

BRECKLAND DISTRICT COUNCIL

Report of: Sarah Suggitt: Executive Member for Strategic and Operational Planning

To: Cabinet 11th September 2023

Author: Rachel Gibbs: Senior Planning Policy Officer

Subject: The Brecks Stone Curlew Buffer and Special Protection Area (SPA)

Purpose: The purpose of this report is to advise Members on new advice from Natural England with regards to the criteria used in decision making around development proposals within the Brecks SPA zone.

Recommendation(s): It is recommended that:

Breckland Council notes the new advice as a material consideration for the purposes of determining planning applications within the Brecks SPA and buffer areas and as evidence for work on the local plan update.

1.0 BACKGROUND

- 1.1 The Breckland Special Protection area covers over 39ha of heathland, forest and arable farmland covering both the district of Breckland, West Suffolk and a small part of West Norfolk. The Brecks is of European value to birdlife and was designated in 2006 as a Special Protection Area (SPA) under the European Council's Directive on the Conservation of Wild Birds. The Brecks habitat is important for a range of ground – nesting birds including the Stone Curlew, Woodlark and Nightjar.
- 1.2 The Stone Curlew is of particular significance as the Brecks has one of the largest populations in Europe, which led to the area's designation. Research on the impact of development on their population resulted in the creation of a buffer zone map of 1.5KM around the SPA, development within this zone was shown to have a likely significant effect on the Stone Curlew populations.
- 1.3 As a consequence, development can only be approved once the decision maker has ruled out any adverse effects on the protected features of the SPA via a Habitats Regulation Assessment (HRA). In 2018 Natural England raised concerns around the in-combination impact of development within the Buffer Zone on Stone Curlews and as a result of this, coupled with recent European Court Rulings and legal advice, the interpretation of key HRA principles have been narrowed, resulting in a much stricter legal framework in assessing development projects.
- 1.4 West Suffolk during their local plan making process had to navigate their development proposals within this stricter framework, and following legal advice some of their growth plans for some settlements had to be abandoned.
- 1.5 Further research has been conducted by Natural England into the Stone Curlew population and because of this research a new buffer zone map around the Brecks

SPA has been created and further guidance produced which enables some small-scale development to proceed within this area but at the same time conforms to the existing legal framework, in particular the precautionary principle.

- 1.6 The new advice allows development outside of the buffer constraint zone, even if it is adjacent to it, however it does not accept the masking of new development by existing buildings as a means to demonstrate no adverse effects on the protected habitat. The new advice does allow for some small-scale development within the settlement boundaries of some of the settlements within the buffer zone, but in some settlements the guidance is a lot stricter, effectively restricting development entirely. The guidance around agricultural buildings remains the same.
- 1.7 The new map captures some areas and not others, significantly the Thetford SUE is outside of the buffer. It currently affects 2 applications in Foulton and Thompson. Some commercial applications will also require further advice from NE and 24 sites in the recent call for sites have also been caught by this new advice.
- 1.8 The new map and criteria differs to the current advice of Policy ENV 03 - The Brecks Protected Habitats & Species in Breckland's adopted Local Plan. Breckland Council is the competent body as the Local Planning Authority in considering development proposals and their impact on this designated habitat site in consultation with Natural England.
- 1.9 The Breckland Special Protection Area (SPA) is designated for birds including stone curlew. Evidence suggests Stone Curlews are sensitive to urban edge effects, residential development and recreational disturbance, all of which may negatively impact on nest density. This evidence has shown that stone curlews respond to potential disturbance events including road traffic, walkers and dog walkers from long distances. Nesting Stone Curlews are also likely to actively avoid buildings, with nesting birds believed to be particularly sensitive to changes in the landscape and the built environment.
- 1.10 To address this a 1.5Km buffer zone from the edge of those parts of the SPA that support, or are capable of supporting, Stone Curlews was developed and adopted by all local planning authorities, which denoted where new development might significantly affect the SPA's stone curlew population. Within this buffer zone new built development require a Habitats Regulations Assessment (HRA). The HRA process requires consideration of the impact of the proposals alone and in-combination with other developments.
- 1.11 Current Breckland policy (ENV03) directs, in accordance with law and guidance, that where an adverse effect on the SPAs integrity cannot be ruled out, and where there are no alternative solutions, the development can only proceed if there are imperative reasons of over-riding public interest.
- 1.12 Currently local planning authorities, as the competent authority for the purpose of an HRA, are unable to grant permission for development which may have an adverse effect on the SPA's integrity.
- 1.13 Recent European Court rulings and legal advice has led to a strict legal framework around in-combination development, whereby it cannot be ruled out that any

development, including in-combination development, is likely to cause an adverse effect on the SPA's integrity and therefore, under the precautionary principle, Local Authorities are unable to grant planning permission to any applications which fall within the SPA constraint area.

