

Odiham and North Warnborough Neighbourhood Plan

Draft Habitats Regulations Assessment

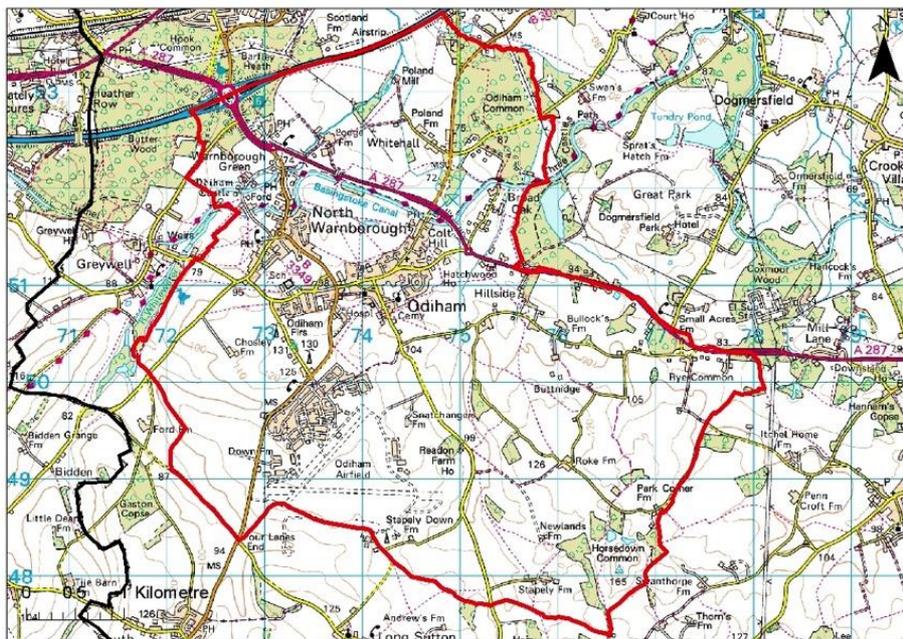
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1. Introduction

- 1.1 The Odiham Parish Council (OPC) was designated by Hart District Council (HDC) on 7 August 2014 under the terms of the Localism Act 2011 as a qualifying body to allow it to prepare a Neighbourhood Plan for the whole of its Civil Parish. This area is shown in Plan A below.
- 1.2 As part of this process the Odiham & North Warnborough Neighbourhood Plan (ONWNP) has prepared a pre-submission plan under Regulation 14 of the Neighbourhood Planning (General) Regulations 2012 (as amended).
- 1.3 Odiham Parish lies within the Zone of Influence of the Thames Basin Heaths Special Protection Area (TBHSPA) and consequently to comply with the Habitats Directive and the Conservation of Species and Habitats Regulations it is necessary for an assessment as to whether the ONWNP would have a significant effect on the TBHSPA.



Plan A: Neighbourhood Plan area

2. The Conservation of Species and Habitats Regulations

- 2.1 The Conservation of Species and Habitats Regulations 2010, as amended, bring into effect the European Birds Directive¹ and the European Habitats Directive² under English and Welsh law.
- 2.2 Regulation 102 provides:
 - 1) Where a land use plan—
 - (a) is likely to have a significant effect on a European site or a European

¹ European Directive 79/409/EEC Conservation of Birds Codified version – 2009/147/EC.

² Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Fauna and Flora

offshore marine site (either alone or in combination with other plans or projects), and
(b) is not directly connected with or necessary to the management of the site,

the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) The plan-making authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specify.

(3) They must also, if they consider it appropriate, take the opinion of the general public, and if they do so, they must take such steps for that purpose as they consider appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 103 (considerations of overriding public interest), the plan-making authority or, in the case of a regional strategy, the Secretary of State must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

(5) A plan-making authority must provide such information as the appropriate authority may reasonably require for the purposes of the discharge of the obligations of the appropriate authority under this Chapter.

(6) This regulation does not apply in relation to a site which is—
(a) a European site by reason of regulation 8(1)(c), or
(b) a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations
(site protected in accordance with Article 5(4) of the Habitats Directive).

2.3 Thus when, as here, any proposals are not connected with or necessary to the management of the site there is a two stage approach. Firstly it has to be determined whether the land use plan, in this case the ONWNP, is likely to have a significant effect (essentially a screening stage), and if that is answered in the positive, then undertake an appropriate assessment (AA) of that effect in light of the European site's conservation objectives (an assessment stage). The plan is only permitted to proceed if the plan, having been assessed, will not adversely affect the integrity of the European site.

