

Nick Moys
Breckland Council
By email only

17th August 2015

Dear Mr Moys,

OUTLINE PROPOSAL BY TALAVERA ESTATES LTD FOR RELIEF ROAD, 1650 DWELLINGS AND VARIOUS ANCILLARY DEVELOPMENTS ON LAND SOUTH OF WEETING AND WEST OF BRANDON, BRECKLAND AND FOREST HEATH COUNCIL DISTRICTS (PLANNING REFERENCES 3PL/2015/0656/O AND DC/15/1072/OUT RESPECTIVELY).

Thank you for consulting the RSPB on the above application for a major housing and road development on land at Brandon and Weeting (the Proposal). Given that this application is also being considered by Forest Heath District Council, we are sending our comments to them at the same time.

The RSPB has very serious concerns regarding the possible adverse effects the Proposal will have on the Breckland Special Protection Area (SPA) and associated Sites of Special Scientific Interest (SSSIs) and their species and therefore **objects** strongly to the proposal.

Based on the information provided by the applicant, the RSPB is not satisfied that the predicted impacts would be avoided or mitigated and therefore the SPA and SSSIs and their species would be permanently effected. In addition, a local planning policy consultation launched immediately following the submission of the Proposal¹ illustrates that there is no need for housing of this scale in this location.

Our reasons for objecting are outlined below and described in detail in the attached annex, including recommendations about what further information is required from the applicant before any decision could be made on the Proposal.

Nature conservation importance of Breckland SPA and associated SSSIs

The Breckland SPA is designated for its European important breeding populations of three ground nesting bird species: stone-curlew, woodlark and nightjar. The three bird features of the SPA are all listed on Annex I of the EU Birds Directive² as they are considered rare and threatened at a European level. The designation, protection and management of SPAs and the duty to restore SPA populations to a favourable conservation status are key measures to achieve the Birds Directive objectives for Annex I species.

All three SPA species are listed on the Birds of Conservation Concern list³ due to the significant declines their populations have suffered nationally in recent years. Stone curlew numbers are amber listed in the BoCC report as they are recovering from a historic low in the mid-1980s. However, this recovery is entirely due to the concerted efforts of landowners working alongside conservation bodies. Without this direct intervention, stone curlew population trends would return to long-term decline⁴. Woodlark and nightjar populations have also suffered historic declines, predominantly due to declines in their breeding range due

¹ Forest Heath District Council public consultation on the Further Issues and Options stages of the Core Strategy Single Issue Review (housing policy CS7)

² Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds (codified version).

³ Eaton MA, Brown AF, Noble DG, Musgrove AJ, Hearn R, Aebischer NJ, Gibbons DW, Evans A and Gregory RD (2009) Birds of Conservation Concern 3: the population status of birds in the United Kingdom, Channel Islands and the Isle of Man. *British Birds* 102, pp296-341.

⁴ Demographic Analysis of the Impact of Conservation Action on Stone Curlew Populations, Alison Johnston, PhD Thesis, Cambridge University, 2009.

to habitat loss, and are amber and red listed respectively on the latest BoCC report. Restoration of these species' populations is still the main conservation driver in the Breckland SPA and is reflected in the SPA's conservation objectives, set out in detail in the annex to this letter.

No supplementary advice to the conservation objectives yet exists for this SPA. However, for stone curlew, the objective will be to restore the population to a favourable level, above its current population level, as the species does not currently occupy all potentially suitable habitat within the SPA.

This is relevant to the Proposal as it affects the way the Habitats Regulations⁵ Assessment to be undertaken by the Council should approach assessing the long-term impacts on the SPA and its qualifying features. As we set out below, we consider the information provided by the applicant is wholly inadequate in this regard and that it underestimates the likely impacts.

