

# FAREHAM

## BOROUGH COUNCIL

### Report to the Executive for Decision 07 December 2021

<b>Portfolio:</b>	Planning and Development
<b>Subject:</b>	<b>Implications of Natural England advice on New Forest Recreational Disturbance</b>
<b>Report of:</b>	Director of Planning and Regeneration
<b>Corporate Priorities:</b>	<b>Providing Housing Choices Protect and enhance the environment Leisure opportunities for health and fun Dynamic, prudent and progressive Council</b>

#### **Purpose:**

To provide Members with information on a new position from Natural England in relation to recreational disturbance impacts from new occupiers of development in Fareham on protected sites in the New Forest, and the implications thereof, and to agree an interim mitigation solution.

#### **Executive summary:**

This report outlines the issue surrounding the impacts of increased recreational pressure on the New Forest designated sites, the advice from Natural England as statutory advisors on protected sites, and the interim mitigation solution. This report seeks Executive approval for the interim mitigation solution set out in the report, which will be a material consideration in the determination of planning applications.

#### **Recommendation:**

It is recommended that the Executive:

- (a) approves the approach to interim mitigation solution as set out in paragraphs 18-30 of the report;
- (b) agrees to the carrying out of works identified in the proposed solution on receipt of appropriate funds received through planning obligations; and
- (c) notes that, where appropriate, the Planning Committee will be advised that the Executive has agreed to the carrying out of works identified in the proposed solution upon receipt of financial contributions.

**Reason:**

To ensure sufficient options for mitigation to address any adverse effect of recreational impacts upon protected sites in the New Forest from new residential and overnight accommodation in the Borough.

**Cost of proposals:**

The estimated project costs of £378,000 will be funded from legal agreements or section 111 agreements. These projects will be phased in line with the collection of the income due on the building of 1,530 new homes in the next 3 years. The projects will be cost neutral to the General Fund.

**Background papers:** None

**Reference papers:** All Footprint Ecology reports can accessed here: [Research into recreational use of the New Forest's protected habitats - New Forest National Park Authority \(newforestnpa.gov.uk\)](#)

Detailed description of impacts can be found within the Footprint Ecology Report, Recreation use of the New Forest: Impacts of Recreation and Potential Mitigation Approaches. [New-Forest-Recreation-Impact-Mitigation-report.pdf \(newforestnpa.gov.uk\)](#)

Zone of influence report [New-Forest-zone-of-influence-report-2021.pdf \(newforestnpa.gov.uk\)](#)

Telephone survey report [New-Forest-Telephone-Survey-report.pdf \(newforestnpa.gov.uk\)](#)

[Local Plan Viability Assessment Addendum \(May 2021\)](#)

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## BOROUGH COUNCIL

### Executive Briefing Paper

<b>Date:</b>	07 December 2021
<b>Subject:</b>	Implications of Natural England advice on New Forest Recreational Disturbance
<b>Briefing by:</b>	Director of Planning and Regeneration
<b>Portfolio:</b>	Planning and Development

#### INTRODUCTION

1. This report outlines the issue surrounding the impacts of increased recreational pressure on the New Forest designated sites, the advice from Natural England as statutory advisors on protected sites, and the interim mitigation solution. This report seeks Executive approval for the interim mitigation solution set out in the report, which will be a material consideration in the determination of planning applications.

#### BACKGROUND

##### Legal framework

2. The Conservation of Habitats and Species Regulations (2017 as amended), hereafter referred to as the 'Habitats Regulations', place significant responsibilities on the Council as competent authority for the protection of ecology. Regulation 63 requires competent authorities to undertake an 'Appropriate Assessment' of the implications of the permission, if it is likely to have a significant effect on a site protected under the Habitats Regulations, hereafter termed a 'protected site'.
3. The Appropriate Assessment process considers potential impacts against the conservation objectives of any protected sites designated for their nature conservation importance. If a likely significant effect is predicted, it is only if the competent authority can determine no adverse effect on the integrity of the site having regard to any proposed mitigation measures that permission may be granted. Therefore, if mitigation measures are not available or sufficient to avoid the adverse effect, then the competent authority would not be able to conclude that the plan or project would not have an adverse effect and should not grant planning permission.
4. Such protected sites include Special Protection Areas (SPA) designated to conserve important or threatened bird species and Special Areas of Conservation (SAC) designated to conserve important and rare habitats. Significant effects on these protected sites can be caused through a number of impact pathways such as direct or indirect habitat loss, increase of recreational disturbance, construction activities, air and water pollution.

