

# Breckland Local Plan Examination

## **Topic Paper: Environmental Policies**

**Breckland District Council**

June 2018



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## 1. Introduction

1. During the hearing session for Matter 12 Environment, held 16<sup>th</sup> May 2018, the Inspector conducting the Local Plan examination requested more information, as well as a reconsideration of some of the policies with regard to issues raised. This paper brings together a number of strands of 'homework' on matters relating to the environment, providing the context for amendments to the plan and setting out modifications proposed by the Council to address issues raised with the policies in the Submission version of the Local Plan.
2. The Council has been aided by consultants Footprint Ecology in the preparation of environmental policies (ENV 02 and ENV 03), the formulation of the Statement of Common Ground with the RSPB and have produced a guidance note on the implications of the People over Wind case. Their advice note and proposed modifications to ENV 02 is provided as an Appendix to this paper.

## 2. ENV 01 Green Infrastructure

- 2.1. At the hearing session on 16<sup>th</sup> May, it was requested that the Council reconsidered Policy ENV 01 Green Infrastructure in light of the representations received and the discussion at the hearing session. The Council has now revised the policy to reflect this.
- 2.2. Key elements of change to the policy are:
  - The supporting text has been expanded to include a paragraph describing the collective work on the Norfolk strategic green infrastructure corridors and habitat core areas from the Norfolk Strategic Planning Framework which has now been endorsed by all Local Councils in Norfolk, overseen by Norfolk County Council. It was considered that this could inform the policy wording, however the Norfolk Green Infrastructure Strategy has not been completed in early 2018 as scheduled and therefore without more detailed interpretation of the delivery of these high level corridors, it is not possible to translate into detailed local policy.
  - The supporting text and policy has been supplemented with reference to existing and future detailed green infrastructure strategies in order to aid implementation of the policy, in addition to highlighting the role of neighbourhood plans in the identification of significant green spaces.
  - A final paragraph has been added to the policy to provide a more specific instruction of how development proposals should have regard to existing, identified green spaces in the vicinity of a site to explore the potential opportunity to improve linkages between green areas, where appropriate. This is considered to strengthen the policy including implementation.

## Revised Policy ENV 01 and supporting text

### Green Infrastructure

The NPPF requires Local Authorities to plan positively for the creation, protection, enhancement and management of networks of biodiversity and green infrastructure. Green infrastructure is the network of multi-functional green space, urban and rural, which is capable of delivering a wide range of environmental and quality of life benefits for local communities. Recognising the value of all green space, not just protected landscapes, green infrastructure is a term used to cover all types of green space, large or small, public or private; including water bodies such as river corridors.

Green infrastructure performs many functions and plays a significant role in helping to attract people, employment and investment to the District. Green infrastructure also helps in meeting social and environmental goals, such as encouraging active, healthy lifestyles and helping the District to be resilient to more frequent occurrence of extreme weather events resulting from climate change.

As a predominantly rural District, Breckland has a vast green infrastructure network, stretching from the protected European sites, through to hedgerows and trees across the northern farmlands, to back gardens and local parks. Although there is no District wide green infrastructure study the value of the green infrastructure network is nevertheless well understood and recognised. Rather than identify key green linkages for protection, the Council is seeking in its policy to recognise the value of all green infrastructure and the contribution it makes to the local area in which it is located.

The green infrastructure policy requires developers to recognise the intrinsic value of green infrastructure and ensure that proposed development does not harm the green infrastructure network within the District. The policy assists the plan strategy and the objective of achieving sustainable development through the protection and enhancement of the key environmental assets of the District. Standards for the protection and provision of recreational open space and trees and landscape are dealt with under separate policies in the Plan.

Breckland District Council have worked collectively with other Local Planning Authorities in Norfolk to produce the Norfolk Strategic Framework. This document forms a set of agreements for working together on strategic, cross boundary planning matters. In order to deliver effective green infrastructure linkages we must look wider than administrative boundaries, seeking improved connectivity across Norfolk and beyond to bordering counties. Strategic green infrastructure corridors and habitat core areas for Norfolk have been identified as shown on the map. Further work is being undertaken on a Norfolk Green Infrastructure Strategy, which will aid Local Plans in protecting and where appropriate enhancing the relevant assets.

Implementation of the policy will be supported by consideration of more detailed local green infrastructure strategies (both existing and future strategies), where these exist. In areas where green infrastructure strategies have been produced, including for the market towns of Dereham and Thetford, development proposals should have regard to the overarching strategy for improving green infrastructure linkages. Development proposals should also be informed by made Neighbourhood Plans which often highlight significant green spaces of importance to the community in their policies, and can also include new designations of local green space.

Unlike smaller, urban areas it is not feasible to create strategic level green infrastructure strategies to cover an entire rural district as extensive as Breckland. However, even in the absence of a specific green infrastructure strategy for an area, opportunities to improve connectivity of green areas should still be considered. By identifying green areas in the vicinity of a development site, it is possible to consider the possibility of improving connections through developing the site, where appropriate. An example could be the provision of footpaths and cycle ways through sites connecting existing publicly accessible green spaces, or small undeveloped wildlife corridors such as a public green connecting a pond on site to a hedgerow and fields beyond at the boundary of a site.

The HRA identifies the need for further green infrastructure and open space as part of a suite of measures to prevent additional recreational pressure for development at Thetford, Mundford and Swaffham and to prevent urban effects on sensitive heathland sites including Barnham Cross Common, Thetford Heath, Thetford Golf Club and Marsh and at East Wretham and Brettenham. For larger development sites allocated through the Local Plan specific green infrastructure requirements are set out in relevant site allocation policies.

### **Policy ENV 01 Green Infrastructure**

The network of green infrastructure in the District, including water bodies, should be safeguarded, retained and, where opportunities arise, enhanced. Enhancement of the green infrastructure network will be sought through the promotion of positive action, and the development management process.

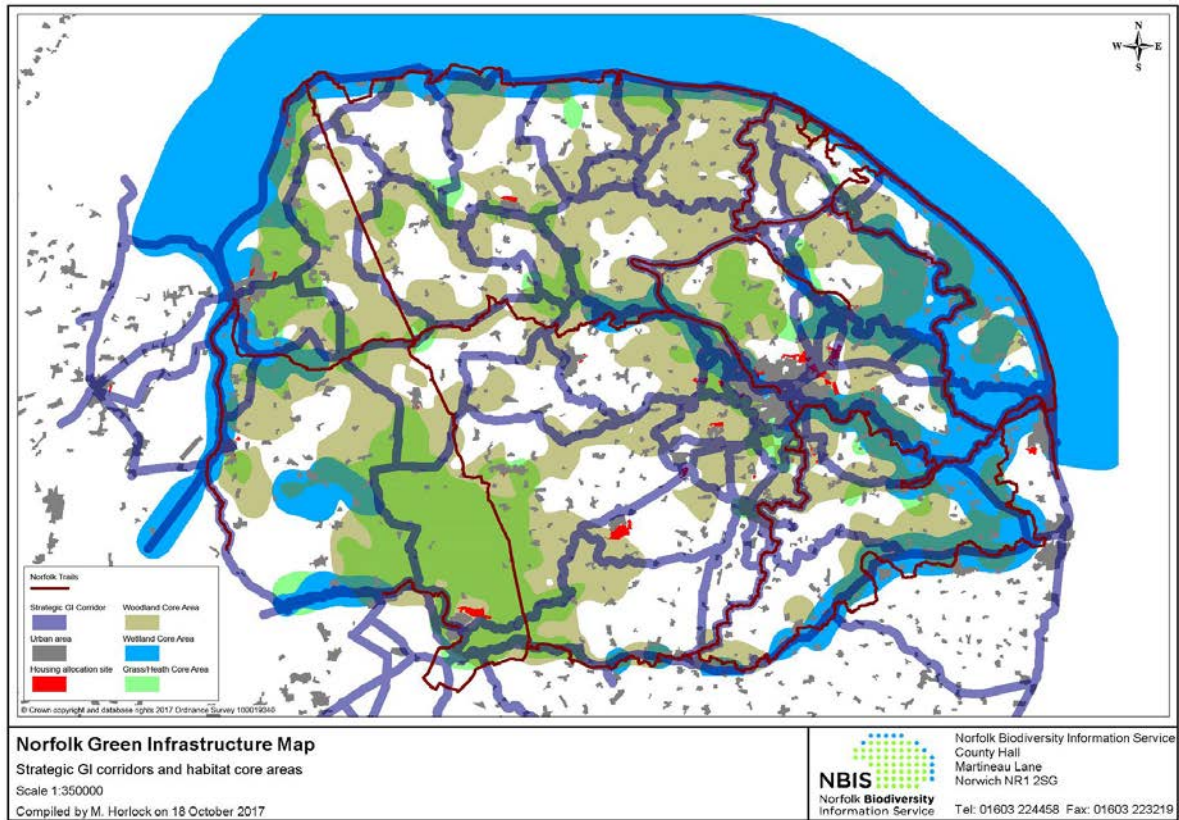
New developments will be expected to exploit opportunities to incorporate green infrastructure and enhance existing connectivity; recognising the intrinsic value of the green infrastructure network and ensuring that the functionality of the network is not undermined as a result of development.

