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Our ref: HatFor Updated Strategic Interim LPA



Uttlesford District Council  
Harlow District Council  
East Herts District Council  
Epping Forest  
Chelmsford Council  
Braintree Council



## BY EMAIL ONLY

Dear All

### **New Evidence and Advice on Recreational Disturbance Impacts. A Proposed Strategic Solution at Hatfield Forest Site of Special Scientific Interest (SSSI) and National Nature Reserve (NNR). Revised Consultation Arrangements for Local Planning Authorities.**

Further to our letter of 5<sup>th</sup> April 2019, and meeting on 25<sup>th</sup> July 2019 at Uttlesford Council's offices, Natural England is writing to your authorities with an update regarding the recently released evidence base which describes the adverse impacts of recreational pressure caused by housing growth around Hatfield Forest Site of Special Scientific Interest (SSSI) and National Nature Reserve (NNR). All local authorities within the zone of influence (see below) have now been sent the report from Footprint Ecology, and have been invited to reviews its contents and offer comments. This evidence has been referenced within our consultation responses to Local Plans in recent months, and is now also regularly highlighted to you for individual development management consultations. Whilst it is our advice that these effects are most effectively addressed by local authorities via a strategic solution in preparation (now a common approach for addressing strategic issues at designated sites country wide), please note that this evidence should be used now to inform all relevant planning decisions.

The purpose of this letter is to update and clarify Natural England's proposed approach in the interim period, so that all local authority partners understand how to apply this new evidence for planning decisions, and what are the next steps towards setting up a strategic approach.

#### Hatfield Forest – Background and Importance

As you will be aware, Hatfield Forest is both SSSI and NNR<sup>1</sup>, supporting an ancient forest mosaic of wood pasture, coppice, old grassland plains and wetlands, that collectively support grassland, woodland, wetland habitat features and notable assemblages of veteran trees, invertebrates, fungi, lichen and breeding birds. Hatfield Forest is arguably unique in a

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<sup>1</sup> National Nature Reserves are our finest wildlife sites: the crown jewels of England's natural heritage. Consequently, Hatfield Forest should be viewed as holding elevated significance in the national SSSI series.

European context as the best example of a mediaeval forest with all elements surviving. (Rackham, O, 1989 and <https://www.placeservices.co.uk/projects/hatfield-forest-conservation-management-plan/> ).

The site is owned and managed by the National Trust, who as long-term stewards of the Forest, have been working with Natural England towards better understanding the interactions between, and impacts arising from, increasing volumes of visitors and the habitats and environment which make Hatfield Forest an attractive visitor destination. Towards this end, the National Trust have commissioned research from consultants Footprint Ecology, (part funded by Natural England), which has now reported.

#### SSSI Responsibilities to Achieve Favourable Condition

It is important to note that Hatfield Forest is privately owned and managed by the National Trust with permissive access (there are no public rights of way within the Forest). All SSSI owners have legal responsibilities to take reasonable steps to avoid damaging SSSI features and the National Trust deliver beyond this to conserve and enhance the SSSI for its habitats and features, in accordance with their charitable objectives and the voluntary Stewardship Agreements they have entered into. Therefore whilst local planning authorities have responsibilities to take into account the effects of planned growth on SSSIs as material considerations, these need to be viewed in the context of the sustained efforts over many years by the National Trust to meet their own legal obligations. Please refer to the National Trust website for further information on these steps, including the 2015-20 Conservation Plan, the “Every Step Counts” project, and other Special Projects which seek to address these obligations.

Despite the best endeavours of the National Trust, the popularity of Hatfield Forest to visitors has grown beyond both its carrying capacity and the ability of the Trust to manage through reasonable endeavours, which in recent years has resulted in an “unfavourable” condition status. The strategic importance of the Forest as a large area of open space, and the lack of alternatives in the area, means that it can no longer reasonably be expected for the National Trust to shoulder the responsibility of growing visitor numbers beyond sustainable levels. There is a clear case that a partnership approach is needed if the Forest is to be sustainably managed moving forwards, particularly where local plan growth is dependent on the Forest for its semi natural greenspace provision. This requires that all public bodies with duties towards SSSIs need to work together to avoid exacerbating the problems experienced.

#### The Legal Basis for a Strategic Solution

Several partner local authorities have questioned the legal basis in relation to decision making linked to recreational impacts on Hatfield Forest SSSI / NNR. In particular any obligations you might have to put in place (or at least consider putting in place) to deliver a strategic solution which would alleviate recreational pressure based on evidence of a likely effect from surrounding development.