5. It is also necessary for the competent authority to consider not only the impact of a single plan or project in isolation but the likelihood of a significant effect occurring in combination with other plans and projects.

### **Relevant case law**

6. An established approach is that the Appropriate Assessment must use the 'precautionary principle' when determining likely significant effects. If it is not possible to rule out a likely significant effect, the competent authority must work on the basis that one exists and undertake an Appropriate Assessment. The precautionary principle also dictates that there must be certainty over the effectiveness of the mitigation measures in order to rule out any adverse effect.
7. This precautionary principle has been reinforced by a case determination from the European Court of Justice in 2018 commonly referred to as the 'Dutch Case'. The Dutch Case also clarified the requirement that mitigation is to be secured at the point of carrying out an Appropriate Assessment in order for the competent authority to conclude with certainty that any mitigation proposed would sufficiently mitigate any adverse effects arising from the plan or project in question. This 'high bar' means that, in exercising its planning functions, the Council has to carefully consider the advice of Natural England, as statutory advisor on these matters.
8. Members will be aware of the issue of nitrate neutrality which the Council has been working through in recent years, and indeed Bird Aware, the Solent Recreation Mitigation Strategy before it<sup>1</sup>. It is the same legislation and procedural approach, involving consultation with Natural England, that needs to be followed in the case of New Forest Recreational Disturbance. By not adhering to Natural England's advice on this matter, the Council, as Local Planning Authority, runs the risk of legal challenge to its planning decisions.

### **Recreational Impacts on the New Forest and Natural England's subsequent advice**

9. Research commissioned by six local planning authorities (Test Valley Borough Council, Eastleigh Borough Council, New Forest District Council, New Forest National Park Authority, Southampton City Council and Wiltshire Council), together with Natural England, Forestry England and with funding from central government focused on understanding the impacts of recreation arising from new development on the protected sites in the New Forest, given the location's long history as a visitor destination. The work was carried out by the specialist consultants Footprint Ecology, who have undertaken similar research in protected habitats across the UK and involved a comprehensive survey of recreational use of the New Forest using techniques such as onsite interviews, telephone surveys and vehicle counts.
10. The Footprint Ecology work identified a range of potential impacts from the projected increase in visitors to the New Forest arising from the planned new development. These impacts caused by increased recreation are listed below under broad headings. There can also be interactions between the different impacts.

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<sup>1</sup> Recreational impacts on the Solent Coastal protected sites are addressed through the Solent Recreational Mitigation Strategy (commonly known as Bird Aware) and the requirements it sets out for new homes built within 5.6 kilometres of those protected sites.

- Disturbance;
- Fire;
- Contamination;
- Trampling/wear;
- Harvesting;
- Grazing issues
- Visitor expectation.

