

Notice of Meeting

Cabinet Member for Environment and Planning Decisions

**Date & time**

Monday, 10 October
2016 at 10.30 am

Place

Members Conference
Room, County Hall,
Kingston upon
Thames, KT1 2DN

Contact

Andrew Baird or Joss
Butler
Room 122, County Hall
Tel 020 8541 7609 or 020
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Chief Executive

David McNulty

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This meeting will be held in public. If you would like to attend and you have any special requirements, please contact Andrew Baird or Joss Butler on 020 8541 7609 or 020 8541 9702

Elected Members
Mr Mike Goodman

AGENDA

1 DECLARATIONS OF INTEREST

All Members present are required to declare, at this point in the meeting or as soon as possible thereafter

- (i) Any disclosable pecuniary interests and / or
- (ii) Other interests arising under the Code of Conduct in respect of any item(s) of business being considered at this meeting

NOTES:

- Members are reminded that they must not participate in any item where they have a disclosable pecuniary interest
- As well as an interest of the Member, this includes any interest, of which the Member is aware, that relates to the Member's spouse or civil partner (or any person with whom the Member is living as a spouse or civil partner)
- Members with a significant personal interest may participate in the discussion and vote on that matter unless that interest could be reasonably regarded as prejudicial.

2 PROCEDURAL ITEMS

a Members' Questions

The deadline for Members' questions is 12pm four working days before the meeting (04/10/2016).

b Public Questions

The deadline for public questions is seven days before the meeting (03/10/2016).

3 PETITIONS

Notice of Petition

Received from John Nolan, 555 signatures

There is a growing body of evidence of serious and long term consequences. HEALTH: Cancer, preterm birth, silicosis, workplace deaths, etc. Letter published in BMJ Copy and paste link: <http://goo.gl/t6l8Jd> The Medact Report Copy and Paste Link: http://www.medact.org/wp-content/uploads/2015/04/medact_fracking-report_WEB4.pdf ENVIRONMENT: Methane leakage (Greenhouse Gas), Polluted aquifers, Earthquakes, Radon gas in homes, crop contamination. FINANCIAL: Short term profit, housing market destabilisation, cost of clean up, medical costs etc. EVIDENCE: Findings to date from scientific, medical, and journalistic investigations combine to demonstrate that unconventional and invasive techniques including high volume hydraulic

fracturing poses significant threats to air, water, health, public safety, climate stability, seismic stability, community cohesion, and long term economic vitality. Copy and paste link: <http://goo.gl/bK4zXA> Evidence shows that regulations are simply not capable of preventing harm i.e. claims of safety are based on wishful thinking.

A response will be tabled at the meeting

4 BISLEY COMMON SANG - LEGAL AGREEMENT

(Pages 1
- 14)

A legal agreement is required in conjunction with the proposed residential development of the former Bisley Furniture Factory site, which adjoins Bisley Common, and which has been granted planning permission by Surrey Heath BC subject to the prior completion of the legal agreement, the purpose of the legal agreement being to create a suitable alternative natural greenspace (SANG) on Bisley Common.

5 EXCLUSION OF THE PUBLIC

Recommendation: That under Section 100(A) of the Local Government Act 1972, the public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information under the relevant paragraphs of Part 1 of Schedule 12A of the Act.

PART TWO – IN PRIVATE

6 BISLEY COMMON SANG - LEGAL AGREEMENT

(Pages
15 - 20)

This Part 2 report contains information which is exempt from Access to Information requirements by virtue of paragraph 3 – Information relating to the financial or business affairs of any particular person (including commercially sensitive information to the bidding companies).

The information contained in this report may not be published or circulated beyond this report.

Confidential: Not for publication under Paragraph 3

Information relating to the financial or business affairs of any particular person (including the authority holding that information)

**David McNulty
Chief Executive**

Published: Friday, 30 September 2016

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Thank you for your co-operation

SURREY COUNTY COUNCIL

CABINET MEMBER FOR ENVIRONMENT AND PLANNING

DATE: 10 OCTOBER 2016

LEAD OFFICER: TREVOR PUGH – STRATEGIC DIRECTOR FOR ENVIRONMENT AND INFRASTRUCTURE

SUBJECT: BISLEY COMMON SANG - LEGAL AGREEMENT



SUMMARY OF ISSUE:

A legal agreement is required in conjunction with the proposed residential development of the former Bisley Furniture Factory site, which adjoins Bisley Common, and which has been granted planning permission by Surrey Heath BC subject to the prior completion of the legal agreement, the purpose of the legal agreement being to create a suitable alternative natural greenspace (SANG) on Bisley Common.