The SPA is also underpinned by a large number of SSSIs which, among other things, protect these three bird species due to their presence in nationally significant numbers. Those SSSIs include:

- a series of semi-natural grass-heath SSSIs which, in addition to their breeding bird interests, are notified for their habitats as well as their botanical and invertebrate communities and which underpin the Breckland Special Area of Conservation;
- The Breckland Farmland SSSI notified for its breeding stone-curlews; and
- The Breckland Forest SSSI notified for its breeding nightjars and woodlarks.

Therefore, in addition to considering the impacts on the SPA, the Council will also need to assess the impacts on the individual SSSIs affected by the Proposal⁶. We defer to Natural England's advice in respect of the impacts on the non-avian features of the affected SSSIs.

Predicted Impacts

The Proposal identifies significant impacts on the SPA and SSSI breeding populations of stone curlew, woodlark and nightjar. It predicts a permanent loss of 4 nesting pairs of stone curlew, 3 within the SPA and associated SSSIs, including on semi-natural habitats, and 1 immediately adjacent⁷. It also predicts damage to at least 36ha of high quality woodlark and nightjar SPA and SSSI habitat within 400m of the Proposal⁸. We therefore agree with the applicant that these impacts constitute a *Likely Significant Effect* under the Habitats Regulations and therefore an Appropriate Assessment is required, along with detailed consideration of the SSSIs and its species within the applicant's environmental statement.

Information provided for Appropriate Assessment

As the Council is aware the Proposal can only receive consent if it meets, among other things, the tests set out in the Habitats Regulations. We consider these issues in more detail in the annex to this letter. Following the step by step requirements set out in regulation 61, Habitats Regulations, it is clear that the Proposal is not connected with the SPA's management for nature conservation, that there will be a Likely Significant Effect on the SPA and its species and it is our view that there will be remaining adverse effects on the SPA and its species, due to the mitigation measures and conditions suggested by the applicant either not being sufficient or inappropriate to address the Proposal's adverse effects and compensation measures should be proposed.

In addition it is our view that alternative solutions which would avoid the adverse effects exist, but sufficient information has not been provided by the applicant for the Council to be able to fully consider this further requirement. The applicant has also not provided any information as to why there are imperative reasons of overriding public interest for its Proposal and therefore based on the current information submitted, it is our view that this proposal cannot pass the Habitats Regulation requirements and be granted consent.

Underestimation of likely impacts

- **Stone-curlew:** the impact on stone curlew is assessed solely against recent nesting records rather than the conservation objectives of the SPA and therefore fails to account for the obligations to restore the SPA to its conservation potential, thereby underestimating the potential impact. In the absence of the Supplementary Advice to the SPA conservation objectives, the RSPB recommends that the relevant parties e.g. the Councils, Natural England, the RSPB and the applicant, seek to

⁵ Conservation of Habitats and Species Regulations 2010 (as amended)

⁶ As required by section 28I, Wildlife and Countryside Act 1981 (as amended)

⁷ Section 5.3, Environmental Statement Volume 2, Report to inform Habitat Regulations Assessment, URS, May 2015

⁸ Section 5.4, pp 26-7, Environmental Statement Volume 2, Report to inform Habitat Regulations Assessment, URS, May 2015

agree an appropriate approach to this issue. With reference to grass-heath components of the SPA, the RSPB suggests the adoption of a density of one pair per 16ha as a proportionate measure of the potential population this semi-natural habitat is capable of supporting, while noting that some individual sites will be capable of supporting higher densities.

- **Stone-curlew:** the banding method for predicting impacts on stone curlew needs to be refined to account for the different potential nesting densities of farmland and semi-natural heathland habitats. Heathland habitats within 1500m of the Proposal have the potential to hold at around 4-5 pairs, but are currently supporting fewer pairs due to habitat condition.
- **Stone-curlew:** the impacts on stone curlew should be assessed to a distance of 2000m as a precautionary approach, reflecting the most recent scientific advice⁹
- **Stone-curlew:** the application fails to address potential impacts from non-trunk roads within 500m of the SPA as set out in our scoping consultation response¹⁰.
- **Nightjar/woodlark:** the potential impacts on woodlark and nightjar nesting habitat within 400m of the Proposal have not been adequately assessed or fully described; and
- **Nightjar/woodlark:** the proposed mitigation measures for all the impact including the wider indirect visitor pressure impacts are not described in sufficient detail (this is discussed below).

