

In its AP16 response, the Council acknowledge the importance of monitoring in gauging the effectiveness of its SPA/SAC mitigation ... this is simply a restatement of its position from the very beginning.

Back in 2014, the Council published its SANG strategy for East Court and Ashplats Wood <sup>1</sup>. Chapter 6 'Monitoring and Review' recommends visitor surveys "every few years" in order "To monitor visitor numbers, patterns, attitudes and behaviour towards the SANG site and consequent associated effects on Ashdown Forest"

In March 2018, the current local plan was formally adopted. The supporting text from Policy DP17 on the Ashdown Forest SPA/SAC commits the Council to "monitor the effectiveness of this policy for the impacts on the Ashdown Forest SPA and SAC and review/amend the approach, including any mitigation requirements, set out in this policy as necessary."

Also in early 2018, Footprint Ecology published its Ashdown Forest SPA Monitoring Strategy, commissioned by Wealden District Council on behalf of all LPAs within 7km of the SPA. It described monitoring as not being separate from the mitigation approach but "part and parcel" of it ... something fundamental to it ... "Monitoring is integral to the strategic mitigation 'package'; ensuring the successful delivery of the mitigation work, acting as an early warning system and providing the feedback to hone mitigation. Monitoring will be necessary to ensure approaches are working as anticipated and whether further refinements or adjustments are necessary."

Page 1 of the 2018 Footprint Ecology report listed the key components of the monitoring strategy. It not only recognised the importance of visitor questionnaires/interviews every 5 years but recommended on an annual basis, counts of visitors and cars parking in designated car parks. It also recommended bird surveys every 3 years to monitor the number and distribution of the protected Nightjar and Dartford Warbler.

Finally in 2020, the HRA summarised and endorsed these earlier assessments; firstly under the Assessment of Recreational Pressure Impacts in paragraph 5.41 ... "Monitoring is therefore an important component of the mitigation delivery and will help ensure its effectiveness." and then under the overall conclusions in paragraph 6.6 ...

*"Policy DP17 in the District Plan ensures that both SAMM and SANG measures for Ashdown Forest SPA/SAC are progressed. However, it is essential that work continues to monitor the mitigation delivery for recreation, ensuring SAMM measures are effectively targeted and SANG contributions effectively spent to ensure mitigation is effective."*

Therefore we can be left in no doubt that the Council accept the importance of monitoring in establishing the effectiveness of their SPA/SAC mitigation package. There can also be no doubt that the absence of monitoring evidence makes it impossible for the Council to legitimately claim that their measures to reduce visitor pressure on the Ashdown Forest have been effective.

Nevertheless, the HRA non-technical summary on page 4 seems to imply that adverse effects can be ruled out based on the evidence ...

*"This HRA uses evidence-based justifications to rule out adverse effects in relation to the key impact pathways, notwithstanding the fact that a HRA report is not complete until the final plan is checked*

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<sup>1</sup> <https://www.midsussex.gov.uk/media/2162/east-court-ashplats-wood-suitable-alternative-natural-greenspace-strategy.pdf>

*prior to adoption. At this point in time, it is concluded that the Mid Sussex Site Allocations DPD does not present any potential risks to European sites that it is considered are not capable of being mitigated for. Adverse effects on integrity on Ashdown Forest SAC/SPA, relating to air quality and recreation impacts can be ruled out."*

This is surprising as little or no evidence is presented within the HRA.

Neither is there any substantive evidence to rule out adverse effects presented in the Council's AP16 response.

In paragraph 2.5 of their AP16 response, the Council refer to Ashdown Forest visitor surveys undertaken in 2008 and 2016. In themselves these two studies can shed very little light on whether the mitigation package is working and this has been confirmed by the Council's own experts:

Page 81 of the report from the 2016 visitor study confirms that the two studies were not comparable and very little could therefore be determined about the change in visitor patterns in 2016 ... *"The previous survey was undertaken during a short time period in September (when weather patterns were unsettled) and given the differences in time of year, survey points used and questionnaire, direct comparison is mostly of limited value."* it confirms that the 2016 visitor study can provide little more than a baseline for future monitoring ...