A SANG is required as a result of the European Birds directive which seeks to protect three species of ground nesting birds occupying the heathland areas known as the Thames Basin Heaths Areas Special Protection Area. As a result all new major residential development within 5k of the Areas is required to provide a SANG as an alternative and attractive leisure use location, thereby reducing the need to use the Area which in turn reduces the impact on the habitats of the ground nesting birds.

Bisley Common is owned by the County Council and managed by the Surrey Wildlife Trust and the enhancements that will be carried out to the Common to create a SANG have been agreed with the developer by the County Council and the Trust and enshrined within a management plan, which formed part of the planning application.

The management plan has also been approved by Natural England who are the national body with responsibility for ensuring that all new SANGS meet their requirements and fulfil the aim of reducing the impact of new residential development upon the Thames Basin Heath Special Protection Area.

RECOMMENDATIONS:

The Cabinet Member for Environment and Planning is asked to authorise, after consulting with the Strategic Director for Environment and Infrastructure and the Deputy Leader of the Council,

1. the execution of the legal agreement for the creation of a suitable alternative natural greenspace (SANG) on Bisley Common in consideration of the payments set out in the Part 2 annexe to the report, and
2. the ring fencing of the landowner payment for the future maintenance of the Bisley SANG, until such time as the remaining capacity of the SANG is utilised by future developments, to ensure that the maintenance liability is underwritten until further developer payments are received.

REASON FOR RECOMMENDATIONS:

The potential benefits of SANGS are that they assist in the protection of the bird species which are considered to be at risk due to the ability of SANGS to influence the behaviour of visitors to the heathland areas known as the Thames Basin Heaths Areas Special Protection Area.

The use of County Council land as SANGS provides capital, maintenance and management improvements on the land, at no cost to the County Council through developer contributions and/or works in kind, at the same time as supporting those affected local authorities in achieving their housing targets.

Use of County Council land as SANGS also releases land for new development for which the County Council receive a landowner charge in recognition of the uplift in value that the SANGS bestow on the proposed development site, in accordance with the County Council SANGS Policy adopted on 18 December 2012.

The legal agreement is required to ensure the necessary enhancement works detailed in the management plan to create the SANG on Bisley Common are carried out by the developer and that a commuted sum for the 'in perpetuity' costs of maintaining the SANG, and a sum by way of a landowner payment are received from the developer before the residential units are occupied.

The creation of the SANG will increase the attractiveness of Bisley Common, for both local residents and the new occupiers of the adjoining residential development, as it will improve the routes across the Common for general exercise and dog walking, at the same time improving and protecting the natural habitats and biodiversity of the Common.

BACKGROUND:

1. The restrictions imposed upon new development to prevent likely significant effect upon the habitat of ground nesting bird species in the Thames Basin Heaths Special Protection Area has led to a regime of avoidance measures known as SANGS.
2. The legal and historic background of the Thames Basin Heath Special Protection Area, the European Directive and the habitat protection regime introduced to protect the ground nesting birds, is to be found at **Annex 1**.
3. A plan showing the extent of the Thames Basin Heath Special Protection Area, and the local planning authority areas affected, is to be found at **Annex 2**.
4. SANGS are areas of land that are required to be made available by developers in perpetuity for the leisure use of the occupiers of new developments and existing residents, the intention being to reduce visitor pressure, and therefore mitigate the impact upon the Thames Basin Heath Special Protection Area.
5. The lack of available SANGS in the areas of the County affected by the restrictions prevents new development, the intention of this report being to utilise County Council land as a SANG to assist the new development both

implement its planning permission and create a SANG, in turn enhancing the existing common land.