Through its layout and design, new development should respond to the location of existing green infrastructure and support appropriate uses and functions. Where it is considered that the development will have a detrimental effect on the quantity or function of existing green infrastructure, ~~applications will be expected to demonstrate how the green infrastructure network will be enhanced as a result of the development~~ compensatory provision will be required in the form of new and/or enhancements to the existing green infrastructure. Where appropriate, the Council will seek to secure through planning obligations provision for the future management and/or maintenance of green infrastructure. Developments that fail to exploit opportunities to integrate and enhance the existing local green infrastructure network will not be favourably considered.

Development proposals should also have regard to Council endorsed strategic green infrastructure strategies and made neighbourhood plans when considering opportunities on site to provide connections and linkages with the wider network of green infrastructure.

The absence of a detailed green infrastructure strategy for an area should not prevent the consideration of opportunities for linking strategic green areas at a higher level when preparing development proposals. As a starting point, green areas in the local vicinity of a site including designated areas of open space (in line with policy ENV 04), local green space designations, Public Rights of Way and areas protected by environmental designations should be identified to explore

possible opportunities for improving connectivity between sites, where appropriate, and in the context of balancing other planning considerations for the site.



### 3. ENV 03 The Brecks Protected Habitats and Species

- 3.1. Changes to Policy ENV 03 the Brecks Protected Habitats and Species had already been proposed in the Councils hearing statement for Matter 1 and Matter 12 to ensure that the policy was compliant with wording recommended in the Councils Habitat Regulation Assessment. It was proposed the policy was revised to align with the HRA and this was accepted in principle during the hearing sessions for Matters 1 and 12 (17<sup>th</sup> April and 16<sup>th</sup> May 2018).
- 3.2. A further change to the policy is proposed in respect of an agreement with the RSPB which clarifies the requirement for a Monitoring and Mitigation Framework. The Statement of Common Ground: Breckland District Council and RSPB, sets the context for the proposed change to the policy in detail. The Council has now revised the policy to include the agreed wording for consideration by the Inspector. The new wording has been inserted at the end of the policy under the heading 'Monitoring and Mitigation Framework' which is within the section on recreation and urban effects.

## Revised Policy ENV 03 and supporting text

### ~~The Brecks~~ Breckland Special Protection Area

Covering ~~39,141ha~~ 39,434ha of heathland, forest and arable farmland, The Brecks is of

~~international~~ and European value to birdlife. 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.

The East of England supports 65% of the UK's breeding pairs of Stone Curlew where most breeding is located within the Brecks. The rich biodiversity of The Brecks is also recognised through other statutory conservation designations including four Special Areas of Conservation (SACs), numerous SSSI and National Nature Reserves (NNR), where the latter (NNRs and SSSIs) make up 40% of the total area.

Evidence used to support the adoption of the Core Strategy in 2009 included research to inform the Habitats Regulations Assessment (HRA) of the Core Strategy which examined the effects of housing and roads on the distribution of the Stone Curlew in The Brecks.

The adopted mitigation policy required that any new development which may impact on the SPA must be subject to Appropriate Assessment. The measures are defined by buffers (Map 5.1). New development is not permitted within 1,500m of the edge of the SPA (primary buffer (red)) unless it can be demonstrated by an appropriate assessment that the development would not adversely affect the integrity of the SPA. Such circumstances may include the use of existing buildings and development where completely masked from the SPA by existing development.

Stone Curlews are also found outside the SPA; these birds are clearly part of the SPA population and functionally linked. Accordingly, a secondary buffer (blue) indicated areas that have been identified where there are concentrations of Stone Curlew (using data gathered over the periods 1995-2006, and 2007-2015) (most recently using data from 2011-2015).

Within these areas development may be brought forward, providing a project level Habitats Regulations Assessment can demonstrate adverse effects have been prevented, for example where alternative land outside the SPA can be secured to adequately mitigate for the potential effects.

In 2013 a "Further Assessments of the Relationship between Buildings and Stone Curlew Distribution" study was carried out to update previous work on the effect of buildings and roads on Stone Curlews in The Brecks. Including new analysis and using additional survey data, this study report focused on the effects of buildings on the distribution of breeding Stone Curlew in The Brecks. The report provides strong support for the continuation of a 1500m zone around the areas capable of supporting Stone Curlews. Within this zone additional development is likely to have a significant effect on the SPA-

The 2013 research also suggests that the planting of woodland/screening as a mitigation measure is unlikely to be effective and that the effect of nest density is strongest as a result of the amount of buildings ~~rather than type~~. One of the key aims of the research was to differentiate the effects of



nest density due to different building classes. Due to the sample size and number of buildings identified there needs to be an element of caution applied to the results, however, the research indicates that there was no evidence of a negative impact of agricultural or commercial buildings. As such, the analysis suggests project level HRA for non-residential development in the SPA buffer zones may be able to demonstrate that adverse effects can be ruled out.

A draft protocol entitled 'Agricultural Buildings and the Breckland Special Protection Area stone curlew constraint zone' was produced by Natural England (2013) with input from stakeholders. ~~Natural England suggested that Breckland Council may wish to update and formally adopt this protocol to take account of the most recent Footprint Ecology report and expand it to include commercial buildings, and this has therefore been taken into account in the Local Plan HRA. For non-residential Agricultural buildings developments which meet certain criteria, this should result in a simplified Habitats Regulations Assessment. This has been reflected in the policy wording. Further consideration of the evidence is required to determine whether other building types could also be added.~~

Further analysis of the most recent Stone Curlew survey data allowed for some minor revisions to the primary (red) and secondary (blue) buffers to ensure they remain founded upon up to date information. Areas where data is absent, but could potentially provide functionally linked land, is identified by orange cells. Here a likely significant effect is presumed until project level Habitats Regulations Assessment provides additional information.

A report providing a comprehensive analysis of current and projected visitor patterns to European protected sites across Norfolk was commissioned by Norfolk County Council and the Norfolk Biodiversity Partnership on behalf of Local Authorities and completed in 2017. The report entitled 'Visitor surveys at European protected sites across Norfolk during 2015 and 2016 highlights that whilst survey areas in The Brecks received a much lower number of visitors than other survey sites such as those on the Norfolk coast, the proportion of local visitors (with Norfolk postcodes) was significantly higher to sites in The Brecks. The report presents evidence that of all designated sites included in the survey, Breckland SPA had the highest proportion of local visitors to the Brecks, from the settlements of Thetford, Mildenhall, Swaffham, Mundford, Brandon (of which Mildenhall and Brandon are outside the District within Suffolk). There is therefore evidential support for mitigation strategies to apply to new development in those settlements.

The Thetford SUE represents the largest area of planned growth within the District which would result in increased recreational pressure in The Brecks. A number of strategic mitigation measures were accepted as part of the adopted Thetford Area Action Plan in July 2012 which have ~~been saved~~ not been superseded through this Local Plan. Further measures have been incorporated within a number of site allocation policies within the plan to ensure that mitigation is provided to reduce the impact of recreational pressure on designated sites.

### **Policy ENV03 The Brecks Protected Habitats & Species**

The Council requires that a Habitats Regulations Assessment is undertaken on all proposals for development that are likely to have a significant effect on The Breckland Special Protection Area (SPA) which is classified for its populations of Stone Curlew, Woodlark and Nightjar, and/or Breckland Special Area of Conservation (SAC), which is designated for its heathland habitats.

Development will only be permitted where it can be demonstrated that the proposal will not adversely affect the integrity of the SPA or the SAC.

### Stone Curlew

Plan level Habitats Regulations Assessment has been undertaken to identify where built development is likely to significantly affect the Breckland SPA. Map 5.1 identifies a 1,500m buffer zone from the edge of those parts of the SPA that support, or are capable of supporting, Stone Curlew, where new built development would be likely to significantly affect the SPA population.

The plan level Habitats Regulations Assessment also identifies areas that have a functional link to the SPA, because they support Stone Curlew outside, but in close proximity to the SPA boundary.

These areas also have a 1500m buffer zone, within which new built development would be likely to significantly affect the SPA population.

A conclusion of no likely significant effect can be met where the proposed building is located further than 1500m away from the SPA boundary (red primary buffer) or the identified (blue secondary buffer) or possible (orange cells) areas that have a functional link (see Map 5.1).

Development within the SPA boundary, or located less than 1500m away from the SPA boundary or identified areas that have a functional link (see Map 5.1) will not normally be permitted.