Therefore, whilst the assessment is correct to identify that adverse effects will occur on the Breckland SPA and its species from this Proposal, it fails to properly describe the full impacts expected. We strongly recommend that the Council requires further information to be provided by the applicant before any determination is made. We would welcome being consulted on any further information provided.

Proposed Mitigation

We are very concerned at the proposed mitigation measures presented in the application¹¹ in response to the identification of adverse effects on the Breckland SPA and its species, which proposes providing alternative habitats elsewhere in the SPA to offset the predicted effects. Based on the current information available we do not think that these measures would mitigate for the predicted Proposal effects and adverse effects on existing SPA habitats and species would clearly remain. This would include the permanent loss of SPA species' functioning habitat and habitat that should be restored to such function, through displacement from the Proposal.

Therefore mitigation measures are not appropriate and compensation measures would be required subject to meeting the other tests of the Habitats Regulations¹². Any loss from within an SPA needs to be compensated for by the creation of new fully functioning habitat to ensure the overall coherence of the Natura 2000 network is maintained. In addition, as you are aware, compensation measures are only a permissible solution if all the preceding tests have been passed, including consideration of whether there are any alternative solutions to the Proposal (which has not been addressed satisfactorily) and whether there are imperative reasons of over-riding public interest. Notwithstanding our wider concerns regarding the proposed mitigation, the Proposal presents only a limited and incomplete description of how it would deliver it and so would need to be presented in full before consideration.

Lack of consideration of alternative solutions

It appears that the applicant has not addressed the issue of alternative solutions¹³ as they consider the Proposal will not have a residual adverse effect on the SPA. For the avoidance of doubt, we set out our views on this issue here.

Consideration of alternative solutions is an important part of the HRA process. The current Strategic Housing Land Availability Assessment¹⁴ (SHLAA) for Forest Heath district demonstrates at a strategic level that there is sufficient land elsewhere in the District to meet its housing needs without building on any land where adverse effects on the Breckland SPA and its species may occur, including explicitly rejecting the Proposal site. The Regulations state that if any alternative solutions are available which would result in a

⁹ Clarke, R. and Liley, D. (2013). Further assessments of the relationship between buildings and stone curlew distribution. Unpublished report by Footprint Ecology for Breckland Council. Quote taken from section 9.58, p96.

¹⁰ RSPB response to EIA Scoping Consultation for West Brandon proposal, 29/10/2014, page 2, bullet point 5.

¹¹ Environmental Statement Volume 1, Chapter 11 – Ecology, para 11.247.

¹² The recent ECJ judgment in the *Briels* case (*Briels v Minister van Infrastructuur en Milieu of the Netherlands C-521/12*) clearly sets out that provision of alternative habitat that does not **prevent** the original damage can only be considered as compensation, not mitigation.

¹³ Environmental Statement, Volume 1, Chapter 4, paragraph 4.6 – '*no other locations were considered by the Applicant*'.

¹⁴ West Suffolk Strategic Housing Land Availability Assessment 2015. Accessed online, http://www.westsuffolk.gov.uk/planning/Planning_Policies/upload/15-08-04-FINAL-SHLAA-AUGUST-2015-web-2.pdf, 11/08/2015.

lesser effect or avoid the adverse effect completely, then the current proposal must not be granted consent. It is clear from the SHLAA that such alternative solutions exist. As there are no imperative reasons of overriding public interest associated with this proposal, it is clear that permission must be refused.

Planning Policy

The latest stage of the Single Issue Housing Review for Forest Heath's Core Strategy is currently in consultation. The consultation identifies four options, none of which allow for more than 55 new dwellings in the town in the plan period to 2031. The site of the Proposal is not included. This can be explained by reference to the accompanying SHLAA which identifies sufficient land away from the SPA and its protection buffers to meet the District's housing needs over the plan period. The development site was considered by the SHLAA and the Council decided not to take it forward due to its impacts on the Breckland SPA (see site B/17 in Appendix 1 and map on page 163 of the SHLAA).

