

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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