You are likely to be aware of other strategic solutions in place for European protected sites (including the Essex RAMS, and at Epping Forest SAC). As you know, Hatfield Forest is both SSSI and NNR, but is not a European protected site, and so there is no duty on you as local authorities to permit or authorise a plan or project only where you can ascertain there will be no adverse effect on the integrity of the European site (if this were the case, you would have an obligation to be satisfied that measures were in place such that a conclusion of no adverse effect could be reached). No such obligation arises in the case of sites that are solely SSSI (NNR status does not change this, although it does arguably elevate the site within the SSSI series).

Nevertheless, there are duties on public bodies including LPAs, in respect of SSSIs, in particular the general duty under section 28G(2) of the Wildlife and Countryside Act 1981 to

“take reasonable steps, consistent with the proper exercise of the authority’s functions to further the conservation and enhancement...” of the SSSI. This is a positive duty to do something rather than a more passive duty, such as a duty to “have regard” to something. There is of course some discretion for the authority to reach a view on what it considers to be reasonable steps and whether those steps are consistent with the proper exercise of its functions. It would though require the authority to consider what active steps it could take to conserve and enhance the SSSI, whether it was reasonable in all the circumstances to take them and if there were no steps that it considered could reasonably be taken, and why that was the case in its view.

There is a specific obligation on an authority under section 28I of the Wildlife & Countryside Act where it is proposing to permit an operation likely to damage a SSSI, to give Natural England prior notice. This is relevant where the authority is considering an individual planning application, where it is clear that damage is likely to arise (this should be viewed in the context of the Footprint Ecology report, and the identified zone of influence).

The above legal points, are in addition to policy considerations, including those you are familiar with, such as National Planning Policy Framework paragraph 170 onwards, relating to conserving and enhancing the natural environment which must be taken into account when preparing plans and determining planning applications.

Natural England has proposed a strategic solution to address the impacts arising as a result of recreational pressure at Hatfield Forest SSSI / NNR, which in our view represents an efficient and effective means of addressing what is a cumulative effect of a volume of new housing spread across multiple local authorities. We are however interested in any other steps which local authorities may wish to take to address these concerns, in light of the evidence available to all parties.

#### Recreational Impacts and Zone of Influence

The Footprint Ecology evidence study comprises two parts, an initial winter phase, and further summer phase. This recognises that although there are specific recreational pressures on the Forest during the winter months (a product of milder, wetter winters, and poorly draining clay soils leading to trampling damage of footpaths and woodland rides), these pressures are maintained throughout the year with adverse implications for the range of habitats for which the site is notified as SSSI / NNR. The Footprint Ecology reports describe these impacts in more detail, and also describe a range of mitigation measures available to offset these impacts, to ensure that future planned housing growth within the zone of influence can demonstrate sustainability consistent with the requirements of the National Planning Policy Framework (NPPF).

The National Trust has reviewed these recommendations, and is preparing a “Mitigation Strategy”. This takes the form of a package of on-site (i.e. within the SSSI / NNR) Strategic Access Management Measures (SAMM) to which new housing development projects can contribute. This document is in draft form, and at our 25<sup>th</sup> July meeting, you were invited to provide feedback, in particular regarding:

- The planning mechanisms by which financial contributions could be secured;
- The breakdown of interviewees by local authority;
- The financial apportionment by District; and
- The planned housing growth during the Plan period (including accounting for permissions already granted).

Once this SAMMS report has been finalised and costed, it will describe the rationale for a per dwelling tariff (for this part of the wider mitigation strategy). This is the typical approach routinely adopted by strategic solutions for protected sites nationwide. Please note that it is for local authorities as decision makers to apportion mitigation costs as seems best to them,

and Natural England has no preference for one model over another, so long as the measures required to achieve sustainable development are funded in full for the life of the Plan period.

The study collated and reviewed visitor post code data, and used this to generate a Zone of Influence, within which the majority (75%) of visitors can be expected to arise from. These data allow planners and stakeholders to confidently predict which new housing projects will contribute further towards recreational pressure at the Forest, and therefore where financial contributions towards the mitigation package should be requested.

The completed study comprising a year-round dataset concluded that the zone of influence to capture 75% of visitors should be set at 14.6km. A map of this zone is attached for reference. We understand from our 25<sup>th</sup> July meeting that some local authorities have raised concerns about this zone, linked to the inclusion of “special event data” which may have resulted in a larger than typical zone, and about some of the assumptions made in the study (including factors which may influence visitor site selection, such as the variable road network, and availability of alternative greenspaces). In seeking to reach a consensus on whether the zone of influence should be amended from 14.6km, the National Trust has asked Footprint Ecology to comment on a number of points, for the discussion of the steering group at its next meeting. The responses to a number of questions put to Footprint Ecology are summarised below.