11. The telephone survey is significant in understanding how frequently local residents visit the woodland and heathland protected sites of the New Forest. The survey engaged with 2,000 randomly selected residents from areas surrounding the New Forest. Interviewees lived within 25km of the New Forest designated sites and sampling was undertaken within 5km bands. Sampling was weighted to the nearer 5km bands to ensure more interviews were conducted with those living relatively close to the New Forest. The questionnaire identified households who had visited the New Forest and asked particular questions relating to the reasons for visiting, activities undertaken and their visit patterns. From this, Footprint Ecology calculated the average number of visits to the New Forest protected sites for each neighbouring district or borough, which for Fareham Borough was around 15.3 visits per year per household (By way of comparison the figure for the National Park itself is 211.3 visits per year and Test Valley is 33.07 visits per year).
12. Most of the evidence from the visitor and telephone surveys was published in May 2020 but in May 2021, the steering group published a 'Zone of Influence' (ZOI) report detailing how far from the New Forest the majority of the impacts were felt. This report recommended that a 13.8km straight-line ZOI from the protected sites in the New Forest be created whereby new residential development (including tourist accommodation) within this zone would need to provide mitigation for recreational impacts. The Footprint Ecology report however, also recommended that the zone of influence should be modified to exclude the following local authorities: Fareham, Gosport, Winchester and the Isle of Wight, recognising the geography of the coastline in this area. This recommendation was based on the fact that *"the visit rates are lower in these areas and the administrative boundaries provide the most straightforward boundary to use. The Fareham boundary is around 13.9km from the bridge at Totton on the A33 (sic) (i.e. the main crossing point) so truncating the zone of influence in this way makes sense given the travel constraints posed by Southampton Water"*.
13. Despite the recommendations of the most recent Footprint Ecology report, it is Natural England's view that data resulting from the telephone survey carried out by Footprint Ecology show visit frequencies in the western parts of Fareham are similar to those in the neighbouring borough of Eastleigh (which is included in the 13.8km ZOI). This suggests the visit rate from these areas are higher than the average visit rate applied to the whole borough. It is Natural England's view that visitors originating from these parts of Fareham are likely to contribute to an in-combination effect on the protected sites. Therefore, and following a request for further clarification of their position, it is Natural England's advice that the ZOI of 13.8km be applied across the whole borough of Fareham to ensure all new development provides appropriate mitigation to ensure the necessary certainty required under the Habitats Regulations. In addition, Natural England advise that for sites up to 15km from the edge of the New Forest that require Environmental Impact Assessment (EIA) should consider whether that development will have an impact of the New Forest protected sites. The Council as competent authority

under the Habitats Regulations, must have regard to Natural England's advice as a statutory consultee, and national body responsible for the natural environment. The Council should only depart from the advice of Natural England for justified reasons: such a reason might be further alternative evidence that Fareham developments should be excluded from requiring any mitigation, or mitigation to a lesser degree.

14. Natural England advise that the Council work in close collaboration with other affected local authorities within and surrounding the New Forest designated sites to develop a strategic, cross-boundary approach to habitat mitigation for the New Forest SPA/SAC/Ramsar. Natural England has recommended that a strategic mitigation strategy is developed incorporating a package of measures including provision of suitable alternative green spaces and networks, and direct measures on the sites such as access management, education and communication, wardening, and monitoring. In advance of such a strategy being agreed and adopted, Natural England advise the Council to implement a suitable interim mitigation solution.
15. Until such an interim solution is prepared and implemented, the Council is unlikely to be able to conclude no adverse effects on the New Forest protected sites in any Appropriate Assessment carried out on residential applications that the Council decide to permit. As a result, there is the potential for a backlog to be created of undetermined planning applications for new residential development similar to that caused by the recent nutrient issue. It is therefore considered expedient to develop an interim mitigation solution in the short-term in order to avoid a growing backlog of planning permissions which will have consequences for the Council's ability to demonstrate a five-year housing land supply, which is used in planning decisions to give confidence that there is sufficient land to build the number of homes as per the housing requirement in the forthcoming five years. If this backlog were to grow, in time, there may also be an impact on the number of homes that are built in the borough and the results of the Housing Delivery Test which judges the Council on the past three years' housing delivery against the housing requirement, and applies penalties if the result is 95% or less.
16. From a Local Plan perspective, Natural England raised the issue of recreational impacts on the New Forest protected sites as part of their consultation response to the Revised Publication Plan. The Council has since submitted the Local Plan for examination with a Statement of Common Ground with Natural England agreeing that further work is required to agree the scope and nature of an interim mitigation solution which may be appropriate in advance of a more definitive solution. Whilst the Local Plan 2037 policy NE1 guards against the granting of any permission that would have an adverse impact on protected sites, whether inside or outside of the borough, the ability of developments coming forward within the plan period to mitigate recreational impacts on the New Forest protected sites will need to be considered through the Local Plan examination process. Without certainty on the ability of sites allocated in the plan to come forward with appropriate mitigation in order to meet the Borough's housing requirement, the Plan could be found unsound by an examining inspector. It is therefore imperative to progress an interim solution to sure up the Local Plan as it moves through the examination process.
17. The Council have written to Government, both the Department for Levelling Up, Housing and Communities (DLUHC), and the Department for the Environment, Food and Rural Affairs (DEFRA) raising the advice from Natural England and the implications on our ability to grant planning permissions and deliver homes as a key part of the

Government's agenda and seeking a supportive collaborative approach from themselves and Natural England. At the time of writing, responses are awaited but officers will continue to raise this issue with Government both individually and as a member of the Partnership for South Hampshire, as several of the PfSH members are affected by this same issue. Natural England accept that their advice is based on a precautionary approach and would welcome further work to understand the level of impact on the New Forest protected sites. This point is picked up in relation to monitoring in later paragraphs.