6. The need for a legal agreement has arisen from the proposed development of the former Bisley Furniture Factory, Queens Road, Bisley, the purpose of the legal agreement being to create a SANG on Bisley Common which adjoins the development site.
7. The planning application for the residential development has already been granted planning permission by Surrey Heath Borough Council but it is subject to the completion of the legal agreement and the execution of the enhancement works to create the SANG before the development is first occupied.
8. The developer has, in the legal agreement, agreed to -
 - fund and carry out the necessary enhancement works in accordance with the agreed management plan to create the SANG,
 - pay a commuted sum as a contribution towards the 'in perpetuity' costs of maintaining the SANG, and
 - pay a sum by way of a landowner payment for the uplift in value the SANG bestows on the new residential development.
9. Upon execution of the legal agreement the enhancement works to establish a SANG on Bisley Common will commence which will enable the SANG to be completed and to be available for use before the development is first occupied. The development only requires 12% of the capacity of the proposed SANG so once the enhancements are completed there will be available future capacity for other developments to utilise the SANG in support of their planning applications.
10. An earlier residential development at the former Fox Garage site, Guildford Road Bisley has also contributed towards the costs of creation of the SANG at Bisley Common and its future maintenance in order to mitigate the impact of its development upon the Thames Basin Heath Special Protection Area.
11. The use of land within the ownership of the County Council to create SANGS to support new residential development in the west of the County is recognised by the SANGS policy adopted by the County Council on 18 December 2012.
12. That policy introduced the concept of the landowner charge, a payment to the County Council for the uplift in value that the SANG bestows on the new residential development, the Bisley development being the first residential development to trigger the landowner charge since the policy was introduced.

CONSULTATION:

13. The Cabinet Member for Environment and Planning agreed the terms that had been negotiated on 13 November 2014, as required by the requirements of the SANGS Policy, the legal agreement reflecting the terms agreed.

14. The Strategic Director for Environment and Infrastructure and the Deputy Leader have been consulted and have agreed that Bisley Common should be provided as a SANG.
15. Additional consultation has been undertaken with the relevant colleagues in the countryside, property, legal and finance teams and any views or recommendations are contained in the report.

<p><u>RISK MANAGEMENT AND IMPLICATIONS: Financial and Value for Money Implications</u></p>

16. Under the European Habitats Directive if SANGS are not available to support new development in any 'zone of influence' then Natural England have no alternative but to lodge an objection to any application that it is considered will cause damage to the Thames Basin Heath Special Protection Area and it's protected species.
17. The lack of available SANGS land affects the ability of the affected local planning authorities to meet their housing targets and as a result affects their ability to support the growth agenda in Surrey.
18. The future availability of land for SANGS in Surrey is likely to be a finite resource, given the fact that each SANG has an agreed capacity of residential units that can be supported by it, and as a result the regime could have a damaging effect on the long term implications for growth in Surrey and the wider economy if additional SANGS cannot be established.
19. The enhancements being carried out by the developer, and the additional financial contributions being received from the development, will both establish and contribute towards the maintenance of the SANG in perpetuity and will ensure sites such as Bisley continue to provide an attractive public access location long into the future.
20. The specific requirements of each new SANG site determine the extent and design of the capital works required to bring the site up to the standards required by Natural England, the costs of the works being apportioned by the level of mitigation each residential development site requires.

Costs of managing the overall site

21. The costs of managing the overall site the overall site are based on work undertaken by the developer's consultants in 2014 and relate to the installation and maintenance/replacement of capital infrastructure (paths, benches, etc) in perpetuity (calculated over 80 years).
22. Bisley Common is currently managed by Surrey Wildlife Trust to a standard which E&I officers consider will be acceptable to Natural England, therefore Surrey County Council is not expected to incur any additional costs as the maintenance of the SANG enhancements will be undertaken by the Wildlife Trust on behalf of the County Council using the monies received from the current development, and any future developments who wish to utilise the available SANG.

Income due from the development

23. The development in question utilises 12% of the SANG's capacity and the payment due from the developer includes the uplift required by SCC policy.

The negotiated and agreed payment

24. The developer's proposed payment to Surrey County Council includes the costs of maintenance in perpetuity and the uplift payment and in addition the capital works to create the SANG will be undertaken by the developer at their expense.
25. As a result of the negotiated settlement and to avoid the need for the County Council to undertake any of the works themselves, funding for which would have needed to have been found and for which there was no current budget, the developer agreed to undertake all necessary works to construct the SANG themselves in accordance with the Management Plan and the requirements of the County Council and Natural England.
26. The construction of the SANG from day one is a major benefit to the County Council in that the whole SANG is being constructed and is available for use by other developments, who themselves will still have to contribute to the proportionate costs of setting up and maintaining the SANG and pay a landowner charge for the right to use the SANG.
27. The developer also indicated that the proposed SANG at Bisley was their preferred option, as the Common was adjacent to the proposed development, and that a proposed SANG that Surrey Heath were promoting would also have been available to utilize as an alternative to Bisley if a reasonable agreement could not be reached in respect of the total costs relating to the setting up and use of the SANG at Bisley.
28. In addition the Fox Garage development has also made a contribution towards the construction and future maintenance of the SANG.

