

PLANNING POLICY AND LOCAL PLAN COMMITTEE

14 OCTOBER 2020

REPORT OF THE CORPORATE DIRECTOR: PLACE AND ECONOMY

A.1 - ESSEX COAST RECREATIONAL DISTURBANCE AVOIDANCE AND MITIGATION STRATEGY (RAMS) CONSULTATION EXERCISE, FINAL SPD AND PARTNERSHIP AGREEMENT

(Report prepared by William Fuller)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

To update the Planning Policy and Local Plan Committee on the outcome of public consultation on the Essex Coastal Recreational Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD) and to seek its agreement to forward the revised SPD and the associated RAMS Strategy document and Partnership Agreement to Cabinet for formal approval.

EXECUTIVE SUMMARY

Key Points:

- The Essex Coastal Recreational disturbance Avoidance and Mitigation Strategy (RAMS) is a coordinated response, across Essex, to protect internationally important and legally protected wildlife sites from the direct and indirect impacts of recreational disturbance arising from housing development and population growth.
- The Supplementary Planning Document (SPD) sets out guidance that will apply when determining planning applications for new housing development, which includes a financial contribution of £125.57 per dwelling. The SPD was the subject of public consultation earlier this year and the document has been revised in response to the comments received.
- Chelmsford City Council has offered to manage and administer all the developer contributions on behalf of all the Essex authorities, subject to the signing of a 'Partnership Agreement'.
- The Committee is asked for its agreement to forward the RAMS Strategy, revised SPD and Partnership Agreement to Cabinet for formal approval.

Under European Law and the associated Habitat Regulations, local planning authorities have a legal obligation to assess the impacts of new development on internationally important wildlife sites and, where necessary, put mitigation measures in place to minimise any harm.

Because there are a number of internationally important wildlife sites around our coast (namely Hamford Water, the Colne Estuary and Stour Estuary), the whole of the Tendring District falls within a 'Zone of Influence' where any new residential development and associated increase in population has the potential to lead, either directly or indirectly, to an increase in recreational disturbance to the important wildlife habitats in those designated areas.

Twelve Essex planning authorities, including Tendring District Council have been working together on the Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS) which includes a programme of measures for protecting the internationally designated wildlife habitats around the Essex Coast from the potential effects of increased recreational disturbance resulting from house building and population growth.

A Supplementary Planning Document (SPD) has also been prepared which sets out guidance for Councils determining planning applications to ensure compliance with the Habitat Regulations. It includes a mechanism for seeking financial contributions from all new residential development towards delivering the mitigation measures – a tariff of £125.57 (April 2020) per dwelling secured through legal agreements on the grant of planning permission.

At the meeting on 16 July 2019, the Committee considered the draft SPD and approved it for public consultation which was undertaken by Essex Place Services across all the Essex authorities in January and February 2020.

A significant number of comments, including many from Tendring residents, were received during the consultation exercise and have resulted in a number of changes to the content of the SPD – although the general thrust of the RAMS Strategy remains unchanged. Officers also submitted a written response to the consultation exercise to highlight some specific concerns raised by landowners around Hamford Water, urging that they be given careful consideration.

Essex Place Services have produced a 'You Said, We Did' document which analyses the various comments received in response to the consultation exercise and explains how they have been taken into consideration in recommending changes to the SPD. The main outcomes of the consultation and subsequent changes to the SPD are summarised in the main body of this report.

Chelmsford City Council has offered to manage and administer all the developer contributions on behalf of all the Essex authorities – thus avoiding the duplication of resources across the Councils and keeping administration costs to a minimum. A 'Partnership Agreement' has been prepared for all of the authorities to sign up to and which will formalise the arrangements with Chelmsford City Council – including the establishment of a 'Delivery Officer' role.

Under the Council's constitution, the approval of strategies and Supplementary Planning Documents is a Cabinet function and therefore the Committee is asked to consider the content of this report and

agree that the RAMS Strategy, revised Supplementary Planning Document (SPD) and Partnership Agreement be forwarded to Cabinet for approval.

If any Council chooses not to approve these documents and sign up to the Partnership Agreement, they will still have an obligation to comply with the Habitat Regulations and will therefore have to put their own arrangements in place – which will have significant implications for resources. It is therefore strongly recommended that the Committee endorses the Essex-wide approach.

RECOMMENDATIONS

That the Planning Policy and Local Plan Committee:

- a) **Notes the content of this report, including the consideration of the responses to the consultation exercise on the RAMS Supplementary Planning Document (SPD), as set out in the ‘You said, we did’ document (at Appendix 3); and**
- b) **Agrees that the Essex Coastal Recreational disturbance Avoidance and Mitigation Strategy (RAMS) (Appendix 1), revised Supplementary Planning Document (SPD) (Appendix 2); and Partnership Agreement (Appendix 4) be forwarded to Cabinet for approval.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

There are a number of internationally important wildlife areas (habitat sites) around the coast of Tendring that are protected under UK and European Law. The Council has a legal responsibility as a ‘competent authority’ to ensure they are not damaged as a result of new development. These areas are Hamford Water, the Colne Estuary and the Stour Estuary. The designations include Special Protection Areas (SPA), Special Areas of Conservation (SaC) and ‘RAMSAR’ Sites.