Where a proposed building is outside the SPA but within 1500m of the SPA boundary or identified or possible areas that have a functional link (see Map 5.1), there may be circumstances where a project level Habitats Regulations Assessment is able to demonstrate that the proposal will not adversely affect the integrity of the SPA. For agricultural buildings, applicants must provide evidence to show how their proposal meets the criteria listed in Natural England's "Agricultural Buildings and the Breckland SPA Stone Curlew constraint zone" advice note, or successor document. 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:

- More than 1500m away from potential stone curlew ~~nesting sites~~ habitat (such as arable land) inside the SPA (~~these are those parts of the SPA that are also designated as Breckland Farmland SSSI~~);
- A new building that will be completely masked on all sides from the SPA by existing built development;
- A proposed re-development of an existing building that would not alter its footprint or increase its potential impact;
- A new agricultural building of less than 120 sqm;
- An extension to existing agricultural buildings of less than 120 sqm or 100% of the original, whichever is less.

(b) Permission may be granted for agricultural buildings where:

- there is a demonstrable need for the facility (necessary to manage the agricultural land/maintain the economic viability of an agricultural enterprise);

- justification is provided as to why it cannot be located elsewhere (outside the buffer zone),

and;

- justification that the selected location is the least detrimental.

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.

### **Woodlark and Nightjar**

Development within 400m of the SPA that support, or are capable of supporting Woodlark and/or Nightjar will not normally be permitted. The Council will consider the need for a Habitats Regulations Assessment to determine the implications of development Nightjar and Woodlark on a case by case basis, depending on the location and nature of the proposal.

### **Recreation pressure and urban effects**

Plan level Habitats Regulations Assessment has identified the potential for increased disturbance to Nightjar, Woodlark and Stone Curlew as a result of recreation, and the potential for other urban effects such as increased fire, litter and eutrophication to significantly affect Breckland SPA and SAC.

~~The Council will work with partners to develop a framework of measures that manage and monitor access. Proposals for development in Thetford, Swaffham and Mundford will be required to demonstrate the inclusion of mitigation measures that contribute to the framework to address the potential impact of increased recreational pressure on Breckland SPA. This should comprise:~~

- ~~• new on-site recreational areas in accordance with other policy requirements in this plan, and/or;~~
- ~~• other measures that contribute to managing recreation pressure, such as educational/information materials, staff resources, managing car parking and projects targeting dog walking or; where the development will not provide on-site recreational space;~~
- ~~• promotional materials for new residents to advertise existing local suitable alternative natural green space for recreation.~~

### Monitoring and Mitigation Framework





The Council commits to a framework of measures that will enable it to co-ordinate the necessary monitoring and mitigation measures required to demonstrate that the increases in visitor pressure arising from new development in the District will be addressed before adverse effects on European sites occurs.

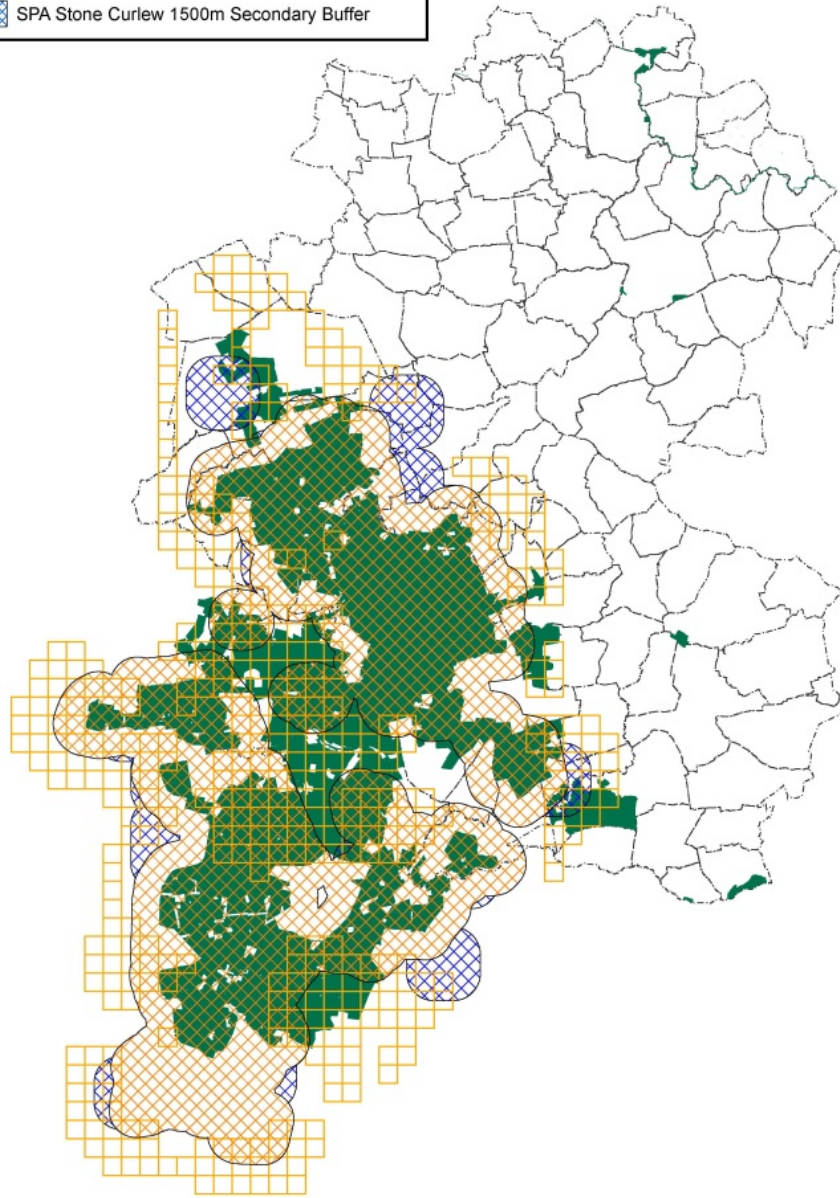
These will include as a minimum the following measures to be implemented following adoption of the Plan:

- Creation of an advisory group;
- Production of a monitoring programme;
- Identification of mitigation measures; and
- Defining funding to support the above measures.

The Council will work with partners to develop a framework for managing and monitoring urban effects. Proposals for development where urban heaths at Thetford (Barnham Cross Common, Thetford Heath, Thetford Golf Club and Marsh), East Wretham or Brettenham are likely to be used as local greenspace will need to demonstrate the inclusion of mitigation measures that contribute to the framework to address the potential impact urban effects on Breckland SPA/SAC.

**Legend**

-  1km grid cells where less than half area surveyed
-  Special Protection Area (SPA)
-  SPA Stone Curlew 1500m Primary Buffer
-  SPA Stone Curlew 1500m Secondary Buffer



## 4. ENV 04 Open Space, Sport and Recreation

4.1. At the hearing session on 16<sup>th</sup> May, it was requested that the Council reconsidered Policy ENV04 Open Space, Sport and Recreation in light of the representations received and the discussion at the hearing session. The Council has now revised the policy to reflect this.

Key elements of change to the policy are:

- Ensuring that when considering new provision, it was clear that the requirement referred to outdoor play space, rather than open space. This was necessary for both consistency and clarity in relation to what should be provided on site.
- Removal of dwelling thresholds for the provision of certain types of children's play and outdoor sports facilities. Concern was raised that the inclusion of these within the policy meant that insufficient outdoor playing space was being provided onsite, when having regard to the overarching standard. There was also concern that this was restrictive to good design.
- Inclusion of a definition of outdoor sports area. The submission version of did not include a definition of outdoor sports areas, and it was considered that greater clarity was required when assessing planning applications.
- Recognition of the important role that open space can play as both recreation activity space and environmental functions. This includes consideration of multi-functionality open space, such as through SuDS.
- Recognition that open space contributions will only be required for sites of 10 or more residential dwellings. This is to ensure conformity with both the planning practice guidance and also regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
- Ensuring reference to the guidance by Fields in Trust is referred to as 'guidance' rather than a standard, to reflect its status.

## Revised Policy ENV04 and supporting text

### Open Space, Sport and Recreation

Open space is defined in the Town and Country Planning Act 1990 as 'land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground'. Allotments are also included under the definition of open space. Open space should be taken to mean all open space of public value, including not just land, but also areas of water such as rivers, canals, lakes and reservoirs which offer important opportunities for sport and recreation and can also act as a visual amenity.

The NPPF at paragraph 73 states that policies should be based on robust and up-to-date assessments of the needs for open space, sports and recreation facilities and opportunities for new provision. Assessments should identify specific needs and quantitative or qualitative deficits or surpluses of open space, sports and recreational facilities in the local area. Information gained from the assessments is then used to determine what open space, sports and recreational provision is required.

In order for planning policies to be 'sound' local authorities are required to carry out a robust assessment of need for open space, sport and recreation facilities. An audit of all open space provision within Breckland District, excluding Thetford Forest <sup>1</sup>, was undertaken in 2015. The Open Space Assessment evaluated the quantity, quality and accessibility of open space and recreational land provision in the Breckland District (excluding Thetford Forest) and recommended standards and effective mechanisms in order for appropriate provision to be secured to meet future needs. The assessment shows that Breckland District has a deficit, both quantitatively and qualitatively, in outdoor playing space provision.