- 1.14 Based on evidence from Clarke et al, and modelling with the Stone Curlew Planning Tool, Natural England have now provided new advice which would enable certain types of development within the SPA constraint area to proceed without further assessment beyond the initial phase of HRA stage 1 as they are inconsequential developments with no meaningful capacity to act either alone or in combination.

The new Natural England Guidance

- 1.15 **Criteria A: Development which is unlikely to have a significant effect alone or in-combination on Stone Curlews and therefore screened out at HRA Stage1 include:**

- Any development outside the 1.5Km constraint zone around the SPA, including development adjacent to it.
- Any development within the 1.5km constraint zone but outside of the SPA which meet one of the following criteria:
 - Householder extensions less than 100% of existing footprint
 - Redevelopment of existing building where there is no net increase in the area of built development.
 - Construction of single dwellings within existing settlement boundaries as defined in local plans except for (within Breckland): Thrextton Hill, South Pickenham, Bodney, West Tofts, Cockley Cley, Gooderstone, Hillborough and Lynford.
 - Construction of up to 50 dwellings within settlement boundary of Thetford
 - Construction of up to 10 dwellings within the settlement boundaries of Watton and Weeting.

- 1.16 **Criteria B: Those developments to be taken to HRA stage 2 but adverse effect on the integrity of the SPA can be ruled out include:**

- Development outside of SPA, but within 1.5km of constraint zone, meeting one of the following criteria:
 - Non-residential redevelopment or change of use, of an existing building where there is no net increase in area of the built development outside the settlement boundaries.
 - A new agricultural building of less than 120sqm
 - An extension to existing agricultural buildings or less than 120sqm or 100% of the original, whichever is less
 - Replacement building with footprint of less or equal to the existing, and with the same use, outside defined settlement boundaries.

- 1.17 **Criteria C: Development within the SPA and any development within primary constraint zone not meeting criteria A or B**

- Consultation will always be required with Natural England and an HRA taken to stage 2 and the provision of Stone Curlew records for 5 years within 1.5 Km zone.

1.18 A Buffer Map has also been provided (Appendix B)

1.19 Policy ENV03 in Breckland Local Plan is based on Natural England's previous guidance and also identifies areas that have a functional link to the SPA. A comparison between the Local Plan Policy and new guidance is set out in Table 1 below.

Table 1: Comparison between ENV03 and new Natural England Advice	
Policy ENV03	New Advice
Development within the SPA boundary, or located less than 1500m away from the SPA boundary or identified to have a functional link will not normally be permitted	No development permitted within the SPA boundary unless there are imperative reasons of over-riding public interest.
Where a proposed building is outside the SPA but within 1500m of the SPA boundary or identified or possible areas have a function link there may be circumstances where a project level HRA is able to demonstrate that the proposal will not adversely affect the integrity of the SPA	Some infill development will be allowed within the settlement boundaries which are also in the constraint zone. Outside the constraint zone, applications can be screened out Thetford- 50 dwellings Watton- 10 dwellings Weeting 10 dwellings Construction of one single dwelling for all other settlements within the 1.5KM constraint zone except Threxton Hill, South Pickenham, Bodney, West Tofts, Cockley Cley, Gooderstone, Hillborough and Lynford.
Agricultural buildings following Natural England's Advice Note	Remains the same
Circumstances where the proposal is able to conclusively demonstrate that it will not result in an adverse effect on Breckland SPA may include where the proposal is:	
A: More than 1500m away from potential stone curlew inside the SPA	These applications can be screened out
B: A new building that will be completely masked from the SPA by existing built development	Research has shown that the masking by existing built development does not prevent adverse effects on Stone Curlews
C: A proposed re-development of an existing building that would not alter its footprint or increase its potential impact	Remains the same

D: A new agricultural building of less than 120sqm	Remains the same
E: An extension to existing agricultural buildings or less than 120sqm or 100% of the original, whichever is less	Remains the same
F: Large developments adjacent to, or just outside the primary or secondary buffer, particularly where occurring in an isolated area with few other buildings are likely to also require project level assessment	Large developments outside but adjacent to the 1.5Km buffer can be screened out