It is the RSPB's view that the Proposal appears to be premature and prejudices the local plan for Forest Heath. It is our view that proposals on this scale, especially ones that are currently unsupported by planning policy, should first be considered at the strategic scale alongside all other housing options for the District, i.e. at the Single Issue Review, rather than attempting to pre-empt strategic housing allocations for the District. Consideration of alternatives is an important step in that strategic scale consideration and ultimate housing allocations. This is discussed in more detail in the annex to this letter.

Conclusions

We have considered the Proposal in detail along with the requirements of the Habitats Regulations. It is clear that the Proposal will have adverse effects on the integrity of the Breckland SPA and its species and that it fails to pass the tests that would allow consent to be granted. The mitigation measures proposed are not in our view mitigation and in any event on the basis of the information available are not fit for purpose,

Our view on the basis of information presented is there will be a residual adverse effect on the SPA and its species and likely damage to the SSSIs and their features and therefore consent should be refused. Although not an argument raised by the applicant due to the timing of the application, we do wish to highlight that, based on the Forest Heath's SHLAA and Single Issue Housing Review there appear to be feasible alternative solutions to the Proposal that may provide sufficient supply for the District's housing needs. Therefore even if the applicant did want to include information and arguments concerning the lack of alternative solutions and IROPI for the Proposals it is our view that those tests would also not be met.

For these reasons, in order to safeguard the Breckland SPA and its species from permanent irreversible damage, we strongly **object** to this proposal.

We trust that our comments are helpful and would welcome a discussion with you. In the meantime please do not hesitate to contact me if you have any questions or require any further information from me at this stage.

Yours sincerely,



Mike Jones
Conservation Officer RSPB Eastern England

Cc Chris Rand, Forest Heath District Council
Francesca Shapland, Planning & Conservation Advisor, Natural England
John Hiskett, Senior Conservation Officer, Norfolk Wildlife Trust
James Meyer, Conservation Planner, Suffolk Wildlife Trust

**ANNEX TO RSPB COMMENTS ON BRANDON RELIEF ROAD AND HOUSING PROPOSAL (REFS
3PL/2015/0655/O AND DC/15/1072/OUT)**

1 Nature Conservation Importance of the Breckland SPA and associated SSSIs

The Breckland SPA is designated for its European important breeding populations of three ground nesting bird species, stone-curlew, woodlark and nightjar. Stone-curlews nest in open ground and short vegetation, on the grass-heaths and arable habitats. Woodlark and nightjar are predominantly associated with the habitats created immediately after felling of conifer plantations.

The SPA is underpinned by a large number of Sites of Special Scientific Interest, which (in addition to a large range of other habitats and species associated with the Brecks) protect these three bird species due to their presence in nationally significant numbers.

Whilst these SSSIs are too numerous to list here, those in the vicinity of the Proposal include:

- Weeting Heath SSSI (also a National Nature Reserve), and Wangford Warren and Carr SSSI, both of which are semi-natural grass-heath SSSIs which, in addition to their breeding bird interests, are notified for their habitats as well as their botanical and invertebrate communities and which underpin the Breckland Special Area of Conservation;
- The Breckland Farmland SSSI notified for its breeding stone-curlews; and
- The Breckland Forest SSSI notified for its breeding nightjars and woodlarks.