The study shows that when assessing overall playing space in the District at a Fields in Trust (FIT) ~~standard guidance~~ of 2.56 ha per 1000 population, 70% of the parishes in the District do not meet the FIT ~~standard guidance~~. The five market towns of Attleborough, Thetford, Dereham, Swaffham and Watton have the largest deficiencies in total playing space provision for their populations compared to the FIT ~~standard guidance~~, with Thetford having the largest deficiency of any parish in the District.

Furthermore, 70% of the parishes in the District do not meet the FIT ~~standard guidance~~ for children's play area provision. The 5 market towns of Attleborough, Thetford, Dereham, Swaffham and Watton have the highest proportion of children in addition to the highest deficiency of provision in children's play compared with the FIT standard. Thetford has the highest percentage of children compared to the other four market towns, but also has the highest deficiency of children's play areas against the FIT ~~standard guidance~~.

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<sup>1</sup> Thetford Forest was excluded from the audit because not all of the forest is publicly accessible. Large areas remain a working forest managed by the Forestry Commission and an important supplier of timber. Thetford Forest also extends into Suffolk. It was considered that the inclusion of such a large area would compromise the open space figure for Breckland and show a disproportionate surplus and/or deficiency.

Only 30% of the parishes in Breckland meet the FIT outdoor sports ~~standard~~ guidance. The five market towns have an average or above quality score, despite having a deficiency in the amount of space. Whereas the majority of the rural parishes have an average or below sports quality score, despite having lower ~~FIT standards~~ level of deficiency against the FIT guidance. A similar pattern was found following the 2010 assessment and consequently the policy focus is to improve the quality, rather than quantity, of rural sports pitches.

The Accessible Natural Green Space Standard (ANGST) requires that sites of at least 2ha in size, of accessible green space, are available per 1000 people based on no one living more than 300m from the nearest area of natural green space. It also recommends that no one should live 2km from at least one accessible site of at least 20ha; 5 km from at least one accessible site of at least 200ha; and 10km from at least one accessible site of 500ha.

In conclusion, the Breckland Open Space, Sport and Recreation study recommended that:

- The ~~local standards~~ FIT guidance of 2.56 ha of open space (0.8 ha for children's play and 1.76 ha for outdoor sport) per 1000 population should be used as a local standard for open space provision;
- There should be a greater focus on provision of new facilities to address quantitative deficits, which will be delivered through new housing development;
- The Local Plan should allocate additional areas of open space;
- All new children's play and outdoor sports areas should be designed in accordance with FIT guidance and Sport England standards to ensure the highest quality of open space area is provided; and
- In terms of outdoor sports, all dwellings in major housing areas must be within 1.2km of outdoor sports areas as recommended by FIT. Outdoor sport areas should be located near to public transport routes, have good provision for car parking and have easy access for pedestrians and cycles. In terms of children's play areas, all dwellings in housing areas should be within 100m of a local area of play (LAP), 400m of a local equipped area for play (LEAP) and 1000m of a neighbourhood equipped area for play (NEAP) as recommended by FIT.

Planning obligations sought need to be in accordance with regulation 122 of the Community Infrastructure Levy Regulations (2010) requiring the provision of infrastructure necessary to make the development acceptable in planning terms, reasonable in scale and kind and directly related to the development. Developers cannot be required to meet existing shortfalls in infrastructure provision.

The HRA identifies the need for further open space as part of a suite of measures to prevent additional recreational pressure for development at Thetford, Mundford and Swaffham and to prevent urban effects on sensitive heathland sites including Barnham Cross Common, Thetford Heath, Thetford Golf Club and Marsh and at East Wretham and Brettenham. Project level HRA's may identify requirements for additional open space or the specific provision of open space as part of the mitigation measures to protect European sites.



Open space designations as identified through the 2015 Open Space Assessment are shown on the Policies Maps. Appendix 6 identifies new open space sites identified within the 2015 Open Space Assessment.

### **Existing Provision**

Development that would result in the loss of existing designated open space will only be permitted if:

- (a) it can be demonstrated (through a local assessment) that there is an excess of recreational or amenity open space in the settlement and the proposed loss will not result in a current or likely shortfall during the plan period; or
- (b) recreational facilities within the open space will be enhanced by the proposed development on an appropriate portion of the open space; or
- (c) the community would gain greater benefit from the developer providing a suitable alternative recreational or amenity open space in an equally accessible and convenient location.

The development of existing open space with an ecological value (a known biodiversity or nature conservation interest) will not be permitted.

### **New Provision**

All new residential development of 10 or more dwellings will be expected to provide a contribution towards outdoor playing space equivalent to 2.56 hectares per 1,000 population\*, which equates to 25.6m<sup>2</sup> of outdoor playing space per person. As set out in the Open Space Assessment (2015), this 25.6m<sup>2</sup> is broken down to 17.6m<sup>2</sup> of outdoor sport area and 8m<sup>2</sup> of children's play space.

There is a presumption that for developments comprising of 25 dwellings or more that ~~open space, sport and recreation facilities~~ outdoor playing space will be provided within the development site. Where on-site provision is provided, the space should be of an appropriate type to serve the needs of the development, well related to the proposed residential properties and in accordance with relevant standards.

Within a residential developments ~~of 25 or more dwellings~~ priority should be given to the provision of children's play areas since the facility is most likely to be required within an easy reach of dwellings and will be required to conform to the 0.8ha per 1000 people standard in provision of children's play area. ~~in accordance with the NPFA standard.~~

~~On sites of 25 dwellings and above – Minimum of 1 Local Area for Play (LAP)~~

~~On sites of 50 dwellings and above – Minimum of 2 LAPs (or equivalent provision if provided as 1 large LAP)~~

~~On sites of 80 dwellings and above – Minimum of 1 Local Equipped Area for Play (LEAP)~~

~~On sites of 200 dwellings and above – Minimum of 2 LEAPs and an Outdoor Sport Area~~

~~On sites of 400 dwellings and above – Minimum of 1 Neighbourhood Equipped Area for Play (NEAP) and an Outdoor Sport Area~~

It is recognised that there may be cases where the direct provision of ~~open space~~ outdoor playing space on-site is not the preferred option. It may be that ~~open space~~ outdoor playing space does not represent an efficient use of land in the context of the site location or that there is a deliverable opportunity to secure a more meaningful area of ~~open space~~ outdoor playing space that better serves the whole community in close proximity to the application site. Contributions in lieu of on-site provision will be the exception and will need to be supported by robust evidence from the applicant that on-site provision is not ~~preferable~~ appropriate/viable. Any contribution will need to be towards a specific deliverable scheme in consultation with the relevant parish council and the developer contributions policy in this document. It will be secured through a section 106 agreement. The contribution will be required to name a specific scheme.

~~Major development sites comprising more than 10 dwellings but less than 25 dwellings will be expected to make proportionate off site contributions towards open space, sports and recreational facilities.~~

In addition to the on-site and off-site contributions, a contribution will be required for 10 years maintenance of the facility. The contribution will be proportional to the type of facility provided and will be calculated in accordance with the criteria set out in the Breckland Open Space Assessment (2015) which will be reviewed periodically.

\* The population resulting from a particular development is calculated using the occupancy rates set out in the below table. Using these occupancy rates it is possible to calculate the level of outdoor playing space needs for any given development.

Forms of outdoor sports provision and ancillary facilities are natural or artificial surfaces used for sports and recreation, which include sport as the primary purpose. They can include, but are not limited to: multi-use games areas, skateboard parks, sports playing pitches, bowling greens, tennis courts. Having regard to the availability and quantum of land sought, proposals to improve the provision of sports facilities onsite will be considered favourably. Outdoor sports areas will be expected to provide equipped facilities. Where it is not possible to accommodate outdoor sports areas onsite, negotiations will occur on a site-by-site basis to determine specific provision and financial contributions, taking into account the financial viability of any development.

Open space can perform both important recreational activity space and important environmental functions, such as moderating surface water run-off, air pollution and wind speeds, as well as providing wildlife habitats to aid biodiversity. The Council will consider the multi-functionality of open space to provide both outdoor playing space and other functions (including use as SuDS) within individual developments. Regard will be had to the primary purpose of the space and the level of usage of the site as outdoor playing space.

Occupancy rates	
1 bedroom	1.5 persons

2 bedrooms	2.0 persons
3 bedrooms	2.5 persons
4 bedrooms	3.0 persons
5 bedrooms or more	3.5 persons

Contributions in line with the standards will be required for all additional new residential ~~units~~ developments of 10 or more dwellings. This includes most specialised types of housing including agricultural dwellings, affordable housing and staff accommodation.

Replacement dwellings will not be required to make a provision unless additional units are being created. If additional units are being created then the net gain of units will be subject to providing a contribution.

Extensions to dwellings will not be subject to making a provision unless where new units of accommodation are being created. This is applied whether or not the unit is tied by condition to the main house, for example staff accommodation. Provision will not be sought where the unit is for a dependant relative, and a specific planning condition or obligation is attached, limiting the occupation's use to that purpose.