1.20 Summary of impact on development proposals for Breckland's settlements within/near the Brecks SPA.

Table 2: Summary of impact on development proposals		
Settlement	Parish/Town	Settlement Area
Thetford	Any area within the constraint zone, the following are permitted: <ul style="list-style-type: none"> - Householder extensions - Redevelopment of existing buildings - NE Agricultural building advice 	Within the constraint zone settlement boundary up to 50 dwellings per application. More than one application of up to 50 dwellings allowed. Any settlement area which is outside the constraint zone is screened out
Watton	Any area within the constraint zone the following are permitted: Householder extensions Redevelopment of existing buildings Agricultural building advice	Within the constraint zone but within settlement boundary up to 10 dwellings per application. More than one application of up to 10 dwellings allowed Any settlement area which is outside the constraint zone is screened out
Weeting	Any area within the constraint zone, the following are permitted: <ul style="list-style-type: none"> - Householder extensions - Redevelopment of existing buildings - Agricultural building advice 	Within the constraint zone but within settlement boundary up to 10 dwellings per application. More than one application of up to 10 dwellings allowed. Any settlement area which is outside the constraint zone is screened out

For the following villages it is considered that a single dwelling is likely to be above the threshold to act in-combination: Threxton Hill, South Pickenham, Bodney, West Tofts, Cockley Cley, Gooderstone, Hillborough and Lynford. Development in these locations are unlikely to proceed unless there is an over-riding public interest reason.
The following settlements are no longer within the buffer zone: Swaffham, Nth Pickenham, Beachamwell, Griston, Cranwich, Mundford, Thetford UE, Roudham, Brigham, Diddlington, Oxborough, Saham Toney, West Harkling, Great Hockering and the East of Watton (beyond Wayland Ave and Wayland Community High School).
There are no new settlements in the buffer zone.

Impact on current proposals

A review of live planning applications and housing allocations indicate that there are 2 applications impacted one at Foulton for 21 dwellings and one at Thompson for 4 dwellings. There are no outstanding housing allocations affected. However, 24 of the sites from the recent call for sites would be impacted, these are mainly in Thetford, Thompson, Foulton, Gooderstone and Cockley Cley and relate to between 3700 and 5000 dwellings and 200,000 m2 employment space.

Conclusion

This new advice from Natural England is based on the latest evidence on the nesting habits of Stone Curlews and as such should be adopted by the Council as a material consideration when determining planning applications. The alternative is not to use this advice and to continue to apply policy ENV03, which is based on outdated evidence, this could open the Council to a legal challenge from Natural England or other parties.

2.0 OPTIONS

2.1 Do Nothing: This is a Statutory Requirement and not applying the latest advice from Natural England when decision making leaves the Council open to potential legal challenge.

3.0 REASONS FOR RECOMMENDATION(S)

3.1 This is a Statutory Requirement and will help provide robust decision making on relevant planning applications.

4.0 EXPECTED BENEFITS

4.1 Robust decision making in line with the development plan and all other relevant material planning considerations, including advice from statutory consultees.

5.0 IMPLICATIONS

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Data Protection;

Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

5.1 **Carbon Footprint / Environmental Issues**

5.1.1 See report.

5.2 **Constitution & Legal**

5.2.1 Failure to adopt the new Natural England Advice could risk legal challenge on decisions on planning applications and future local plan allocations within the Brecks SPA area.

5.3 **Corporate Priorities**

5.3.1 The Local Plan Review aligns with the following corporate priorities in the Breckland Corporate Plan 2020–2023.

- To deliver substantial and continued growth as proposed through our Local Plan, in conjunction with our key partners.
- Enable the effective planning and delivery of housing solutions to meet local needs and aspirations to ensure that our residents including veterans have access to a range of housing options in the district.

5.3.2 This new advice will apply to reserved matters applications, so could impact any sites with an extant outline approval or allocations, where previously they may have been outside the 1.5km buffer but are now within it of which there are none. The SUE at Thetford is unaffected by this.

5.3.3 Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise. This new advice does not replace Policy ENV 03 of the Local Plan but is a material consideration that must be considered in determining planning applications within the affected area. The weight to be given is for the decision maker to determine but it would normally be accorded significant weight in the decision-making process. Natural England's new advice differs from policy ENV03 of Breckland's Local Plan, and consequently makes it out of date as it has been superseded by new national advice. This new advice would need to be taken into account with regards to the call for sites selection criteria

6.0 **WARDS/COMMUNITIES AFFECTED**

6.1 This has implications for the following wards in Breckland.

- Forest
- Thetford Boudica
- Thetford Castle
- Thetford Burrell
- Thetford Priory
- Bedingfield
- Ashill
- Watton

- Haling and Heathlands
- Saham Toney
- Bedingfield
- Watton
- All Saints and Wayland

Background papers:- None

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Key Decision: No

Exempt Decision: No

This report refers to a Mandatory Service

Appendices attached to this report:

Appendix A: Map of old Stone Curle Buffer
Appendix B: Map of new Stone Curlew Buffer
Appendix C: Guidance Letter from Natural England
Appendix D: Guidance on Minor Developments Annex A
Appendix E: Small Scale Development Guidance Annex B