The three bird features of the SPA are all listed on Annex I of the EU Birds Directive¹⁵ as they are considered rare and threatened at a European level. The designation, protection and management of SPAs and the duty to restore SPA populations to a favourable conservation status are key measures to achieve the Birds Directive objectives for Annex I species, as set out in the SPA's conservation objectives (July 2014)

With regard to the SPA and the individual species and/or assemblage of species for which the site has been classified (the 'Qualifying Features' listed below), and subject to natural change:

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring:

- *The extent and distribution of the habitats of the qualifying features*
- *The structure and function of the habitats of the qualifying features*
- *The supporting processes on which the habitats of the qualifying features rely*
- *The population of each of the qualifying features, and*
- *The distribution of the qualifying features within the site.*

This document should be read in conjunction with the accompanying *Supplementary Advice* document, which provides more detailed advice and information to enable the application and achievement of the Objectives set out above.

Qualifying Features:

A133 *Burhinus oedicanus*; Stone-curlew (Breeding)

A224 *Caprimulgus europaeus*; European nightjar (Breeding)

A246 *Lullula arborea*; Woodlark (Breeding)

No supplementary advice to the conservation objectives yet exists for this SPA.

In the UK, these species' populations are still in recovery and the Breckland SPA is one of the most important SPAs in the UK for all three species, due to significant conservation efforts by a range of landowners, local authorities, statutory and non-statutory bodies over the last 30 years.

With specific reference to stone-curlew, it is important to note that restoration of this species is still the main conservation driver in the Breckland SPA as the species does not currently occupy all potentially suitable habitat within the SPA. In addition to increasing the population per se, this will

¹⁵ Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds (codified version).

include ensuring that more of the breeding population is located on semi-natural or other safe habitats (e.g. fallow plots), including those sites which do not currently support stone curlews, such as Wangford Warren and Carr SSSI. It will also probably need to include productivity level targets designed to achieve the favourable population level.

This is relevant to the Proposal as it affects the way the Habitats Regulations Assessment to be undertaken by the Council should approach assessing the long-term impacts on the SPA and its qualifying features. As we set out below, we consider the information provided by the applicant is wholly inadequate in this regard and that it underestimates the likely impacts.

In addition to considering the impacts on the SPA, the Council will also need to assess the impacts on the individual SSSIs affected by the Proposal. We defer to Natural England's advice in respect of the impacts on the non-avian features of the affected SSSIs.

2 Information provided for Appropriate Assessment

The information provided by the applicant for the Council's purpose of carrying out an Appropriate Assessment is insufficient for this purpose. We have identified numerous omissions from the assessment which underestimate the likely impacts of the Proposal, as well as wider concerns regarding the proposed 'mitigation', which given the Proposal's potential impacts cannot be regarded as such.

Underestimation of likely impacts – stone-curlew

- The Proposal attempts to assess the impacts on the SPA by estimating the impacts based on most recent average nesting records. We are seriously concerned at the scale of the impacts predicted using this method, but are equally concerned at the method used as it fails to account for the obligations to restore the SPA to its conservation potential, thereby underestimating the potential impact. This is important as the impact on the SPA from the Proposal would be in perpetuity. Notwithstanding this, the applicant has also failed to consider that the recent mean is unrepresentative given recent dramatic declines in response to poor weather conditions during recent breeding seasons. It is reasonable to expect that when Natural England produce numeric conservation objectives for the SPA these will reflect the need to restore the stone curlew population to the carrying capacity of the SPA habitats. In the absence of the Supplementary Advice to the SPA conservation objectives, the RSPB recommends that the relevant parties e.g. the Councils, Natural England, the RSPB and the applicant, seek to agree an appropriate approach to this issue. With reference to grass-heath components of the SPA, the RSPB suggests the adoption of a density of one pair per 16ha as a proportionate measure of the potential population this semi-natural habitat is capable of supporting, while noting that some individual sites will be capable of supporting higher densities.
- The banding method for estimating impacts from the Proposal on stone curlew nesting habitat also fails to differentiate between the different habitat types present. It is not clear how accurately this method reflects the different types of nesting habitat and their potential for damage from the Proposal. For heathland habitats in the Brecks it is widely agreed that when the habitat is in good condition, stone curlews will nest at a density of 1 pair per 16ha. There are two areas of heathland SPA within 1500m of the Proposal – we estimate that approximately 61ha of Weeting Heath SSSI and NNR is in proximity, which puts a potential of at least 3 pairs at risk there should the site reach its full potential, and approximately 35ha of Wangford Warren and Carr SSSI is in proximity, putting up to 2 pairs at risk should that site be restored to its full potential. In addition, approximately 215ha of SPA farmland habitat is also within 1500m of the Proposal. We therefore recommend that Table 3 of the HRA be revised to reflect the restoration potential of the various sites and habitat types within the SPA in the distance bands – e.g. Wangford Warren and Carr SSSI, Weeting Heath SSSI and Breckland Farmland SSSI. See also comment below with respect to the implications of the recent Footprint Ecology report on the appropriate distance over which to assess impacts.
- The most recent Footprint Ecology report¹⁶ to Breckland Council on the impacts of the built environment on stone curlew nesting notes that in many cases the adverse effect on nesting density has been recorded as statistically significant up to 2000m from the source and