2.4 This testing is undertaken utilising the Precautionary Principle. This is set out in ODPM Circular 06/2005 *Biodiversity and Geological Conservation – Statutory Obligations* and their impact within the Planning System at paragraph 13 where it states:

The decision on whether an appropriate assessment is necessary should be made on a precautionary basis. An appropriate assessment is required where there is a probability or a risk that the plan or project will have significant effects on a site. This is in line with the ruling of the European Court of Justice in Case C-127/02 (the Waddenzee Judgment) which said “*any plan or project not directly connected with or necessary to the management of the site is to be subject to an appropriate assessment of its implications for the site in view of the site’s conservation objectives if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either individually or in combination with other plans or projects*”. [Italicisation in original].

- 2.5 The English High Court in *Hart District Council, R (on the application of) v Secretary of State for Communities & Local Government & Ors* [2008] EWHC 1204 (Admin) made it clear that in undertaking that first screening stage the assessment can be undertaken by including any mitigation that may form part of the proposals rather than excluding any such proposed mitigation.
- 2.6 While the assessment of the plan will need to be taken as a whole, and in combination with other plans and projects, in looking at individual proposals within that plan consideration will need to be given to cumulative effects. Thus if in reality two or more sites physically create a larger site, then the impacts of that larger site should be considered to ensure that the purposive effect of the legislation is realised.

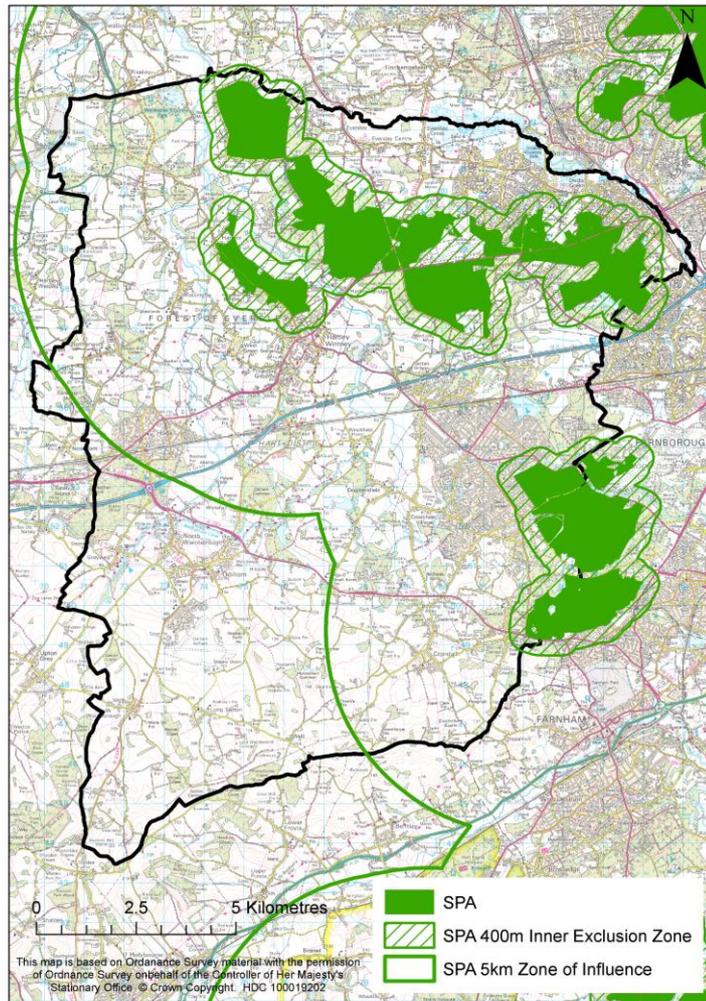
3. The Thames Basin Heaths Special Protection Area

- 3.1 The SPA is a network of heathland sites that are designated in the UK under the Habitats Regulations as a habitat for the internationally important bird species of woodlark, nightjar and Dartford warbler. These birds are particularly subject to disturbance from walkers, dog walkers and cat predation because they nest on or near the ground.
- 3.2 These heathland sites comprise all or parts of 13 Sites of Special Scientific Interest (SSSIs) in Hampshire and Surrey. The nearest SSSIs to Odiham are the Bourley and Long Valley and Hazeley Heath SSSIs.
- 3.3 The TBHSPA qualifies under article 4.1 of the Directive as it is used regularly by 1% or more of the Great Britain populations of the following species listed in Annex I in any season:
 - European nightjar *Caprimulgus europaeus* 7.8% of the GB breeding population;
 - Woodlark *Lullula arborea* 9.9% of the GB breeding population; and
 - Dartford warbler *Sylvia undata* 27.8% of the GB breeding population.
- 3.4 The conservation objectives of the SPA are to:

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.