Section 151 Officer Commentary

29. The financial implications of entering into the proposed agreement are explained in the Part 2 annexe.

Legal Implications – Monitoring Officer

30. The Thames Basin Heath Special Protection Area is designated under European Directive 79/409/EEC and Natural England has identified that net additional development up to 5km from the designated sites is likely to have a significant effect on the integrity of the Thames Basin Heath Special Protection Area and as a result the effect of new development in such areas is required to be mitigated; the SANGS regime being the strategy that has been implemented to mitigate the impacts of such development.
31. The provision of County Council land as SANGS assists both those local planning authorities affected by the SANGS regime and prospective developers, in mitigating the impacts of such development upon the Thames Basin Heath Special Protection Area.
32. On 18 December 2012, Cabinet took the decision which established the County Council policy for the provision of SANGS and the question of

whether future SANGS should be provided on individual County Council sites would continue to be considered and approved by the Cabinet Member for Transport and Environment (now the Cabinet Member for Environment and Planning), in consultation with the Strategic Director for Environment (now the Strategic Director for Environment and Infrastructure) and the Leader of the Council (or the Deputy Leader whilst the Leader is unable to act).

Equalities and Diversity

33. The report does not propose changes that would have adverse impacts on any of the designated groups under the equalities legislation and it is on this basis that it is not necessary to undertake an Equalities Impact Assessment.
34. Any impacts at the level of the individual SANGS should be beneficial by providing suitable recreational space close to new development for people to enjoy access to green space, etc.
35. The key issue from an equalities perspective is that accessibility issues are taken account of on an individual site-by-site basis and any new or upgraded access facilities on future SANGS.
36. The management plan for the Bisley SANG has taken account of such accessibility issues to ensure it complies with the County Council's least restrictive access principles.

Public Health implications

37. As the creation of the SANG will increase the attractiveness of Bisley Common, for both local residents and the new occupiers of the adjoining residential development, and it will improve the routes across the Common for general exercise, dog walking and other outdoor recreational uses which has the potential to improve the users fitness, health and general wellbeing.

Climate Change/Carbon emissions implications

38. The County Council attaches great importance to being environmentally aware and wishes to show leadership in cutting carbon emissions and tackling climate change and the development of SANGS potentially creates additional open space for recreational use near to new residential development, thus reducing unnecessary private vehicle journeys to the Thames Basin Heath Special Protection Area.

WHAT HAPPENS NEXT:

39. Upon execution of the legal agreement the enhancement works to establish a SANG on Bisley Common will be able to commence to enable the SANG to be completed and useable before the residential development is first occupied.

Contact Officers:

Paul Druce – Infrastructure Agreements & CIL Manager
Lisa Creaye-Griffin – Countryside Group Manger

Consulted:

Cllr Peter Martin – Deputy Leader

Cllr David Harmer – Chairman of the Economic Prosperity, Environment & Highways Board

Dominic Forbes – Planning and Development Group Manager

Joanna Mortimor – Principal Lawyer

Tony Orzieri – Finance Manager

John Edwards – Countryside Management and Biodiversity Manager

Keith Barker – Asset Strategy Manager

Annexes:

Annex 1 – Legal & Historic Background of the TBH SPA, the European Directive and the Habitats Regime.

Annex 2 – Plan showing the extent of the TBH SPA.

Annexe 3 – Part 2 Exempt information

Sources/background papers:

- County Council SANGS Policy - Cabinet Report – 18 December 2012
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ANNEX 1

THAMES BASIN HEATHS SPECIAL PROTECTION AREA SUITABLE ALTERNATIVE NATURAL GREEN SPACES

South East Plan Policy NRM6 “Thames Basin Heaths Special Protection Area” The South East Plan Regional Spatial Strategy for the South East of England. - GOSE May 2009

New development, which is likely to have a significant effect on the ecological integrity of Thames Basin Heaths Special Protection Area (SPA), will be required to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects. Such measures must be agreed with Natural England.