Permissions for temporary mobile homes will not be expected to provide open space.

It is accepted that certain development will not create demand for all elements of open space requirements. For example the occupants of a sheltered housing scheme, nursing homes, hostel accommodation, where the occupancy is controlled, would not be expected to use all children's play areas. In these cases it would not be appropriate for the Council to apply that element of the standard. However, it is worth noting that although children's play areas may not be appropriate, there is an element of amenity area or communal space that could benefit residents of the new proposal. Such cases will be considered individually on their own merits.

Summary of exceptions to open space contributions	
Developments where the Council will seek to apply the play and outdoor sports space standard.	Development that is likely to be considered exceptions to the play and outdoor playing space standards
All new <u>residential dwellings developments of 10 or more dwelling</u>	Replacement dwellings (on a one for one basis) i.e. no new additional units
Dwelling gains resulting from new development <u>of 10 or more)</u>	Extensions and annexes within the curtilage of a main property for dependent relatives
Conversion or part conversions creating additional independent residential units with	Sheltered housing schemes, nursing homes,

separate facilities	controlled hostel accommodation
Bedsit accommodation with shared facilities	Temporary permission for mobile homes
Permanent permission for mobile homes	

## 5. ENV 10 Renewable Energy Development

5.1. At the hearing session on 16<sup>th</sup> May, it was requested that the Council reconsidered Policy ENV10 Renewable Energy Development in light of the representations received, the discussion at the hearing session and the governments policy direction with regard to wind energy. The Council has now revised the policy to reflect this.

5.2. Key changes include:

- Some of the identified adverse impacts identified in the policy cross over with other policies in the plan. Consideration was given to removing these criterion entirely, as it is not necessary to duplicate policy requirements where they will be used collectively to assess development proposals. However, in this case, it is considered helpful to retain these policy requirements and note the linkages to other policies as these are the 5 principle considerations which will be taken into account when assessing development proposals for renewable energy and low carbon development ;
- The policy has been reconfigured to be positively worded so that it is clear that proposals for renewable and low carbon development will be supported, providing any adverse impacts can be mitigated to make the proposal acceptable;
- Parts of the supporting text have been removed that appear to be policy criterion, but have been taken verbatim from national planning practice guidance (PPG). This is now summarised with appropriate references to the PPG;
- The policy and supporting text have been updated in line with recent national policy guidance, particularly the written ministerial statement in 2015 with regard to wind energy (discussed in detail below).

5.3. Following the written ministerial statement in 2015 with regard to wind energy, and updates to planning practice guidance, there is a clear steer to identify suitable areas for wind energy development, however the ministerial statement does allow for a transitional arrangement.

5.4. 'Where a valid planning application for a wind energy development has already been submitted to a local planning authority and the development plan does not identify suitable sites, the following transitional provision applies. In such instances, local planning authorities can find the proposal acceptable if, following consultation, they are satisfied it has addressed the planning impacts identified by affected local communities and therefore has their backing'. In the interim, any wind energy application would have been considered in the context of the transitional arrangement.

5.5. Breckland was midway through plan preparation at the time this ministerial statement was released, and any new evidence commissioned on suitable areas for wind energy would have caused delay to the schedule of the Local Development Scheme for producing the plan. Illustrating the identified areas only at Pre-Submission Stage would not have provided

stakeholders or the public the opportunity to shape the policy further as comments could only have raised issues with the soundness of the strategy.

- 5.6. Breckland is not the only authority to have been in this position. I would like to bring the Inspectors attention to the Warwick Local Plan (adopted September 2017) and the Inspectors report for this plan, where a modification is proposed to effectively incorporate parts of the ministerial statement into the policy in order for the Inspector to have confidence that the policy was compliant with national policy. Similar wording was also incorporated in the renewable energy policy for the Central Lincolnshire Local Plan (adopted April 2017). Extracts of these documents and supporting justification have been provided in Appendix 1.
- 5.7. It is therefore proposed that a similar form of wording is proposed as a main modification to Policy ENV 10, to ensure that the Breckland Local Plan is compliant with national policy and guidance on wind energy. The NPPF consultation (para 153) indicates that at a national government level, the policy direction with regard to wind energy is unlikely to change in the immediate future. Any subsequent review of the Local Plan will provide the opportunity to commission evidence required to identify suitable areas, or these can be identified in Neighbourhood Plans.

## Revised Policy ENV 10 and supporting text

### Renewable Energy

The NPPF supports the transition to a low carbon future in a changing climate and encourages the use of renewable resources, including the development of renewable energy. National policy as a whole supports and encourages the development of renewable energy sources. As a result of EU Directive 2009/28/EC, the UK committed to a legally binding target to achieve 15% of all energy generated from renewable resources, including electricity, heat and transport, by 2020. The 2006 Energy Review has an aspiration that 20% of electricity is to be from renewable resources by 2020. The overarching strategy to reduce carbon emissions to meet the requirements of the Directive and the Climate Change Act is contained in the UK Renewable Energy Strategy and the UK Low Carbon Transition Plan.

Renewable energy is central to the economic, social and environmental dimensions of sustainable development. In meeting the challenge and to help increase the use and supply of renewable and low carbon energy, the Council recognises the need to have a positive strategy to promote renewable energy generation, whilst at the same time ensuring that the adverse impacts are addressed satisfactorily, including the cumulative landscape and visual impacts.

There are many different types of renewable energy choices, from solar energy, wind and biomass through to energy efficient installations such as combined heat and power and ground source heating. All of these technologies and methods of construction have a role to play in meeting Government targets and are seen as positive outcomes for the District. The Council will therefore support and encourage the generation of energy from renewable sources. These will be permitted unless there are unacceptable site specific or other impacts that could not be outweighed by wider environmental, social, economic and other benefits.

### **Solar Photovoltaic Farm Planning Considerations**

As a rural District, Breckland is particularly suited to solar farms. The Government's solar Photovoltaic (PV) strategy was published in 2014. The aim is to create more financial certainty and investor confidence in order to realise the long term potential for solar PV in the UK at a large and small scale. There is no cap on capacity. It is the Government's ambition to see "more ambitious deployment, perhaps approaching 20 Gigawatts (GW) early in the next decade". The past four years has seen a growth in the delivery of such facilities and their associated energy production capacity, but as at June 2013, the capacity of PV was 2.4 GW, forecast to reach 10 GW by 2020.

Whilst large scale facilities provide an opportunity for greater energy production (as well as potential enhancement to biodiversity), it is also of importance that they are carefully planned and screened to ensure any amenity and visual impacts are minimised. The NPPF states that applicants for energy development should not have to demonstrate the overall need for renewable or low carbon energy and that applications should be approved if their impacts are (or can be made) acceptable.

Whilst large scale ground-mounted PV solar farms developments can have a negative impact on the rural environment, particularly in undulating landscapes, the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively.

The Governments' Planning Practice Guidance (PPG) on renewable and low carbon energy sets out a set of planning considerations at a national level to assess the impact of large scale ground-mounted solar photovoltaic farms. Development proposals should have regard to the PPG, in addition to this local policy on renewable energy in order to ensure the proposal is acceptable and can be supported by the Council. Key planning considerations include the quality of agricultural land, the visual and landscape impact, the effect on landscape of glint and glare and on neighbouring uses and aircraft safety, the impact of security infrastructure such as lights and fencing and the impact on the setting of heritage assets.

The Council will consider favourably opportunities for biodiversity enhancements around arrays, the potential for complete restoration of the land and appropriate mitigation such as landscape buffers (trees and hedgerows) where compatible in the context of the Council's Landscape Character Assessment and Settlement Fringe Study.

### **Solar Farm Planning Considerations / Assessment Criteria**

The effective use of land by focusing large scale solar farms on previously developed and non agricultural land, will be encouraged provided that it is not of high environmental value.

Particular factors that the Council will need to consider where a proposal involves greenfield land include:

- the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and
- that the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.

The Government's NPPG makes specific reference to a Ministerial speech in April 2013 encouraging development on brownfield land, low grade agricultural land and on buildings; and to a Written Statement to Parliament in March 2015. The guidance notes:

- That solar farms are normally temporary structures and planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use;
- The proposal's visual impact, the effect on landscape of glint and glare and on neighbouring uses and aircraft safety;
- The need for, and impact of, security measures such as lights and fencing;
- Great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting. As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of large scale solar farms on such assets.



Depending on their scale, design and prominence, a large scale solar farm within the setting of a heritage asset may cause substantial harm to the significance of the asset;

- The potential to mitigate landscape and visual impacts through, for example, screening with native hedges; and
- The energy generating potential, which can vary for a number of reasons including latitude and aspect.

The guidance also advises that the approach to assessing the cumulative landscape and visual impact of large scale solar farms is likely to be the same as assessing the impact of wind turbines. However, in the case of ground mounted solar panels, it should be noted that with effective screening and appropriate land topography the area of a zone of visual influence could be zero.