¹⁶ Clarke, R. and Liley, D. (2013). Further assessments of the relationship between buildings and stone curlew distribution. Unpublished report by Footprint Ecology for Breckland Council. Quote taken from section 9.58, p96.

indicates that 'the ... Council may need to undertake individual Habitats Regulations assessment on large developments up to 2000m from the SPA'. We recommend that any assessment of the likely impacts on the SPA for a proposal this scale takes into account SPA habitat up to 2000m distant as a precautionary measure.

- We noted in our most recent scoping consultation response that non-trunk roads have a proven negative impact on stone-curlew nesting density at a distance up to 500m. As the proposed road falls within 500m of the SPA, we would expect this impact to have been addressed in the EIA, but can find no evidence of this. Therefore the Proposal underestimates the potential adverse effect on the integrity of the Breckland SPA. We recommend that further assessment is provided by the applicant to address this omission.

Underestimation of likely impacts – nightjar and woodlark

- The application has not satisfactorily addressed or fully described the impacts from housing within 400m of the forest elements of the SPA. It recognises that there will be a suite of effects arising from proximity to human habitation, but has not been able to evaluate the number of nesting pairs of woodlark and nightjar that would be affected. In the absence of more detailed information, we support the precautionary approach taken in the ES which predicts the impacts based on a presumption of complete exclusion.
- We have serious concerns regarding the recreational survey and impact assessment in the HRA. The methods are flawed, and are unable to provide an accurate description of which parts of the SPA people visit, or what existing visitor pressures occur at these sites in order to assess baseline conditions and cumulative impacts. We set out the various flaws and our recommendations for further work below:
 - It is unclear where the visitor survey was undertaken and if this best reflects the individuals that would visit the SPA or undertake the kinds of access that are relevant. It appears to have been undertaken in Brandon and Weeting rather than areas of the SPA visited (see below for recommended approach).
 - The survey timings appeared to be weighted towards the weekend. If the surveys were undertaken in Brandon and Weeting this would emphasise people who are shopping and is therefore not best suited to sample people who visit the countryside.
 - The survey timings, in December, do not necessarily reflect the visitor patterns in spring and summer, when the SPA nesting species are present.
 - The results do not identify accurately where people visit. The map provided to interviewees is not provided in the HRA, and it is not clear if the term Special Protection Area was familiar to the general public sufficiently to correctly identify areas visited in the SPA.
 - Of the three main locations referred to in question 3, it should be noted that Brandon Country Park is outside the SPA.
 - We recommend a more suitable approach would be to conduct on-site interviews and counts of access at a selection of locations at Brandon, i.e. interviewing people at SPA destinations, so that all access points (on foot and parking locations etc) are identified and the baseline visitor pressure and cumulative pressure with the Proposal can be identified.
- It is unclear how the applicant intends to address the displacement of nightjar from 21.75ha of SPA forest habitat within 400m of the Proposal. A basic description is given, setting out the possible provision of an area elsewhere in the SPA of forest on a 22 year rotation, but this information is incomplete and appears to have been deferred to an Addendum to the Proposal. Notwithstanding our legal concerns regarding these "mitigation" proposals (see below), without any further information to inform the Council it is not possible to safely conclude that this work could be completed. If an Addendum is in preparation, then we recommend that it addresses the following concerns:
 - The need to assess the impacts of using existing SPA forestry land to provide "mitigation" when that land is already required to meet the existing SPA conservation objectives. Any use of SPA land for this purpose would remove it from the wider crop rotation which is necessary for SPA management and would therefore need to be subject to its own HRA.
 - The area proposed, but as yet unidentified, appears to be based on a like for like area basis. However, the HRA notes that recent nesting records show the area within 400m of the Proposal has had higher than average nightjar nesting densities (0.17 birds/ha