Priority should be given to directing development to those areas where potential adverse effects can be avoided without the need for mitigation measures. Where mitigation measures are required local planning authorities, as Competent Authorities, should work in partnership to clearly set out and deliver a consistent approach to mitigation, based on the following principles:

- i a zone of influence set at 5km linear distance from the SPA boundary will be established where measures must be taken to ensure that the integrity of the SPA is protected.
- ii within this zone of influence there will be a 400m “exclusion zone” where mitigation measures are unlikely to be capable of protecting the integrity of the SPA. In exceptional circumstances this may vary with the provision of evidence that demonstrates the extent of the area within which it is considered that mitigation measures will be capable of protecting the integrity of the SPA. These small locally determined zones will be set out in local development frameworks (LDFs) and SPA avoidance strategies and agreed with Natural England.
- iii where development is proposed outside the exclusion zone but within the zone of influence, mitigation measures will be delivered prior to occupation and in perpetuity. Measures may be based on a combination of access management, and the provision of Suitable Alternative Natural Green Space (SANGS).

Where mitigation takes the form of provision of SANG the following standards and arrangements will apply:

- iv a minimum of 8 hectares of SANGS land (after discounting to account for current access and capacity) should be provided per 1,000 new occupants.
- v developments of fewer than 10 dwellings should not be required to be within a specified distance of SANGS land provided it is ensured that a sufficient quantity of SANGS land to cater for the consequent increase in residents prior to occupation of the dwellings.
- vi access management measures will be provided strategically to ensure that adverse impacts on the SPA are avoided and that SANG functions effectively.
- vii authorities should co-operate and work jointly to implement mitigation measures. These may include, inter alia, assistance to those authorities with

insufficient SANG land within their own boundaries, cooperation on access management and joint development plan documents.

- viii relevant parties will co-operate with Natural England and landowners and stakeholders in monitoring the effectiveness of avoidance and mitigation measures and monitoring visitor pressure on the SPA and review/amend the approach set out in this policy as necessary.
- ix local authorities will collect developer contributions towards mitigation measures, including the provision of SANG land joint contributions to the funding of access management and monitoring the effects of mitigation measures across the SPA.
- x large developments may be expected to provide bespoke mitigation that provides a combination of benefits including SANG, biodiversity enhancement, green infrastructure and, potentially, new recreational facilities.

Where further evidence demonstrates that the integrity of the SPA can be protected using different linear thresholds or with alternative mitigation measures (including standards of SANG provision different to those set out in this policy) these must be agreed with Natural England.

The mechanism for this policy is set out in the TBH Delivery Framework, by the TBH Joint Strategic Partnership and partners and stakeholders, the principles of which should be incorporated into local authorities LDF's.

Supporting Text

The Thames Basin Heaths Special Protection Area (SPA) is designated under European Directive 79/409/EEC because of its populations of three heathland species of birds – Dartford Warbler, Nightjar and Woodlark. This designation covers parts of 15 local authority areas and three counties and is likely to have a major impact upon the potential for development within these areas and others adjoining it.

Natural England has identified that net additional housing development (residential institutions and dwellings) up to 5km from the designated sites is likely to have a significant effect (alone or in combination with other plans or projects) on the integrity of the SPA. Initial advice from Natural England is that an exclusion zone of 400 metre linear distance from the SPA is appropriate. The district level housing allocations for the affected sub-regions presuppose that a workable approach to dealing with the effects of development on the SPA can be found. Local authorities that are affected by the designation should deal, in their Local Development Documents, with the issue of the effects of development on the SPA, and put forward a policy framework to protect the SPA whilst meeting development requirements. The focus of this policy is on avoidance and mitigation of the effects of residential development. This does not obviate the need for possible Habitats Regulation Assessment on other forms of development.

Nor do the provisions of this policy exclude the possibility that some residential schemes (and, in particular relatively large schemes) either within or outside the 5km zone might require assessment under the Habitats Regulations due to a likely significant effect, alone or in combination with other plans or projects, and subject to advice from Natural England.

Applications for all non-residential development will need to be subject to Habitats Regulation Assessment where they are likely to have significant adverse impact on the Thames Basin Heaths SPA.

To assist local authorities in the preparation of Local Development Documents, and to enable development to come forward in a timely and efficient manner, Policy NRM6 sets out the extent of mitigation measures required, based on current evidence. The evidence available indicates that effective mitigation measures should comprise a combination of providing suitable areas for recreational use by residents to buffer the SPA and actions on the SPA to manage access and encourage use of alternative sites. Such measures must be operational prior to the occupation of new developments to ensure that the interests of the SPA are not damaged. Local Authorities and Natural England will need to co-operate so that the effect of mitigation measures can be monitored across the SPA.

Where developers propose a bespoke solution, this will be assessed on its own merits under the Habitats Regulations. The SANG requirement for bespoke solutions may vary according to the size and proximity of development to the SPA; early consultation with Natural England and the local planning authority is encouraged.