### **The Interim Mitigation Solution**

18. This solution sets out:
  - The area in which the solution applies
  - The scope of the interim solution
  - The lifetime of the interim solution
  - The suite of measures to be provided by or funded by residential development to provide the required mitigation of recreational impacts
  - The rationale behind the interim approach and the steps required to develop a definitive solution.
19. This interim mitigation solution covers the borough of Fareham as per Natural England's advice. It deals specifically with recreational impact on the New Forest protected sites (SAC/SPA and Ramsar).
20. Mitigation measures set out in this interim solution are directed towards:
  - providing alternative recreational opportunities (to deflect potential visits away from the New Forest protected sites),
  - access management and wardening in the New Forest protected sites themselves,
  - accompanied by monitoring of the impacts and effectiveness of mitigation measures (to provide a better understanding of the impacts of recreation on the New Forest protected sites and enabling future refinements of mitigation policies and measures).
21. Whether new green spaces are created, or existing open spaces are improved in terms of accessibility and recreational function, open spaces that provide mitigation will be designed to maximise their chances of diverting Fareham Borough residents who might otherwise visit the New Forest protected sites for outdoor recreation. Evidence suggests that such alternative natural recreational greenspace should target the needs of residents who wish to go for recreational walks, with or without a dog.
22. The mitigation requirements for recreational disturbance impacts apply to all forms of new residential development resulting in a net gain of a self-contained dwellings. This includes new builds, redevelopment, changes of use, those permitted via prior approval and permitted development, affordable housing, visitor accommodation and gypsy pitches, for example.
23. A time period of up to March 2025, in line with growth assumptions in the Fareham Local Plan 2037, is proposed for this interim solution recognising the ongoing work required to understand the nature of the potential impact of the New Forest sites and the ongoing work of the steering group, of which this Council is now part. It is possible that the steering group will develop a strategic solution for mitigation of which

developers in Fareham may be able to take part. It is also possible that the monitoring work undertaken during the lifespan of the interim solution will help determine the scale of the definitive strategy, for example, refine the geographic scope within the borough and/or a refinement of the average visit rate from ongoing survey work. It will be for the definitive strategy that will follow to take advantage of further refinements in the evidence of the visitor impact on the New Forest protected sites.

24. Additional pressures will be put on the New Forest protected sites from the growth planned in neighbouring planning authority areas. Addressing and mitigating these additional impacts arising from outside the Borough of Fareham is a matter for the relevant planning authorities. Similar mitigation schemes are in place for new development in New Forest District Council and National Park Authority areas, and are in development in Test Valley, Eastleigh and Southampton along similar lines. The wider management of all visitors (including car parking arrangements, cycling, horse riding and issues with littering) in the New Forest protected sites is an issue address through the work of the New Forest National Park Authority.

### **Calculating the recreational mitigation required**

25. In order to calculate the number of visits that are required to be mitigated, the Council used the latest report from Footprint Ecology which demonstrated that the estimated average visits per household per year to the New Forest protected sites is 15.3.
26. The Local Plan 2037 estimates that, by the end of March 2025, 1,530 net new homes will be built in the 13.8km zone of influence, creating a total additional 23,454.9 visits to the New Forest protected sites. This is the level of additional recreational pressure that needs to be mitigated.
27. Where on-site recreation mitigation is not provided, a financial contribution will be sought towards the provision of new green spaces or the enhancement of existing green spaces including provision for their long-term maintenance and management costs. These enhancements are designed to deter people from visiting the New Forest and any adverse effect on integrity of the protected sites in that location. To ensure that the programme of projects is responsive to changing circumstances and opportunities, the programme of specific projects will be maintained separately and reviewed on a regular basis to ensure that they are deliverable in the agreed timeframe.
28. It is important to monitor both the implementation of the proposed mitigation measures of the interim mitigation solution and the effectiveness of those measures in mitigating the recreational impacts of new residential development within the Borough on the condition of the protected sites in the New Forest. Information from the monitoring process will inform future reviews of the interim mitigation solution and could be used to test the appropriateness of Natural England's interpretation of the available evidence. Monitoring costs are included in the programme costs set out below and monitoring efforts are likely to include supporting monitoring in New Forest itself.
29. Natural England have advised that alongside improvements to country parks within the Borough which will reduce the impact on the New Forest protected sites, as there will still be visits that take place from residents of Fareham, a proportionate contribution is required to fund access management or wardening on those sites. Therefore, it is proposed that £6,000 per year be provided to such projects within the New Forest itself. Discussions are ongoing with the New Forest National Park Authority as to how this is