The RAMS project will support the Corporate Plan 2020-24 (aligned with the core themes of Tendring4Growth and Community Leadership) through delivery of interventions aimed at:

- Delivering High Quality Services
- Community Leadership Through Partnerships
- Building Sustainable Communities for the Future
- Strong Finances and Governance

RESOURCES AND RISK

Resources: Tendring District Council’s contribution toward the cost of the RAMS project has been met through the agreed Local Plan budget. Officers from the Council’s Strategic Planning and Place Team have been actively involved in the Essex Steering Group for RAMS. Chelmsford City Council

has offered to manage and administer all the developer contributions on behalf of all the Essex authorities – thus avoiding the duplication of resources across the Councils and keeping administration costs to a minimum.

Risks: Plans and procedures need to show that they will not have a detrimental impact upon the qualifying features of the internationally designated sites. Without this collaborative approach Tendring may be at risk of not properly assessing how harm could be mitigated. Harm to the qualifying features of these sites as a result of new development may result in a breach in UK and European Law for which the Council could be liable.

A considerable amount of work has already been undertaken by the RAMS Steering Group and Place Services. If the Council were to withdraw from the RAMS project they would need to undertake much of the work already completed. This could include site surveys, identification and costing of projects and monitoring and review. Furthermore the Council's approach would also need to mesh with that of the RAMS project that the other eleven authorities are proceeding with.

LEGAL

Legislation: The Habitat Regulations were originally published in 2010, but were updated and consolidated into the Conservation of Habitats and Species Regulations 2017 which came into effect on 30th November 2017. Both sets of Regulations require Local Planning Authorities (LPAs) to demonstrate that their Local Plans will not adversely affect the integrity of a protected site(s) through a Habitats Regulations Assessment (HRA). Similarly, the Regulations require the Council as a 'competent authority' to ensure that planning permission is not granted for development that will have an adverse impact upon a protected site in the District, unless appropriate mitigation is sought. Any mitigation is a requirement of legislation so must be delivered.

The UK Government is currently in a 'transition period' which will last until the 1st January 2021. During this period business will proceed as usual in regard to European Directives. This means that, for the purposes of the RAMS project, the Directives will still apply.

Policy: The National Planning Policy Framework (NPPF) requires Local Plans to be based on adequate, up-to-date and relevant evidence about the economic, social and environmental characteristics and prospects of the area. To ensure compliance with the Habitat Regulations, the emerging Local Plan has been the subject of a Habitat Regulations Assessment (HRA) which specifically identifies the potential for harm to protected wildlife habitats resulting from planned development. It recognises RAMS as a potential solution to ensure any such harm is avoided or otherwise mitigated. In addition, through the examination process for Section 1 of the emerging Local Plan, an additional policy was suggested for inclusion in the plan, with the support of Natural England, to provide specific policy endorsement of the RAMS approach. The Local Plan Inspector, in his 15 May 2020 letter has endorsed the RAMS approach as an acceptable means of meeting the requirements of the Habitats Regulations.

OTHER IMPLICATIONS

Area or Ward affected: All wards.

Consultation/Public Engagement: The RAMS Steering Group has already held two workshops for landowners, businesses and other interested parties and a Member workshop hosted by Maldon District Council.

A draft SPD was published for consultation between Friday 10th January 2020 and Friday 21st February 2020 in accordance with the planning consultation requirements of each LPA.

These consultation requirements require the publication of a 'You Said We Did' report, which outlines details on who and how the public, organisations and bodies were consulted, the number of people, organisations and stakeholders who submitted comments, a summary of the main issues raised in the comments received, and the proposed amendments to the SPD that the LPAs intend to make in response to them.

Following the close of the consultation all comments have been considered and the main issues summarised within Section 4 of the 'You Said, We Did' report. Where amendments have been deemed necessary as a result of any main issues, these have been factored into a new iteration of the SPD. These amendments are set out in Section 5 of the 'You Said, We Did' report.

PART 3 – SUPPORTING INFORMATION

THE RAMS PROJECT

The RAMS Strategy

The Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS) was initiated by Natural England, the government's adviser for the natural environment in England, in 2017. The purpose of the RAMS Strategy is to ensure a coordinated approach to protecting internationally important wildlife habitats from the direct and indirect impacts of population growth resulting from housing development. The European Habitat Regulations require local planning authorities to consider the impacts of new development on protected habitats and, where necessary, secure or implement measures to mitigate those impacts.