Page 8 of the 2018 Footprint Ecology SPA Strategy Report confirms that ... *"The most recent visitor survey in 2016 provides baseline data on overall visitor numbers, behaviour and access patterns and is therefore a foundation for future monitoring"*

In paragraph 2.5 of the Council's AP16 response, they say that another SPA monitoring survey is likely this year. However, if the Council was familiar with the 2018 Ashdown Forest Monitoring Strategy they would realise that visitor surveys need to be conducted at the same time of year in order for reliable trends to be established. On page 13 ... *"Surveys would be based on the visitor survey work undertaken in 2016, using that survey as a baseline. Surveys would be done at the same time of year (June/July) and we suggest ten locations would be sufficient, rather than a complete repeat of the 2016 survey work."*

In paragraph 5.5 of their AP16 response, the Council also stress the importance of visitor surveys undertaken at the SANG, yet they haven't commissioned any studies since the Ashplatts Wood SANG became operational in 2015.

It is therefore clear that the Council have no empirical evidence that they can draw upon to demonstrate their mitigation approach to be effective.

In the place of evidence, the Council can only try to show that their mitigation measures could work in principle by saying that ...

1. The District Plan examination found the mitigation policy sound
2. Natural England were fully supportive of the HRA
3. The mitigation approach has been adopted by many other LPAs

Taking each of these in turn:

#### **District Plan Examination and Policy DP17**

It is accepted that the District Plan examination didn't raise concerns with the mitigation approach and also that Inspector Bore was satisfied with the conclusions of the HRA.

During the examination, Inspector Bore may have reasonably concluded that the Council would adhere to the provisions of the 2018 HRA and its own Policy DP17 ...

At the bottom of paragraph 6.7.6 of the September 2017 HRA, it suggests that the effectiveness of the mitigation measures rely not only on managing visitor behaviour but also on visitor and bird number surveys ...

*"6.7.6 The purpose of the Strategic Access Management and Monitoring Strategy is to mitigate the adverse effects of disturbance caused by the proportion of visits from new residential developments close to the SPA which will not be avoided through the provision of SANG. The Council has developed an interim SAMM Strategy<sup>10</sup> to implement the recommendations of earlier versions of the HRA. This has been in place since August 2013 and sets out mitigation measures which have been discussed and agreed in collaboration with the Conservators of Ashdown Forest, Natural England and the other affected local authorities (Lewes District Council, Wealden District Council and Tunbridge Wells Borough Council). These measures focus on protecting the SPA from new recreational pressures through managing access (visitor) behaviour and monitoring both birds and visitors."*

In its AP16 response, the Council refer to DP17 in support of the DPD. They rightly say that it remains up to date and not subject to review as part of the current examination. However, while their response reproduces the wording of the Policy in full, it ignores the supportive text which commits the Council to monitoring the implementation of the policy to ensure effectiveness ...

*"The District Council will monitor the effectiveness of this policy for the impacts on the Ashdown Forest SPA and SAC and review/amend the approach, including any mitigation requirements, set out in this policy as necessary."*

In his 2018 Report on the Examination, Inspector Bore said that he was satisfied that the overall housing requirement, as modified by MM04, can be accommodated without harm to the Ashdown Forest. In its AP16 response, the Council seem to mistakenly believe that the overall housing requirement in this context includes the current DPD site allocations.

Inspector Bore makes it clear at the end of paragraph 29 that this isn't the case and that these additional allocations are subject to demonstrating no further harm to the Ashdown Forest ...

*"MM04 amends Policy DP5 and its supporting text. It reflects the calculations referred to in the preceding paragraphs, and indicates that the overall housing requirement amounts to a minimum of 16,390 dwellings between 2014 and 2031, comprising an OAN figure of 14,892 and a figure of 1,498 for unmet need in the North Western Sussex HMA (principally Crawley). The requirement is to be delivered as an average of 876 dpa to 2023/24 and an average of 1,090 dpa in the last 7 years of the plan, reflecting the timing of Crawley's unmet need, but as the overall requirement is expressed as a minimum there is scope for delivery to exceed the minimum requirement. The delivery of the full 1,090 dpa in the latter part of the plan period is subject to there being no further harm to the integrity of European Habitat sites in Ashdown Forest"*

### **Natural England support of the Council's approach**

It is clear from their consultation responses, that Natural England support the Council's mitigation approach and the general findings of the HRA. As Natural England were involved in the production of the 2018 Ashdown Forest Monitoring Strategy they must surely be familiar with its monitoring recommendations.