3.5 The extent of the TBHSPA is shown in Plan B.



Plan B: SPA Designations, 400m Exclusion Zone and 5km Zone of Influence

4. Strategic Planning Policy

- 4.1 Strategic Planning policy for the TBHSPA can be found in retained South East Plan Policy NRM6 and saved policies CON1 and CON2 of the Hart District Local Plan (Replacement) including First Alterations (Local Plan). For the purposes of this Habitats Regulations Assessment it is reasonable to assume that these policies are such that proposals in accordance with them will not have an adverse impact on the TBHSPA as they were assessed under their respective adoption procedures.
 - 4.2 South East Plan policy NRM6 requires new development which has a significant effect on the ecological integrity of the TBHSPA to demonstrate that adequate measures are put in place to avoid or mitigate any potential adverse effects. It then sets out a zone of influence set at 5km linear distance from the SPA boundary for all residential schemes and standards which can be taken as providing sufficient mitigation for residential development.
 - 4.3 At the time that the Local Plan was adopted (2002) the SPA had yet to be designated, although it had been proposed. Saved policy CON1 indicates that development which would adversely affect the nature conservation value of the what is now the TBHSPA will not be permitted unless there are no alternative solutions and there imperative reasons of over-riding public importance, including those of a social or economic nature. Saved policy CON2 protects SSSIs by preventing development that would adversely affect the nature conservation value of the Site and will be permitted only if suitable conditions are imposed.
 - 4.4 The Local Authorities surrounding the Thames Basin Heaths SPA, together with the South East England Partnership Board, Natural England and other bodies established the Thames Basin Heaths Joint Strategic Partnership (JSP). On 12 February 2009 the JSP agreed a Delivery Framework to enable the delivery of housing in the vicinity of the SPA without the likelihood of significant adverse effects on the SPA. This is based on the provision of Suitable Alternative Natural Greenspace (SANG) and contributions towards Strategic Access Monitoring and Management (SAMM).
 - 4.5 Although there is a zone of influence of 5km set out in the South East Plan, the Technical Assessor's report to the South East Plan Examination Panel also indicated that larger developments (ie those of over 50 dwellings) up to 7km from the TBHSPA could have an impact and, in line with the precautionary principle, these would need to be screened for the need for AA.
5. HDC has adopted an Interim Avoidance Strategy³ setting out its approach, including the provision of two SANGs at Hitches Lane, Fleet and Hawley

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www.hart.gov.uk/sites/default/files/4_The_Council/Policies_and_published_documents/Planning_policy/Interim_Avoidance_Strategy_for_TBHSPA%20-%20November_2010.pdf

Meadow, Blackwater. The zone of mitigation effects of Hitches Lane SANG includes parts of Odiham (see Map 2 of the Strategy).

6. In-combination plans or projects

- 6.1 As seen above, it is necessary to consider in combination effects with other plans or projects. Although at the time of preparation of this assessment a number of parishes in Hart have been designated for the preparation of a Neighbourhood Plan none of these have published a draft plan, let alone a pre-submission plan. The content of these plans is therefore uncertain and it would not be reasonably possible to pre-suppose what the contents might consist of and thus assess any 'in combination' effects.
- 6.2 Similarly the Hart Local Plan is still under consideration and has not yet reached any statutory stage.
- 6.3 While there have been a number of other planning applications in the Odiham area submitted since the TBHSPA was designated that have been approved, only one, at land adjacent to Hatchwood Place, Farnham Road (HDC Ref: 13/02085/MAJOR), has exceeded 50 dwellings, and as part of the consideration of that application HDC positively concluded that, due to the open space being provided on that site as part of that project, the site would not have a significant effect on the TBHSPA. A significant effect was therefore excluded at the screening stage. On that basis, unless there are any existing planning permissions which would be extended by proposals in the ONWNP the 'in combination' effects can also be objectively excluded.