### **Government Aims on Solar Energy**

The Written Statement to Parliament in March 2015 sets out the Government's aims on solar energy development and highlights concerns about the unjustified use of high quality agricultural land making it clear that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence.

### **Anaerobic Digestion Planning Considerations /~~Assessment Criteria~~**

Anaerobic digestion (AD) is a natural process in which micro-organisms break down the organic matter found in wet biomass waste (such as sewage sludge, animal manure and slurry and waste food) in the absence of oxygen, to produce biogas (mainly a mixture of around 60% methane and 40% carbon dioxide) and digestate (a nitrogen rich fertiliser). The National Non-Food Crops Centre (NNFCC) runs the Government's Anaerobic Digestion Portal (<http://www.biogas-info.co.uk/>) – a gateway to information on anaerobic digestion, biogas and digestate. Reference should also be made to 'The Anaerobic digestion strategy and action plan', published by government on 14 June 2011 and an update on progress on detailed actions published in July 2012. Anaerobic Digestion proposals are regarded as waste treatment facilities, where feedstock is classified as waste under relevant legislation and so relevant related national and county best practice guidance and policies will apply.

Anaerobic Digestion proposals raise a number of planning issues including visual and landscape impacts arising from industrial scale plant / buildings; location concerns (in sustainability terms relative to the source of biomass and where relevant combined heat and power (CHP); electricity and/or gas grid connection), potential odour impacts, air emissions, noise impacts, protection of the water environment and traffic impacts. Failure to supply adequate environmental information to accompany planning applications for anaerobic digestion projects can be a key cause of delay in determining a planning application. Breckland Council therefore encourages early pre-application engagement on all renewable energy projects to optimise project assessment and delivery.

### **Wind energy development**

In recent years, new wind energy development in Norfolk has been driven by the favourable conditions offshore, and the potential for larger turbines producing higher amounts of energy.

Within Breckland, a substation has been constructed near Necton, to enable the energy generated from offshore wind farms to connect to the National Grid.

In consideration of onshore wind turbines, the written ministerial statement made on 18 June 2015 specifies that when considering applications for wind energy development, local planning authorities should (subject to the transitional arrangement) only grant planning permission if:

- the development site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan; and
- following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.

The PPG on renewable and low carbon energy clarifies that whether the proposal has the backing of the affected local community is a planning judgement for the local planning authority.

The Local Plan has not identified suitable areas for wind energy and therefore these areas are only able to be identified in Neighbourhood Plans.

### **All Renewable Energy Environmental Concerns**

In relation to all renewable or low carbon energy development the Government's NPPG also states that: the need for renewable or low carbon energy does not automatically override environmental protections; cumulative impacts require particular attention, especially the increasing impact that wind turbines and large scale solar farms can have on landscape and local amenity as the number of turbines and solar arrays in an area increases; local topography is an important factor in assessing whether wind turbines and large scale solar farms could have a damaging effect on landscape and recognise that the impact can be as great in predominately flat landscapes as in hilly or mountainous areas; also, that great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting.

### **Policy ENV 10 Renewable Energy Development**

The Council supports proposals for new renewable energy and low carbon development, subject to consideration of the impact of the development and whether this can be made acceptable.

Proposals for renewable energy development including the landward infrastructure for offshore renewable schemes requiring planning permission will be assessed to determine whether the benefits they bring in terms of the volume and usability of energy generated outweigh any adverse impacts. Proposals will be considered having regard to the extent to which there are:

1. adverse impacts on the local landscape, townscape or designated and ~~un~~-non-designated heritage assets assessed in line with Policies ENV 05, ENV 07 and ENV 08 in the plan , particularly listed buildings, conservation areas, scheduled ancient monuments, historic parks and gardens;
2. adverse effects on residential amenity by virtue of outlook / overbearing impact, traffic generation, noise, vibration, overshadowing, flicker, glare or any other associated detrimental emissions, during construction, operation and decommissioning; and

3. an irreversible loss of the highest quality agricultural land;

4. cumulative impacts of renewable energy development on an area; and

3. 5. adverse impacts upon designated wildlife sites; nature conservation interests; and biodiversity, assessed in line with Policies ENV 02 and ENV 03 in the plan.

Proposals will be permitted where the impact is, or can be made, acceptable. Applications will be expected to demonstrate that any adverse impacts can be mitigated. Permission will be granted where there are no significant adverse impacts and effects or where any identified adverse effects and impacts are demonstrably outweighed by the benefits. Proposals for renewable energy development including the landward infrastructure for offshore renewable schemes requiring planning permission will be assessed to determine whether the benefits they bring in terms of the volume amount and usability of energy generated outweigh any adverse impacts. When attributing weight to any harm, in addition to other relevant policies in the Local Plan, regard will be given to national policy and guidance, statutory duty and legislation which seeks protection and enhancement of the landscape; designated and non-statutory heritage assets.

Where appropriate the authority will consider the need for planning conditions requiring the decommissioning and removal of all plant and ancillary equipment, and if necessary the restoration of land, on the cessation of use.

### **Solar Energy Development**

The effective use of land by focusing large scale solar farms on previously developed and non agricultural land, will be encouraged provided that it is not of high environmental value.

Particular factors that the Council will need to consider where a proposal involves greenfield land include:

- the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and
- that the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.

### **Wind Energy Development**

Proposals for wind energy development involving one or more wind turbines will only be permitted if:

- the development site is in an area identified as suitable for wind energy development in an adopted Neighbourhood Plan; and
- following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.

## Appendix 1 – Renewable energy policy evidence

### Warwick Local Plan – adopted 20th September 2017

Source: [https://www.warwickdc.gov.uk/info/20410/new\\_local\\_plan](https://www.warwickdc.gov.uk/info/20410/new_local_plan)

#### Inspectors Report

Report to Warwick District Council by Kevin Ward BA (Hons) MRTPI, an Inspector appointed by the Secretary of State for Communities and Local Government. Date 28 July 2017

“Main modification **MM57** is necessary to ensure that Policy CC2 takes an effective approach to the impact on heritage assets and is consistent with national policy in relation to wind energy”.

Page 86, Paragraph 583

#### Main modifications consultation

Ref.	Policy	Proposed Modification
<b>MM 57</b>	CC2	<p><b>CC2 Planning for Renewable Energy and Low Carbon Generation</b></p> <p>Proposals for new low carbon and renewable energy technologies (including associated infrastructure) will be supported in principle subject to all of the following criteria being demonstrated:</p> <p>...</p> <p><b><u>Also, for wind energy proposals, planning permission will only be granted if:</u></b></p> <p style="padding-left: 40px;"><b><u>h) the development is in an area identified in either the Local Plan or a Neighbourhood Plan as being suitable for wind energy; and,</u></b></p> <p style="padding-left: 40px;"><b><u>i) following consultation, it can be demonstrated that the planning impacts identified by local communities affected by the proposal have been fully addressed and that the proposal has the backing of those communities</u></b></p> <p><b>Explanatory Text</b></p> <p>5.110 ... In assessing this, consideration will be given to the sensitivity of the landscape. <b><u>Such development should in any case, only be considered on sites identified as being suitable and included in the Local Plan or a neighbourhood plan and with the support of the local community. The policy is consistent with the Written Ministerial Statement concerning onshore wind energy (18 June 2015).</u></b></p>

## Central Lincolnshire Local Plan – adopted April 2017

Source: <https://www.n-kesteven.gov.uk/central-lincolnshire/local-plan/>

### Evidence to support policy direction

Policy LP19 Renewable Energy Proposals Evidence Report (Examination Library reference PS.EVR19, page 5)

#### Alternative Reasonable Options

6.1 The following alternative options have been considered for this policy. (Option 1 is the preferred policy approach which has been included in the Proposed Submission Local Plan.)

6.2 **Option 2:** No policy on renewable energy and instead rely on national planning policy. This policy has been discounted: it is felt that specific criteria in relation to renewable energy development are necessary in addition to the Design and Amenity policy to highlight the specific considerations associated with proposals for renewable energy technology.

6.3 **Option 3:** Have separate policies for different types of renewable energy. This option has been discounted for two reasons: firstly, the desire to deliver a concise Local Plan and avoid repeating common principles across multiple policies. Secondly, given the likely progression in renewable energy technology over the plan period, and the potential development of new technologies, it is considered that establishing technology specific policies rather than an overarching renewable energy technology proposal could become outdated.

6.4 **Option 4:** Policy identifying suitable areas for wind energy development. This option has been discounted because:

- of the time which would be taken to produce the evidence (and the subsequent, and unacceptable, delay to the Local Plan);
- the considerable (and unacceptable amount of) resources which would be needed to undertake a thorough assessment of areas which are appropriate for wind farms; and,
- even if such evidence was produced, the likelihood that proposals within any identified zones being acceptable to the community being slim, with the subsequent implication being that any positive policy would, as a result of the ministerial statement and changes to National Planning Practice Guidance, be ineffective in any event

## **5.4 Renewable Energy Proposals**

**5.4.1** Policy LP19 identifies the considerations which will be taken into account when assessing proposals for renewable energy.

