delivered given SANG, CIL, s106 and other contributions PLUS the 40% affordable housing provision.

Guildford Borough Council has chosen to set its SANG and CIL levies at the higher end of the spectrum of local authorities in the area.

Local Councils have discretion in the application of the mitigation strategy for TBH SPA as follows:



- a) Levies- the amount to be levied as a tariff towards SANGs are discretionary and set by the Council. Guildford has chosen the highest. A nominal amount would be possible and, given the availability of plenty of existing open space in and around Guildford, rational and reasonable – perhaps leaving a higher SANG payment and mitigation strategy for developments within a shorter distance of the TBH SPA.
- b) The TBH SPA Strategy paper 2009 (Background: Legislation – Paragraph 3.6) states that ***“If a Council is satisfied that a proposed development has no significant effect on an SPA the Habitats Regulations is not engaged and the Council may proceed to determine the application in a normal way”***.

## Guildford Borough Council’s Approach to SPAs

The Council uses a standard justification of its SANG policy, that the problem of harm to the bird population has been caused “by urbanisation and recreational use by local people”. This does little justice to locals and the majority of British people (we are generally a nation of bird lovers).

We understand that a Natural England visitor study in 2013 showed the visitor numbers over the previous 5 years had not increased despite new homes being built.

The logic that it is SANGs that have benefitted birds is implausible and we have uncovered no research to justify it.

Recently the Council have claimed that SANG is justified on the basis of “the precautionary principle”. They could be right, but without weighing this policy against its costs (which EU policy requires), it is a far from a convincing policy.

If one accepts that in the Guildford SPAs (using the ratio identified earlier) there could be around 60 or maybe more nests on the SPAs in a stable state, our assessment of the likely SANG revenue from the Local Plan of around £64m to £90m required to protect them would seem to many rather generous. So far, the Council has collected levies of around £8m.



Guildford Borough Council seems to be extracting an exorbitantly high premium for developers (when compared with all neighbouring authorities, some of which are entirely covered by SPA protection zones), which it then seems to be proposing to use for sites like Tyting Farm (in its ownership) with which it does not know what else to do. As noted above, without using Tyting Farm as a SANG, there are already many hundreds of acres of non-SANG publicly accessible land in the immediate vicinity – making Tyting pointless as a SANG, with or without a new car park in the Green Belt in the heart of Surrey Hills AONB.

It may well become a question in law (or for the Inspector at the Examination in Public) to determine whether monies raised through SANG can, to all intents and purposes, be used as an alternative source of funding for the maintenance of existing Council properties.

## Developing SANGs

Officers highlight that on two recent occasions where SANGs were proposed and rejected (once even by the Guildford Borough Council Planning Committee), that at Appeal, Inspectors overturned the decisions on the grounds that new housing would have an adverse effect on the local SPA.

Had the Inspectors been told that there were only 16 nests on 350 hectares on the local SPA and that Natural England had attributed this low number to unusually cold weather, their decision might have been different.

Government policies are stated to be that Green Belt land should not be used for development “other than in exceptional circumstances”.

The Society accepts this policy and we agree that, in some circumstances, the housing need is so acute that development is a sensible option. The Council now argues, however, that provided SANGs are funded by a developer the development will be acceptable. But SANGS are to protect birds not to justify housing development. In fact, Green Belt land often protects birds that might need protection if their hunting grounds are given over to SANGs.



We believe there needs to be a register of all publicly accessible land (and a regular count of visitor numbers) before creating new SANGs. We also highlight that there is relatively little point in creating SANGs in close proximity (or even adjacent) to existing publicly accessible open land.

The challenge is, perhaps, that the regulations make it quite clear “it is essential to provide car parking” for a SANG. As a mitigation strategy for town centre housing, therefore, a SANG would seem to be counter-intuitive since it is our aim to reduce the dependence of town centre homes on cars.

## Conclusion

The Council has included a blanket one-size-fits-all approach to SANGs in the Submission Draft Local Plan, and it has refused to put its SANGs policy to their Scrutiny Committee as they have argued that there is nothing that can be done to alter it. The Councillors seem to be unaware that they have it within their gift to modify the policy quite substantially.

The Society strongly believes, in the context of the Local Plan that:

- a. The default position should be that the allocation of land in the Local Plan should have brought with it a requirement for the Council to have objectively tested the likelihood of adverse impact of new development on the TBH SPA and, where no adverse impact were identified to apply a default that developers confirm the Council findings of nil harm, or that they have to prepare a Habitat Regulations Assessment ('HRA').
- b. That the high level of SANG and Strategic Access Management and Monitoring ('SAMM') tariffs in the Local Plan will harm the prospects of delivering housing (and particularly affordable housing) in Guildford, and that there is, therefore, a good case for reviewing and reducing the amount of levy charged.
- c. That Councillors must be presented with the full facts (including an objective HRA test) enabling them to determine whether an SPA is likely to be significantly affected by a new development, and what the appropriate mitigation strategy might be.



- d. There is a need for a modification to the national regulations as the bird populations seem to have recovered (more due to weather conditions than SANGs) and that SANGs and SAMM in Guildford at least represents an unjustifiable tax on new housing.

Councillors and officers seem to have no idea that they are responsible for policy-making in this area, and that the policy allows them to make quite significant changes in its implementation. They must have regard for both the responsibility to mitigate against harm to the SPAs but, also to ensure that, where a development will have little or no impact on SPAs (especially because of the amount of publicly accessible natural green space that is not a SANG or a SPA), they do not seek to unilaterally impose a SANG charge on that development.

In preparing a positive Local Plan, they should have been identifying all practical means to mitigate impact on SANG for all allocations, and not simply relying on this unsustainably generous cash cow at the expense of other pressing local needs such as infrastructure and affordable housing.

G. Bridger

The Guildford Society

6<sup>th</sup> May 2018