7. Potential Likely Significant Effects

- 7.1 The Parish of Odiham is a significant distance from the TBHSPA, being, at closest, over 4km from the TBHSPA. There will therefore be no direct effects from any proposals on the TBHSPA; any impacts, if they exist, will therefore be indirect. Plan C shows the Parish along with lines at both 5km and 7km from the TBHSPA.
- 7.2 Evidence⁴ shows that Woodlark and nightjar are particularly susceptible to human disturbance during the nesting season that has been shown to increase the risk of nest predation, for example from corvids. Increased dog presence has also been shown to affect the nesting distribution and success of these birds, primarily as a result of nest desertion again resulting in increased predation. Dartford warbler nesting in heather territories are also vulnerable to human disturbance, which has been shown to reduce both the number of successful broods and the average number of chicks fledged per year
- 7.3 Because of the distances from the parish to the TBHSPA it is extremely unlikely that cats⁵ owned by the occupiers of the new properties or

⁴ Langston, R.H.W., et. Al. (2007) What effects do walkers and dogs have on the distribution and productivity of breeding European Nightjar *Caprimulgus europaeus*? Ibis 149, supplement 1: 27–36.

⁵ Barratt (1997) Home range size, habitat utilisation and movement patterns of suburban and farm

unaccompanied minors will visit the TBHSPA. Cats predate the birds and unaccompanied minors have been known to lead to a higher risk of fire. Thus these impacts can reasonably be excluded.

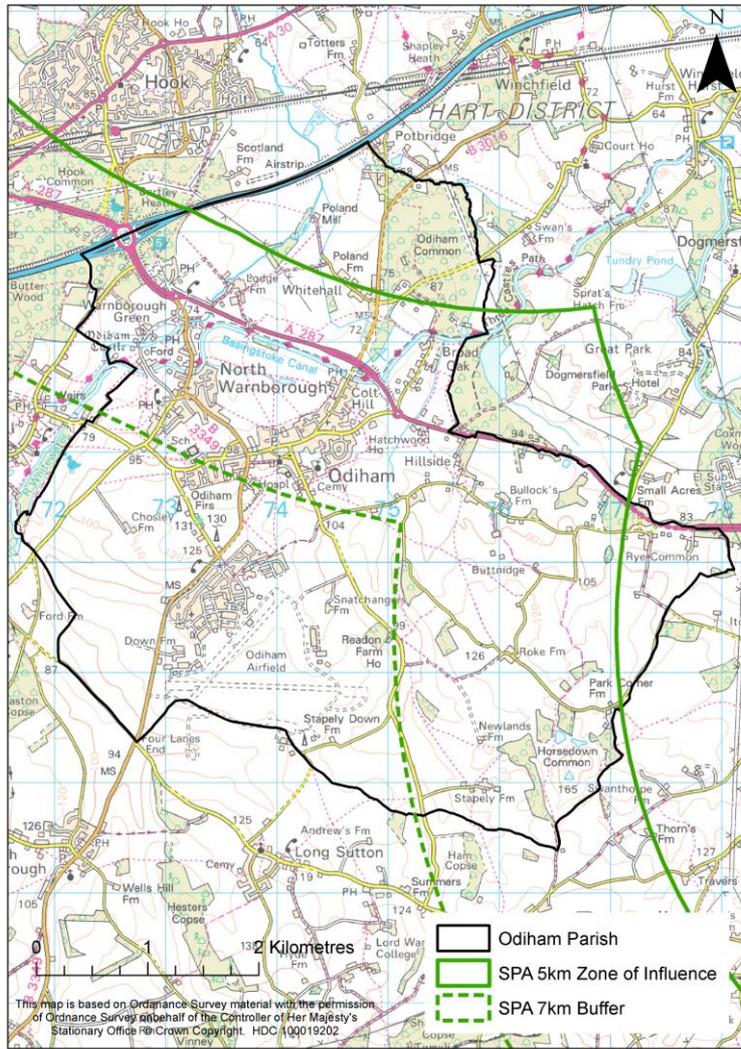
- 7.4 The main effects on the TBHSPA are therefore likely to be recreational disturbance from an increase in visitors from the new properties within the parish along with dog predation or dog disturbance leading to predation by others, principally corvids.
- 7.5 Evidence⁶ also shows that dog owners will mostly utilise open space close to where they live for the vast majority of their walks, and this is why dwellings further away from the TBHSPA are considered not to have a significant effect and it is only with larger developments that the consideration of effects needs to be assessed, as there is the potential for residents to go for longer walks, particularly at weekends.

8. The Neighbourhood Plan

- 8.1 The ONWNP sets a spatial arrangement where the focus of development will be on the settlements of Odiham and North Warnborough; this does not represent a change from the existing adopted policy arrangement set out in the Local Plan.
- 8.2 However, the ONWNP does allocate seven sites for residential development totalling in the order of 125 dwellings and a 60 bed nursing home. The ONWNP also proposes specifying the mix of dwellings, with a predominance of smaller (1 and 2 bedroom) properties. It gives policies for the design of properties, the various Conservation Areas in the parish, the High Street, the safeguarding of land for education facilities and the allocation of six parcels of land as Local Green Space.
- 8.3 None of the policies in the ONWNP propose any development within 5km of the TBHSPA, however some development is proposed within 7km of the TBHSPA.

cats *Felis catus*. *Ecography* 20: 271-280.