**5.4.2** In preparing the policy, the Central Lincolnshire authorities have taken account of the Secretary of State for Communities and Local Government's (Greg Clark) Written Statement (HCWS42) of 18 June 2015 which related to wind energy development. The National Planning Practice Guidance (NPPG) on wind energy development was amended as a result of the statement. The NPPG now advises that local planning authorities should only approve proposals for wind energy development if:

- the development site is in an area identified as suitable for wind energy development in a Local or Neighbourhood Plan; and
- following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.

**5.4.3** Policy LP19 therefore outlines the Central Lincolnshire position in respect of wind energy development, in response to national guidance.

## **Policy LP19: Renewable Energy Proposals**

### **Proposals for wind energy development**

This Local Plan does not identify areas which are suitable for wind energy development. As such, proposals for wind energy development will only be permitted if:

- the proposal is in an area that has been identified as suitable for wind energy development in an adopted Neighbourhood Plan; and
- following consultation, it can be demonstrated that the planning impacts identified by affected local communities have been fully addressed and therefore the proposal has their backing.

### **Proposals for non-wind renewable energy development**

Proposals for non-wind renewable technology will be assessed on their merits, with the impacts, both individual and cumulative, considered against the benefits of the scheme, taking account of the following:

- The surrounding landscape and townscape;
- Heritage assets;
- Ecology and diversity;
- Residential and visual amenity;
- Safety, including ensuring no adverse highway impact;
- MoD operations, including having no unacceptable impact on the operation of aircraft

- movement or operational radar; and
- Agricultural Land Classification (including a presumption against photovoltaic solar farm
- proposals on the best and most versatile agricultural land).

Proposals will be supported where the benefit of the development outweighs the harm caused and it is demonstrated that any harm will be mitigated as far as is reasonably possible. Renewable energy proposals which will directly benefit a local community, have the support of the local community and / or are targeted at residents experiencing fuel poverty, will be particularly supported.

## Appendix 2 – Footprint Ecology advice note



# Advice note to Breckland Council and the Examining Inspector - amendments to Policy ENV2 and HRA compliance with recent European caselaw

## 1. Purpose of this advice note

- 1.1 This advice note has been prepared by Footprint Ecology following the hearing sessions for HRA and biodiversity during the Breckland Local Plan Examination in Public. Footprint Ecology provided technical support to planning officers, to assist with the Examining Inspectors questions for Matters 1 – Legal Requirements, and 12 – Environment.
- 1.2 During the Hearing sessions, the Examining Inspector gave detailed consideration to the wording of policies ENV2 and ENV3, and the HRA undertaken by Footprint Ecology. Discussions in relation to policy ENV 2 also considered whether policy wording adequately and correctly secured biodiversity net gains as part of development in accordance with the National Planning Policy Framework and current focus on net gain within the recently published Defra 25 Year Plan<sup>1</sup>, and emerging professional institute guidance on good practice in securing biodiversity net gain within development<sup>2</sup>.
- 1.3 Additionally, the Inspector discussed the relevance of a recent European Court of Justice (ECJ) Judgment to the policies and the HRA. The 12 April 2018 Judgment of the ECJ (Seventh Chamber) in *People Over Wind & Sweetman v Coillte Teoranta* (Case C-323/17) has highlighted the need to carefully explain actions taken at each HRA stage, particularly at the screening for likely significant effects stage. The Judgment is a timely reminder of the need for clear distinction between the stages of HRA, and good practice in recognising the function of each. The screening for likely significant effects stage should function as a screening or checking stage, to determine whether further assessment is required. Assessing the nature and extent of potential impacts on European site interest features, and the robustness of mitigation options, should be done at the appropriate assessment stage.
- 1.4 As part of the Examination in Public, Breckland Council's planning officers have agreed to a series of 'homework' requirements with the Examining Inspector. This advice note assists the planning officers with the homework requirements for the following:
- Updated supporting text and policy wording for policy ENV2 to a) provide better alignment with the wording of the Habitats Regulations, and b) provide clarity in relation to biodiversity net gain requirements and c) suggest a more suitable policy title

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<sup>1</sup> <https://www.gov.uk/government/publications/25-year-environment-plan>

<sup>2</sup> <https://www.cieem.net/biodiversity-net-gain-principles-and-guidance-for-uk-construction-and-developments>

- Confirmation of the conformity of the HRA with the recent ECJ Judgment, also with reference to advice provided by Breckland Council's appointed solicitor for the Examination
- Proposed amendments to the HRA report to incorporate acknowledgement of the Judgment and how the HRA complies, and to provide a final check of the main modifications arising as a result of Examination.

## 2. Policy ENV 2 and supporting text

- 2.1 The current policy wording considered during the hearing session for Matter 12 – Environment is provided below, with recommended changes identified by red text annotations for text additions and text strike through for text to be removed.
- 2.2 These annotations are made in line with the Inspector's recommendations discussed during the hearing session to provide better alignment with the wording of the Habitats Regulations, clarity in relation to biodiversity net gain requirements that should be for all development, and also should be proportionate. The Inspector also suggested that a more suitable policy title would be preferable.
- 2.3 It is recommended that ENV 2 policy and supporting text is amended as follows:

### **Biodiversity protection and enhancement Sites, habitats and species of European, National and Local Nature Conservation Importance**

**5.13** The planning system has an important part to play in meeting the UK's national and international commitments for habitats and species. In considering sustainable development proposals, the Council will have regard for the relevant biodiversity legislation and policy. Section 40 of the Natural Environment and Rural Communities Act (2006) places a duty on all public authorities in England and Wales to have regard, in the exercise of their functions, to the purpose of conserving biodiversity. The National Planning Policy Framework states that the planning system should contribute to the Government's commitment to halt the overall decline in biodiversity, seeking net gains where possible and establishing coherent ecological networks. Regard should also be had to The Conservation of Habitats and Species Regulations **2017** ~~2010, as amended~~, and the Wildlife and Countryside Act 1981, as amended. A key purpose of biodiversity legislation and policy is to embed biodiversity protection, restoration and enhancement as an integral part of policy making.

**5.14** Breckland has a wide range of sites which are protected for their biodiversity or geological interest. The ecological network in the District is inherently connected to the wider Norfolk area and should be viewed as a component part of a much wider network which stretches beyond the District's boundaries. There are a range of protected sites in the District, arguably the most famous being The Brecks, an extensive area of largely conifer plantation and arable farmland but with extensive areas of heathland within the forest and arable landscape. The Brecks also includes fen, grazing marsh and naturally fluctuating waterbodies (meres and pingos).

**5.15** A significant proportion of The Brecks, including arable farmland, is designated as European protected sites, forming the largest terrestrial protected area in Norfolk. These are designated for their suitability to support internationally important bird species, particularly Stone Curlews, Woodlark and Nightjar. **5.16** The District also contains a number of river valleys, including the Wensum, Waveney, Yare/Blackwater, Nar, Whitewater, Tud, Wissey, Little Ouse

and Thet. These have extensive areas of wetland habitats, comprised mainly of grazing marsh with areas of fen and reedbed; many of the rivers are recognised as chalk streams. Some of these habitats are European protected sites. 5.17 Other key ecological features of the District include extensive areas of woodland and shelter-belts, often associated with large estates, and arable landscape features, comprising Scots pine shelter-belts, hedgerows, mature trees, copses, ponds and field margins. Some of these areas are designated as County Wildlife Sites, of which Breckland has more than any other District in Norfolk. Designated or not, these areas are key components of the ecological network at a local scale and collectively, when viewed as part of the green infrastructure network, amount to a significant biodiversity resource.

**5.16** From The Brecks to the Norfolk Valley Fens, the range of sites with conservation and environmental interest is broad. Protected sites in Breckland as shown on the policies map comprise: Internationally designated sites Special Protection Areas (SPAs); Special Areas of Conservation (SACs); Ramsar sites; Nationally designated sites Ancient Woodland; Sites of Special Scientific Interest; National Nature Reserve; Locally designated sites Local Nature Reserves; Roadside Nature Reserves; Regionally Important Geological and Geomorphological Sites; County Wildlife Sites.

**5.17** The sites designated under the protections listed above are the key biodiversity sites and geological features in the District. The different sites benefit from varying degrees of protection based on the rarity of the habitat and the diversity of species that they support. The range and quality of these sites is crucial not only for the wildlife they support but also as an educational and cultural resource and in supporting the overall quality of life in Breckland. As such, these areas are key components of the aspiration of achieving successful and sustainable development in Breckland.