compared to the average maximum density of 0.078/ha found by a UEA study¹⁷). It should not be presumed that any new land can replicate this higher nesting density. We therefore recommend that the full details on this are provided by the applicant before it can be considered, including an evaluation of why the area within 400m of the Proposal currently holds a higher than average nesting density.

The Proposal has not yet provided sufficient evidence that it is able to comply with the Access and Bird Monitoring and Implementation Framework set out in Breckland planning policy¹⁸. Therefore, whilst the assessment is correct to identify that an adverse effect would occur on the Breckland SPA from this Proposal, it fails to properly describe the full impacts expected.

Proposed Mitigation

Having identified a loss of at least 3 nesting pairs of stone curlew from the SPA, the applicant proposes providing new nesting habitat elsewhere in the SPA as mitigation. In addition, the applicant suggests that Natural England has advised through their Discretionary Advice Service that mitigation for impacts on SPA woodlark and nightjar habitat within 400m of the Proposal can be provided through acquisition of existing SPA forestry land and modifying the felling rotation in order to provide more frequent clearfell habitat as part of the wider forest rotation¹⁹.

We are very concerned at the proposed mitigation measures presented in response to the identification of adverse effects on the Breckland SPA and its species. Based on the current information available we do not think that these measures would mitigate for the predicted Proposal effects and adverse effects on existing SPA habitats and species would clearly remain. This would include the permanent loss of SPA species' functioning habitat and habitat that should be restored to such function, through displacement.

Therefore mitigation measures are not appropriate and compensation measures would be required subject to meeting the other tests of the Habitats Regulations. The recent ECJ judgment in the *Briels* case (*Briels v Minister van Infrastructuur en Milieu of the Netherlands C-521/12*) clearly sets out that provision of alternative habitat that does not **prevent** the original damage can only be considered as compensation, not mitigation. Any loss from within an SPA needs to be compensated for by the creation of new fully functioning habitat to ensure the overall coherence of the Natura 2000 network is maintained.

Instead the suggested mitigation measures will use even more of the functional habitat within the SPA. We consider the impact of this measure on those existing SPA features should be assessed.

In addition, as you are aware, compensation measures are only a permissible solution if all the preceding tests have been passed, including consideration of whether there are any alternative solutions to the Proposal (which has not been addressed satisfactorily) and whether there are imperative reasons of overriding public interest.

Lack of consideration of alternative solutions

It appears that the applicant has not addressed the issue of alternative solutions as they consider the Proposal will not have an adverse effect on the SPA. For the avoidance of doubt, we set out our views on this issue here.

Consideration of alternative solutions is an important part of the HRA process. The current SHLAA for Forest Heath district demonstrates at a strategic level that there is sufficient land elsewhere in the District to meet its housing needs without building on any land where adverse effects on the Breckland SPA and its species may occur, including explicitly rejecting the Proposal site. The Regulations state that if any alternative solutions are available which would result in a lesser effect or avoid the adverse effect completely, then the current Proposal must not be granted consent. It is clear from the SHLAA that such alternative solutions exist. As there are no imperative reasons of overriding public interest associated with this Proposal, it is clear that permission must be refused.

¹⁷ See section 5.4 of the applicant's Report to inform Habitats Regulations Assessment (May 2015).