- 1) Clarification on the number of dwellings in scope: Councils are able to supply any relevant GIS data required for the study (if possible also windfall and small development, in addition to the main allocations). The predictions of the study can be checked and revisited if needed.
- 2) The inclusion of special event data, e.g. Woodfest leading to possible data skew and enlarged zone of influence: the study took an average across survey points which reduces the effect of Woodfest and other bias. Taking all the data pooled – without any averaging, filtering etc. – 75% of interviewees came from within 17.8km. The winter half term data (i.e. February) had a 75<sup>th</sup> percentile value of 18.3km and looking at the winter term time data, both the main car-parks had 75<sup>th</sup> percentile values above 15km. Footprint Ecology conclude that the 14.6km zone holds up and makes sense.
- 3) Assumptions made in the study (e.g. accounting for travel routes and availability of alternative greenspace): whenever Footprint Ecology has looked at travel time vs. linear distance they find similar results – i.e. relatively little effect of particular travel routes. At some sites there does seem to be an effect of motorways bringing people from further afield (for example in South Devon there were postcodes from the M5 corridor up towards Bristol), but there is not really anything visible from the post-code maps to suggest that here. Other greenspaces are very hard to factor in. If there is a greenspace that is drawing people away from Hatfield Forest, the best way to find that out would be to conduct interviews at the other space and ask which other sites people there visit and where they might have gone instead that day. It is clear from the GIS data that there is a general paucity of greenspace across much of the relevant areas.

#### Interim Consultation Arrangements

You will be aware that consultation on planning applications is directed through Natural England's Impact Risk Zone (IRZ) system, whereby defined zones are set according to development type around each designated site. These IRZs are [reviewed and updated frequently](#), and we encourage your authority to regularly refresh your GIS systems to ensure that you are aware of the most recent changes. Planning Authorities must consult Natural

England on relevant development proposals within these zones.

Please note that consistent with the changing and emerging evidence base, Natural England has now changed the Impact Risk Zone for Hatfield Forest SSSI / NNR, to be set at 14.6km.

The table below indicates which local authorities are within the respective zones of influence.

<i>Local Authority</i>	<i>14.6km zone</i>
Uttlesford	Yes
Harlow	Yes
East Herts	Yes
Epping Forest	Yes
Chelmsford	Yes
Braintree	Yes, just clipped

#### Interim Approach to Mitigation

Several local authority plans are currently being examined by the Planning Inspectorate, and some of the supporting material informing a strategic solution is being finalised.

Nevertheless it is important that relevant planning decisions are informed by this new evidence, albeit some Local Plans were adopted before the survey work was commissioned. Whilst this presents some challenges to achieving sustainable development solutions, Natural England does not wish to unduly delay planning decisions if these are able to show that their own impacts can be adequately mitigated, and sustainability with respect to Hatfield Forest SSSI / NNR can be demonstrated. Our proposal therefore at this interim stage (until a strategic solution is fully signed off by the local authorities) is therefore to seek consultations on the larger housing applications, in order that bespoke mitigation packages can be negotiated and agreed with relevant stakeholders, in particular the National Trust. We suggest this is a proportionate response to new evidence, until a strategy can be agreed.

The National Trust has prepared and consulted upon a draft Mitigation Strategy, containing a list of Strategic Access Management Measures (SAMMs), to enable developers to agree packages of funded measures proportionate to the size and location of their projects. The purpose of a strategic solution is that all relevant housing projects can contribute towards these measures, but at the current time these packages are being negotiated on a case-by-case basis, until such time as mitigation measures and consultation can be streamlined. For this reason we propose that only the largest schemes are required to contribute financially in this way, and we suggest this should apply to projects of 50 or more units. Please note however that this does not mean that projects of less than 50 units are not considered likely to have significant effects, and provision should still be made within relevant Plans (including Neighbourhood Plans).

Once the Mitigation Strategy (the SAMMs) is agreed and costed, and systems to streamline consultation advice have been set up, then all relevant planning applications will be in scope for a financial mitigation contribution. At that point Natural England will further update our Impact Risk Zones to ensure that all relevant applications receive appropriate advice. We anticipate that streamlined consultation would be set up to ensure consistently and efficiency.

#### The Mitigation Strategy

Please note that the document you have been asked to comment upon titled the "Mitigation Strategy" represents only those measures within Hatfield Forest SSSI / NNR which will help to address recreational disturbance impacts. The Footprint Ecology report makes it clear that a wider package of measures is required in order to fully address the impact arisings, which should include alternative greenspace for new residents to utilise (e.g. paragraph 8.2).