**5.18** When preparing applications applicants should consider the potential effects of the application on biodiversity demonstrating that potential effects have been avoided, and where this is not possible, adequately mitigated for. Biodiversity net gains and contribution to ecological networks should be sought **for all development, and this should be proportionate to the scale of the proposal and any potential impacts. A development with limited or no impacts on biodiversity should still seek to demonstrate a biodiversity net gain** wherever possible. If, when considered alone or with existing and known future projects, an application is likely to affect a European site the applicant must provide a report accompanying the application showing the site(s) that may be affected together with sufficient information **and appropriate evidence** to enable the Council if necessary to undertake **a Habitats Regulations Assessment, including consideration of likely significant effects either alone or in combination with other plans and projects, and where necessary an in depth assessment of any identified potential effects and proposed mitigation measures, to inform** an appropriate assessment. The Habitats Regulations Assessment (HRA) refers to the whole process of assessment, including - where one is required - the appropriate assessment stage.

#### **Policy ENV 02 **Biodiversity protection and enhancement** Sites of International, European, National & Local Nature Conservation Importance**

The highest level of protection will be given to European Sites, with development only permitted where ~~it can be demonstrated that~~ **the proposal is in accordance with the requirements of the Conservation of Habitats and Species Regulations 2017.** ~~there will be no adverse effect (either directly or indirectly) on the integrity of any European site (either alone or in combination with other plans or projects).~~

Where measures to mitigate for potential ~~adverse effects~~ **on European sites are required, identified,** the proposed mitigation measures must be justified as fit for purpose with appropriate evidence, **to inform the Council's Habitats Regulations Assessment.**

~~If it cannot be ascertained that no adverse effect on European site integrity will result, the proposed development will only be permitted where there is no alternative solution and there are imperative reasons of overriding public interest.~~

Development likely to have an adverse effect (either directly or indirectly) on a site of national, regional or local biodiversity, or geological interest, as identified on the Policies Map, will not be permitted unless:

- a. it can be clearly demonstrated that there are reasons for the proposal that outweigh the need to safeguard the special ecological / geological interest of the site, and;
- b. it has been demonstrated, where development would result in significant harm, that it cannot be reasonably located on an alternative site that would result in less or no harm, and;
- c. residual harm, after all measures to prevent and adequately mitigate **have been applied**, will be adequately compensated for.

Where the Council considers that a designated site, protected species, or any species or habitat, **particularly where listed as a Priority Habitat or Species under Section 41 of the Natural Environment and Rural Communities Act (2006)**, of principal importance for conservation may be **adversely** affected by a development proposal, an **ecological environmental** impact assessment (E~~c~~IA) will be required to be submitted with the planning application to assess effects on ~~European sites and effects on~~ flora and fauna, **commensurate with the scale of the impact and the importance of the species**. ~~Whilst the EIA and Habitats Regulations Assessment (HRA) are separate and distinct elements, the EIA information is likely to inform the Council's HRA where an appropriate assessment is required.~~

In accordance with the stepwise approach to protecting biodiversity (**the mitigation hierarchy**), all development with the potential to affect biodiversity should demonstrate how such effects have been considered, **by firstly demonstrating how effects have been avoided, and then** how effects that cannot be avoided have been minimised. **Residual harm, after all measures to prevent and adequately mitigate have been applied, must be adequately compensated for.**

**All development should demonstrate and** how net gains for biodiversity are being secured as part of the development, **proportionate to the scale of development and potential impacts (if any).**

Where development is permitted, the authority will consider the need for conditions or planning obligations to ensure the protection and enhancement of the site's nature conservation and / or geological interest. ~~Where development is likely to have an impact upon a species that is not protected by other legislation, and in particular where a habitat or species is listed as a Priority Habitat or Species under Section 41 of the Natural Environment and Rural Communities Act (2006), there will be an expectation that the development proposal will be accompanied by an impact study commensurate with the scale of the impact and the importance of the species.~~ Wherever a proposed development may have a detrimental impact upon a designated site or protected species, appropriate conditions and/or planning obligations will be used to ensure that **the appropriate mitigation measures incorporated within the proposal are fully implemented, and monitored where required.** ~~utilised.~~

Policy ENV03 outlines specific requirements that apply to The Brecks SPA.

### 3. HRA conformity with the 'People Over Wind' Judgment

- 3.1 The recent Judgment in April 2018 of the European Court of Justice – *People Over Wind & Sweetman v Coillte Teoranta (Case C-323/17)*, being referred to as the 'People Over Wind Ruling,' is of relevance to local plan HRAS as although it relates to a development project, it has highlighted the principle of maintaining a clear distinction between the stages of HRA, and good practice in recognising the function of each. The screening for likely significant

effects stage should function as a screening or checking stage, to determine whether further assessment is required. Assessing the nature and extent of potential impacts on European site interest features, and the robustness of mitigation options, should be done at the appropriate assessment stage.

- 3.2 People Over Wind is an environmental group that raised concerns over the legality of a development proposal in Ireland, to lay an electric cable to connect a wind farm to the grid, given its potential effects on two SACs. Consideration of the case within the Irish domestic courts led to its referral to the European Court of Justice for a preliminary ruling. The Irish High Court decided to stay the proceedings until the European Court provided a ruling on the following question:
- 3.3 *Whether, or in what circumstances, mitigation measures can be considered when carrying out screening for appropriate assessment under Article 6(3) of the Habitats Directive?*
- 3.4 Issues in the People Over Wind Ruling relate to the potential implications of the cable laying for two SACs, and in particular the River Barrow and River Nore SAC, which hosts an Irish subspecies of the Freshwater Pearl Mussel; the 'Nore' Pearl Mussel *Margaritifera durrovensis*.
- 3.5 The developer's consultants prepared a screening report, identifying that in the absence of measures to protect the River Barrow and River Nore SAC, where it is known that high sedimentation is already threatening the status of the Nore Pearl Mussel, there is the potential for likely significant effects. However, the screening report refers to the 'protective measures' that have been built into the project as being capable of enabling a conclusion of no likely significant effects.
- 3.6 However, the Judgment at Paragraph 36 has ruled that *"a full and precise analysis of the measures capable of avoiding or reducing any significant effects on the site concerned must be carried out not at the screening stage, but specifically at the stage of the appropriate assessment."*
- 3.7 The Judgment goes on to state at Paragraph 38 that *"the assessment carried out under Article 6(3) of the Habitats Directive may not have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects."*
- 3.8 It is Footprint Ecology's view that for Local Plans, the Judgment does not contradict our previous HRA practice and adherence to previous European and domestic case decisions that have defined the approach taken by HRA practitioners, conservation bodies and decision makers. Indeed, those following best practice have worked hard to prevent appropriate assessment at the screening stage and have challenged such practice where it has occurred.
- 3.9 The HRA supporting the Breckland Local Plan includes an appropriate assessment, that adequately provides a detailed scrutiny of potential impacts and mitigation needs. Additionally, the HRA seeks to assist Breckland Council with recommendations for strengthening policy and supporting text to better align with the terminology of the legislation, or to provide clarity and further assistance to project level HRAs. These recommendations are not mitigation that requires further assessment.
- 3.10 An example of a recommendation to assist project level HRA relates to the 'orange cells' within policy ENV 3 and its associated map that illustrates a range of zones in relation to the avian interest features of the Brecks SPA. Here there are a number of zones applied,

that result from extensive background HRA and evidence gathering work, and which are continually refined in light of new evidence.

- 3.11 The orange cells have been added as a result of collaborative work with the RSPB and Natural England, to better assist developers seeking to make a planning application in the vicinity of the SPA. Survey work undertaken by the RSPB has enabled the identification of land outside the SPA as orange cells that may potentially be supporting habitat for Stone Curlew. If development comes forward within these orange cells, the developer is made aware by their inclusion within the local plan that a project level HRA will need to be informed by up to date Stone Curlew survey work, and that mitigation may need to be provided. The inclusion of the orange cells within the Local Plan is not mitigation. It is a flag for applicants to enable them to understand upfront what their application requirements will be. Project level HRA will assess mitigation suitability, with an understanding that in principle, supporting habitat can be recreated.
- 3.12 To inform the hearing session for Mater 12, Breckland Council sought a legal advice note from their appointed Examination solicitor, which has been provided to the Examining Inspector and concurs with this advice note. The advice provides three main points; the Judgment does not call into question the lawfulness of the Breckland Local Plan HRA, as it includes an appropriate assessment, the HRA and Local Plan serves to provide clarity on where project level HRA is required, and that the Judgment confirms the need for project level appropriate assessment in relation to any project level mitigation proposal where supporting habitat for the SPA may be affected.

## 4. HRA next steps

- 4.1 The HRA will be updated to check any main modifications arising from Examination. This will include a re-screening of the plan and updates to the appropriate assessment as required. This final update to the HRA will provide a final HRA report to support the Breckland Local Plan upon adoption.
- 4.2 At the time of preparing this final update, Footprint Ecology will also amend the HRA report to include reference to the People Over Wind case, and highlight how the HRA is in conformity with the ruling. Additional explanation will be added, for completeness, in relation to the function of the orange cells, and any other recommendations made at screening stage that do not constitute mitigation, but rather have been made to improve alignment and terminology in relation to the legislation or give further assistance to project level HRA.

Rachel Hoskin, Footprint Ecology. 27<sup>th</sup> June 2018