⁶ Liley, D. & Panter, C. (2015) A review of suitable alternative natural greenspace (SANGs) in the Thames Basin Heath area. Unpublished report of Footprint Ecology for Natural England.



Plan C: Odiham Parish with 5km and 7km Zones of Influence

8.4 The seven sites and the approximate number of dwellings, which the ONWNP envisages, is set out in the following table.

Site Reference	Site Name	Number of dwellings proposed
i)	Longwood	12
ii)	Western Lane	15
iii)	Crumplins Yard	12
iv)	Swan Inn	3
v)	Albion Yard	12

Site Reference	Site Name	Number of dwellings proposed
vi)	Dunleys Hill	30
vii)	Hook Road	15
viii)	Crownfields	30

- 8.5 The Crownfields site includes a 60 bed high dependency nursing home on it. Due to the physical limitations of the residents of such a facility it is considered that the occupants of that nursing home are extremely unlikely to recreate on the TBHSPA and consequently any impacts from the nursing home can be reasonably excluded.
- 8.6 It can thus be seen that none of the sites on their own breaches the 50 dwelling criterion set out in retained South East Plan policy NRM6 and thus, individually will not have a significant effect on the TBHSPA. It is then necessary to look at the sites in combination.
- 8.7 Although on both sides of Hook Road, the Swan Inn, Albion Yard and Hook Road sites are in close proximity; together these total 30 dwellings; again this is less than the 50 dwelling NRM6 criterion.⁷
- 8.8 Of the remaining sites the Longwood, Western Lane and Dunleys Hill sites are all in close physical proximity; together these total 57 properties, which breaches the 50 dwelling criterion.
- 8.9 However, the allocation of Dunleys Hill for residential development is contingent on the remaining part of the site being allocated as public open space, and this open space will therefore be act as mitigation for the impacts on the TBHSPA, provided it is secured in perpetuity. The policy in criterion (e) requires this to be so secured.
- 8.10 As set out in SEP policy NRM6 mitigation is required in two elements; open space (Suitable Alternative Natural Greenspace (SANG)) and a contribution towards management and monitoring of the SPA – Strategic Access Management and Monitoring (SAMM). In the 5km to 7km zone this is restricted to the monitoring element only.
- 8.11 Looking at this overall area (Longwood, Western Lane and Dunleys Hill) together including the open space it can be reasonably concluded that the impact of the residential development on the TBHSPA will be mitigated by this

⁷ There is currently a planning application for 30 dwellings on the Hook Road site (Hart Reference: 14/01704/MAJOR), however if this gains permission, then that site and the three sites of Hook Road, Swan Inn and Albion Yard will total 45 dwellings; again less than the 50 dwelling criterion in retained South East Plan policy NRM6.

open space as it will be utilised for day-to-day recreation and dog walking and thus provide a *de facto* SANG. Provided that contributions towards SAMM are secured, as provided for in the policy this will ensure that monitoring of the impacts on the SPA are secured. Taken together, therefore, it is concluded that the development will not have a significant effect on the TBHSPA.

- 8.12 Insofar as the housing mix policy will have an effect by being weighted towards smaller properties (1 and 2 bedroom) so there is a lower propensity for dog ownership and larger dogs that would require extensive exercise. This will therefore reduce any impacts on the TBHSPA.
- 8.13 None of the policies in the ONWNP for the design of properties, the various Conservation Areas in the parish and the High Street would have a significant effect on the TBHSPA.
- 8.14 The proposal for safeguarding land adjoining Robert May's School is to provide outdoor recreational facilities with an obligation that they be shared with the local community. The nature of this is that, given the distance to the TBHSPA, there will be no significant effect on the TBHSPA.
- 8.15 Finally, the proposals for Local Green Space, with the exception of that at Dunleys Hill discussed above, do not change the planning status of the land, and consequently this will have no significant effect on the TBHSPA.
- 8.16 Following the logic of the High Court in *Hart* where no proposal has a significant effect a combination of these sites will also have no significant effect.

9. Conclusion

- 9.1 Consequently it is possible to conclude that the Odiham and North Warnborough Neighbourhood Plan can be screened as not having a significant effect on the Thames Basin Heaths Special Protection Area and no Appropriate Assessment is necessary.