best achieved, and the intention is to review this contribution annually on the back of monitoring information.

30. The Council's Streetscene team have provided a costed list of projects totalling £300,000 over three years and including new features at flagship country parks, such as Holly Hill Woodland Park, Abbey Meadows, implementing a masterplanned set of improvements at Park Lane recreation ground, tree planting, wildflower meadow creation and interpretation panels at sites throughout the Borough. With the addition of £20,000 a year for monitoring, and £6,000 for access management/wardening in the New Forest, the total annual cost of the mitigation scheme is £126,000. Expressed as a cost per household that equates to £247.05 per net new house (£126,000 each year for three years, divided by 1,530 dwellings). This money would be collected on developments that were unable to provide on-site mitigation, via legal agreements or section 111 agreements. This figure is subject to indexation and will be revised on the 6 April each year in line with the Retail Price Index (RPI), with April 2021 being the base year.

In relation to the Council's viability assessment, this level of additional cost is considered appropriate and within the assumptions of £10,000 environmental mitigation payments per dwelling allowance included in the viability testing for the Local Plan 2037 (see reference paper Local Plan Viability Addendum May 2021). By way of comparison, the Bird Aware contributions are £595 per house.

### **Implementation and monitoring**

31. Through an annual review of projects and implementation priorities a programme of mitigation projects will be agreed. Ensuring the delivery of mitigation projects is sufficient to meet the additional visits identified to meet the predicted housing delivery and remains in line with the implementation of new residential development will be a high priority in the overall programme for infrastructure delivery.
32. An initial tranche of projects for implementation will be programmed to cover up to March 2025 and will be delivered by the Council's Streetscene team. The projects will be prioritised based on their ability to be delivered, the likely level of visits mitigated against and the location in relation to residential development that has come forward.
33. Monitoring will involve both on-site monitoring of the use of the new or improved greenspaces as well as further work to understand the impact, and any residual impact, of Fareham residents on the New Forest protected sites, with the latter used to inform any revisions to the interim solution or the definitive strategy.

### **Wider benefits of the interim mitigation solution**

34. Whilst this solution is fundamentally about delivering mitigation for the likely significant effect of new development in this borough on the New Forest, the provision of improvements to the network of natural greenspaces located close to people's doorsteps will bring about 'quality of life' opportunities, such as healthier lifestyles, becoming more in touch with nature, space for wildlife and natural habitat, and improved attractiveness. This in turn also enables the Council to deliver on its Corporate Strategy

priorities of protecting and enhancing the environment, and leisure opportunities for health and fun.

## **Conclusion**

35. Without an interim solution to address the potential for adverse effects on the New Forest protected sites, it is likely that the Council's ability to grant planning permission and defend its Local Plan at examination will be drawn into question. A pragmatic interim solution is proposed for the near term to provide mitigation solutions in the form of improved open spaces within the Borough of Fareham to deflect residents from visiting the New Forest protected sites. The need for monitoring of the effectiveness of the solutions is built into a costed programme of improvements that will be funded via developer contributions on all new residential development in the Borough, where on-site mitigation is not possible. Work will continue with government departments and Natural England to further understand the impacts demonstrated in the Footprint Ecology reports and with the New Forest Steering Group to consider the potential to develop a definitive mitigation strategy.
36. The proposed solution identifies works not previously budgeted for nor proposed within the council's corporate objectives. However, the carrying out of those works and the decision to carry them out are matters outside of planning and of an executive nature and as such, the Executive are invited to approve the carrying out of such works in order for the proposed solution to be implemented.

## **Enquiries:**

For further information on this report please contact Gayle Wootton (Ext 4328)