¹⁸ Breckland Site Specific Policies and Proposals DPD, adopted January 2012. See Table 5.7, p60 – Access and Bird Monitoring and Implementation Framework.

¹⁹ Section 5.4, pp 26-7, Environmental Statement Volume 2, Report to inform Habitat Regulations Assessment, URS, May 2015.

3. Legal matters

The Council will need to ensure that the Proposal meets the tests set out in the Habitats Regulations²⁰ before it can consider granting consent: Below we set out the sequential tests and summarise the RSPB's current view based on the information available.

- *Is the proposal directly connected with or necessary to site management for nature conservation (Reg 61(1)(b)).* The Proposal does not meet either of these criteria.
- *Is the proposal likely to have a significant effect on the European site, alone or in combination with other plans? (Reg 61(1)(a)).* We agree with the applicant that the Proposal is likely to have a significant effect on the features of the Breckland SPA.
- *Can it be ascertained that the proposal will not adversely affect the integrity of the site? (Reg 61(5)).* The applicant states that the displacement impacts arising from Proposal would result in the de facto permanent loss of at least 3 breeding pairs of stone curlew, permanent loss of woodlark and nightjar habitat. The applicant accepts that, unmitigated, these represent an adverse effect on the integrity of the SPA and its species. For reasons set out above, the RSPB considers these impacts underestimate the adverse effects on the SPA and its species.
- *Would compliance with conditions or other restrictions, such as a planning obligation, enable it to be ascertained that the proposal would not adversely affect the integrity of the site? (Reg 61(6)).* Based on the current information available the predicted Proposal effects and adverse effects on existing SPA habitats and species would clearly remain as the proposed "mitigation" measures would not address the impacts in situ and therefore cannot be considered as mitigation. The impacts include the permanent loss of SPA species' functioning habitat and habitat that should be restored to such function, through displacement
- *Are there alternative solutions that would have a lesser effect, or avoid an adverse effect, on the integrity of the site? (Reg 62(1))* The current SHLAA for Forest Heath district demonstrates at a strategic level that there is sufficient land elsewhere in the District to meet its housing needs without building on any land where adverse effects on the Breckland SPA and its species may occur, including explicitly rejecting the Proposal site. The Regulations state that if any alternative solutions are available which would result in a lesser effect or avoid the adverse effect completely, then the current Proposal must not be granted consent. It is clear from the SHLAA that such alternative solutions exist.

The Regulations are therefore clear in this circumstance that consent cannot be granted, as it fails to meet the requirements of the tests.

4. Planning Policy

The latest stage of the Single Issue Housing Review for Forest Heath's Core Strategy is currently in consultation. The consultation identifies four options, none of which allow for more than 55 new dwellings in the town in the plan period to 2031. The site of the Proposal is not included. This can be explained by reference to the accompanying Strategic Housing Land Availability Assessment²¹ (SHLAA) which identifies sufficient land away from the SPA and its protection buffers to meet the District's housing needs over the plan period. The development site was considered by the SHLAA and the Council decided not to take it forward due to its impacts on the Breckland SPA (see site B/17 in Appendix 1 and map on page 163 of the SHLAA).

It is the RSPB's view that the Proposal appears to be premature and prejudices the local plan for Forest Heath. It is our view that proposals on this scale, especially ones that are currently unsupported by planning policy, should first be considered at the strategic scale alongside all other housing options for the District, i.e. at the Single Issue Review, rather than attempting to pre-empt strategic housing allocations for the District. Consideration of alternatives is an important step in that strategic scale consideration and ultimate housing allocations.

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²⁰ The Conservation of Habitats and Species Regulations 2010 (as amended)

²¹ West Suffolk Strategic Housing Land Availability Assessment 2015. Accessed online, http://www.westsuffolk.gov.uk/planning/Planning_Policies/upload/15-08-04-FINAL-SHLAA-AUGUST-2015-web-2.pdf , 11/08/2015.