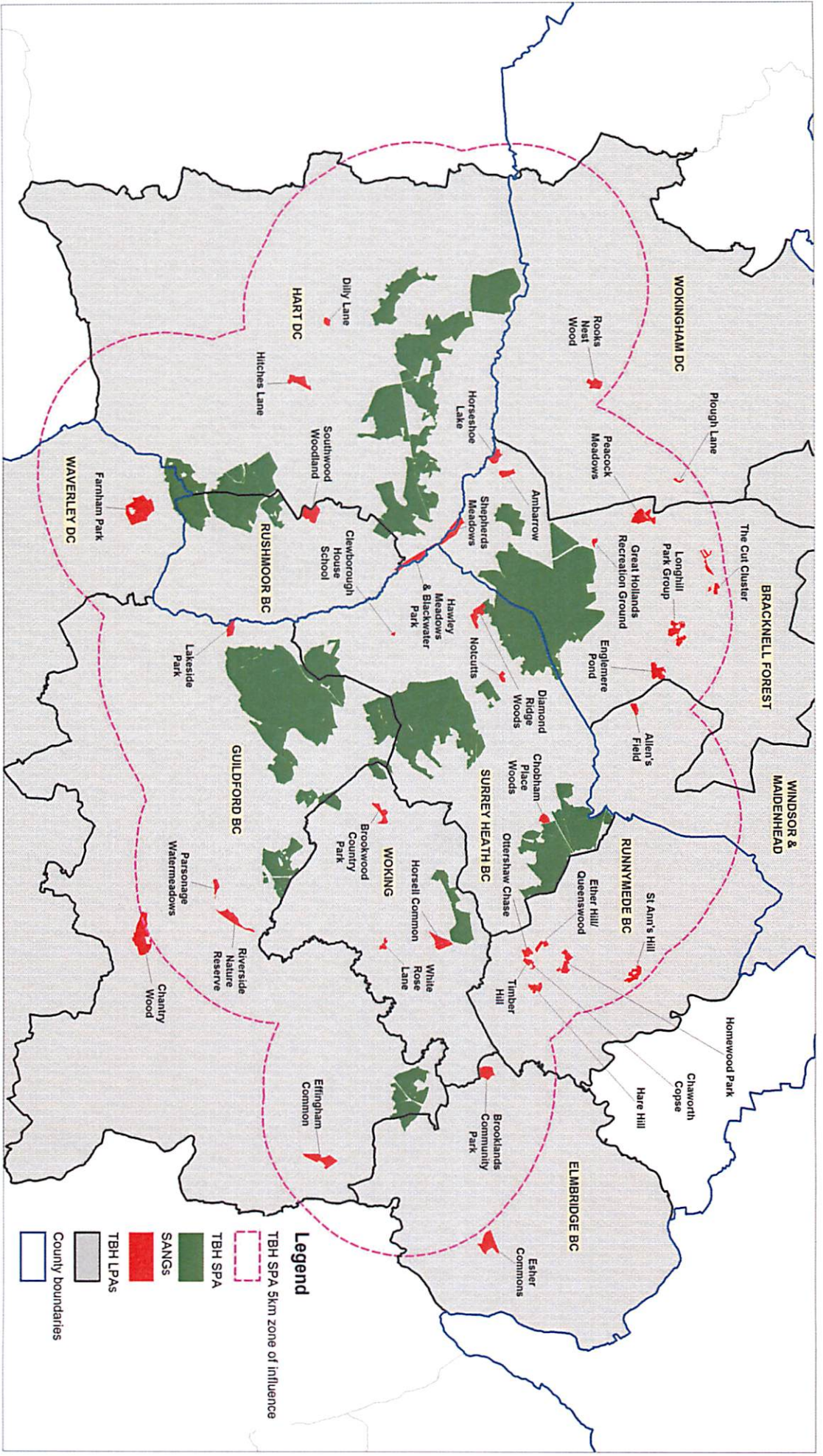
Should it become apparent during the lifetime of this Plan that alternative arrangements may need to apply these must be brought forward with the agreement of Natural England.

One route would be the publication of supplementary guidance to this Plan by Natural England to set out alternative arrangements or further details.

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Thames Basin Heaths SANGS as at September 2012

Site boundaries are indicative only. Definitive site boundaries are held by the relevant local authority



Scale 1:150000 Map 1 of 1
 Drawn by: Patrick Mckernan
 Date: 25/9/2012
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