What is not so clear is whether Natural England were aware of the Council's failure to undertake any of the monitoring recommended by Footprint Ecology in the SPA monitoring strategy.

Anyway, it is hardly surprising that Natural England support a joint SANG/SAMM strategy as they have been instrumental in its development ... and few would argue against it in principle, especially given the monitor/review/amend feedback loop required by Policy DP17.

However, the fact remains that without monitoring, the Council have not fully implemented the mitigation strategy.

### **The mitigation approach has already been established elsewhere**

The principle of an integrated SANG/SAMM mitigation approach has been established by other LPAs, and in particular those responsible for the Thames Basin Heath SPA. Indeed, in its AP16 response, the Council lists 12 other such authorities which have used the same or similar mitigation approach in the table at paragraph 4.4. It credits each one of them with 'monitoring', although it isn't clear whether this means that each authority ...

- a) considers monitoring to be important but hasn't done any,
- b) has undertaken monitoring which is not sufficient to show mitigation to be effective, or
- c) has undertaken monitoring which has shown mitigation to be effective

From a quick review of the documents cited as references in the Council's AP16 response, it is clear that most will likely fall into the middle category. Indeed only one of the 11 referenced documents indicate that there has been any reduction in people visiting the SPA and in this case it wasn't possible to show that the reduction was attributable to the SANG.

Nevertheless, each SAC/SPA will have unique characteristics and not all SANGs will be equally effective in drawing people away from them. In other words it seems obvious that what works for one may not work for another.

The extent to which SAMM measures are implemented is also highly significant. The 2018 Ashdown Forest SPA Monitoring Strategy lists a number of measures to promote responsible visitor behaviour ...

- Producing and publicising a code of conduct for dog walkers
- Recruiting volunteer dog rangers/wardens
- Arranging dog training and other community events

The Council have been operating an interim SAMM strategy since 2014 which comprised a leaflet for dog walkers. While this can be found on the Council's website it is not clear how else it has been publicised.

In its AP16 response, the Council say that the full SAMM strategy came into effect in April 2020. What they don't say is what measures are likely to be covered by the strategy or give any timetable for their implementation.

If they are yet to be implemented, it will clearly not be possible for the Council to comment on their effectiveness.

### **In Conclusion**

The Council were asked to explain why its approach to SANGs is effective in relation to taking pressure off Ashdown Forest and why it is a settled issue.

They were not asked to explain why their approach was effective 'in principle'; yet this is the question addressed by their response. We can all agree that the approach is effective in principle.

It is clear that the Council's failure to monitor the mitigation approach, despite their commitment to do so, means that they have no evidence to demonstrate that it is working and therefore effective in reducing pressure on the Ashdown Forest.

- How can the approach to SANGs be effective if the Council's SANG is not effective?
- How can the SANGs approach be settled if it is not known whether the SANG is effective?

Yet in its DPD, the Council are prioritising sites within 7km of the Ashdown Forest ... which was not even listed as a planning consideration within its site selection criteria.

In paragraph 2.8 the HRA requires that the Council err on the side of caution in its approach to mitigation ...

*"The precautionary principle should be applied at all stages in the HRA process and follows the principles established in case law relating to the use of such a principle in applying the European Directives and domestic Habitats Regulations."*

And finally in paragraph 3.6, the HRA makes it clear that if the decision maker believes that they can be certain that no harmful impacts will arise from development then they need evidence to support such a belief ...

*"It is for the competent authority to gather the information and evidence necessary for the appropriate assessment to give them certainty that adverse effects will not occur. Fundamentally that therefore means that in the absence of certainty, the plan or project should not normally proceed (subject to the further exceptional tests explained in Appendix 1)."*

No reasonable assessment of the Council's position could possibly conclude that the mitigation approach provides certainty that adverse impacts on the SPA will not arise.

Regulation 63 of the Habitats Regulations is clear that if adverse impacts cannot be ruled out then the competent authority will be obliged to look for alternative solutions that would achieve the objectives of the plan and have no, or lesser, effect on the Ashdown Forest SAC/SPA.

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