These off-site measures (i.e. outside of the SSSI / NNR) will need to include both new

greenspace within the red-line boundary of new housing developments of sufficient size, and for the largest allocations (or elsewhere as required), Suitable Alternative Natural Greenspace (SANG).

The principles of SANG have been established through the Thames Basin Heaths SPA and elsewhere for some years, and describe greenspace of a certain quantity and quality that is regarded to be most effective in attracting visitors away from sensitive designated sites. Evidence suggests that SANGS should be at least 30ha to reach an optimal size, in order to provide a route length of above 2km within their boundary. Nevertheless many smaller allocations will be unable to provide a SANG within their boundary, hence an appropriate proportionate amount of open space should be requested.

Natural England understands that Uttlesford District Council will be producing a Green Infrastructure strategy in due course, which will help to quantify available open space, and identify any deficiencies. At the present time therefore, we are not aware of a holistic evidence base which describes the need for SANGS (or other open space) provision (other than that there is a deficiency). Separate to this, we have also recently commented on Uttlesford Council's Open Space Assessment Report, as part of the targeted consultation on evidence documents (our response letter is dated 11<sup>th</sup> September 2019, our ref: 292252). There is a certain amount of overlap between these two documents, however in our view insufficient regard was had in that document to the natural environment, in particular in the context of Hatfield Forest SSSI / NNR. The authorities should therefore be aware that these documents are likely to identify and describe open space deficits in the area, which are likely to feed into additional mitigation requirements to address the situation at Hatfield Forest SSSI / NNR.

#### Suitable Alternative Natural Greenspace (SANG) & other Greenspace Provision.

As described above, the complete mitigation solution (described within the Footprint Ecology report) at Hatfield Forest SSSI / NNR includes the provision of alternative areas of greenspace, whether these are formal SANGs or smaller equivalent provision. During this interim stage, we suggest that the largest, strategic housing sites (perhaps 100+ units), include specifically designed green infrastructure provided within the red-line boundary of the proposed development. Such green infrastructure should be designed to absorb significant proportions of the day to day recreational needs of new residents, such as walking, dog walking, jogging / exercise, children's play facilities, and other informal recreation. It should also aim to provide a semi-natural character, with significant proportion of tree / woodland cover, and as may be appropriate, café / basic refreshment facilities.

LPAs and developers may also wish to consider two benchmark standards for open space provision. Firstly, the TCPA have published [Guides and Principles for Garden Communities](#), and Guide 7, Principle 9, references 40% green infrastructure as a target quantum. Whilst some larger housing allocations may not technically qualify for Garden Community status, nevertheless Natural England advises that this represents a quantum and quality standard which is aspirational in this context. Secondly, the strategic solution designed for the Thames Basin Heaths SPA requires a quantum of SANG at a rate of 8ha per 1000 population. Again though, it should be noted that the Thames Basin Heaths SPA (ground nesting birds) is classified for different interest features to Hatfield Forest SSSI / NNR, and so although it may not be directly comparable, does offer an indicative quantum comparison. In both instances, we wish to emphasise that the design quality is as important as quantity, and schemes should aim to provide a rationale which cross references GI design with mitigation requirements for the Forest.

For individual schemes, Natural England would be happy to advise developers and/or their consultants on the detail of requirements at the pre-application stage through our charged Discretionary Advice Service, further information on which is available [here](#).

**Interim Funding Mechanism**

Natural England are keen to see the delivery of the Strategic Access Management Measures. We are open for the individual Local Planning Authorities to use whatever funding mechanism they are comfortable with, as long as on a periodic basis, contributions are submitted in line with the quanta of development delivered. However we note that the recent MHCLG report "Government Response to Reforming Developer Contributions" (June 2019) proposes to lift the pooling restrictions on planning obligations towards a single piece of infrastructure, making it easier to allocate s106 monies towards overall mitigation strategies, rather than discrete items, and we anticipate this will resolve any pooling concerns. We would also advise that any mitigation measures should be in place by the time residential developments are occupied.

**Next Steps**

Natural England will continue to engage proactively with your authorities towards integrating a strategic solution for Hatfield Forest SSSI / NNR within Local Plan policies, where possible. We are pleased that a steering group has been set up, with Uttlesford District Council as the lead authority, and we look forward to further meetings to discuss & progress the strategy. Please contact us again should you have any queries with the above. We would be grateful if you could also circulate this letter to all relevant staff within Planning Policy and Development Control departments.

Yours sincerely

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**Area Manager – West Anglia Team**

CC: Sarah Barfoot, Nina Crabb, Henry Bexley, Leigh Freeman - National Trust