12 Essex Authorities have been working together with the assistance of Essex Place Services on the RAMS project. Natural England have also been involved in an advisory role. The 12 local planning authorities are listed below:

- Basildon Borough Council
- Braintree District Council
- Brentwood Borough Council

- Castle Point Borough Council
- Chelmsford City Council
- Colchester Borough Council
- Maldon District Council
- Rochford District Council
- Southend Borough Council
- Tendring District Council
- Thurrock Borough Council
- Uttlesford District Council

The Essex Coast is rich and diverse and has many protected habitats sites (also referred to as European sites and Natura 2000 sites) including the Colne Estuary, Hamford Water and the Stour Estuary which affect a significant stretch of the Tendring coast. These sites are protected by the Conservation of Habitats and Species Regulations (2017). Joint working offers the opportunity to protect the wildlife around the Essex Coast from increased recreational disturbance as a result of new housing across Essex in a coordinated manner. Likely significant effects to habitats sites from non-residential development also have to be considered, albeit this will be undertaken through Habitat Regulations Assessments, on a case by case basis by the relevant local planning authority in consultation with Natural England.

There are numerous examples elsewhere around the country of cross-authority mitigation strategies that seek to avoid and mitigate the impacts of recreational disturbance on habitats sites in a coordinated manner, such as Bird Aware Solent, Bird Wise North Kent and Thames Basin Heaths. This is a new and growing area in the conservation community and those working on mitigation strategies regularly share good practice and assist each other.

Visitor surveys were carried out at key locations within each of the habitats sites to establish base line evidence and 'Zones of Influence' (Zol) were calculated for each habitats site using the survey data, within which it is considered that residential development is likely to have an impact and where therefore developer contributions for the delivery of avoidance and mitigation measures are justified.

The Essex Coast RAMS Strategy Document was completed in January 2019 and has been endorsed by Natural England. To comply with the Habitat Regulations in advance of any formal planning guidance, the local planning authority partners are already collecting RAMS contributions for development within the Zone of Influence (Zol), which will be spent on the mitigation measures package detailed in the RAMS Strategy Document.

Through the provision of a per dwelling tariff, the RAMS enables the achievement of proportionate mitigation measures and enables development proposals of all scales to contribute to necessary mitigation. The measures within the RAMS Strategy are to be fully funded by developer contributions.

During development of the Strategy Document, workshops were held with key stakeholders with local and specialised knowledge to capture the mitigation measures considered as most effective to avoid the impacts likely to result from increased recreational pressure.

The costed mitigation package (Table 8.2 of the RAMS Strategy Document) includes a mix of measures considered necessary to avoid or minimise likely disturbance at key locations with easy public access. The measures include:

- Staff resources – Rangers etc
- Communication – with the public and others
- Dog related mitigation
- Codes of conduct
- Habitat creation
- Monitoring

The package is flexible and deliverable and based on best practice elsewhere in England. A precautionary approach has been adopted, with priority areas for measures identified as those which have protected breeding birds which could conflict with high numbers of summer visitors to the coast and those with important roosts and foraging areas in the winter. Sensitive habitats have also been identified for ranger visits. The mitigation package prioritises measures considered to be effective at avoiding or mitigating recreational disturbance by habitats sites managers. For example Maldon District Council are managing water sports on the Blackwater Estuary. Encouraging responsible recreation is a key measure endorsed by land managers of important wildlife sites across the country, including Natural England, RSPB and the wildlife trusts. These bodies regularly provide educational material at sites to encourage visitors to comply with key objectives.

The RAMS is intended to be a flexible project that can adapt quickly as necessary. The rangers will quickly become familiar with the sites and areas that are particularly sensitive, which may change over time, and sites that experience a high number of visitors. The experience of rangers on the ground will help to steer the project and necessary measures.

Monitoring and review process

The Essex Coast RAMS will provide a flexible and responsive approach, allowing it to respond to unforeseen issues. Close engagement will continue with Natural England who will be able to advise if recreational disturbance is increasing at particular habitats sites and specific locations. Thus, enabling these locations to be targeted by the rangers to have an immediate impact. Updated visitor surveys, which are included in the mitigation package, will enable the Zol to be reviewed and expanded if it is shown that visitors are travelling further than previously found. There is scope to adjust the tariff too if it is shown that contributions are not covering the identified measures, if the Zol is made smaller or to respond to changes in housing numbers across Essex.

The Essex Coast RAMS will be monitored and reviewed on a regular basis by the Officers involved in the RAMS steering group . The Essex Coast RAMS will be deemed successful if the level of bird

and habitat disturbance is not increased despite an increase in population and the number of visitors to the coastal sites for recreation (paragraph 1.7 of RAMS). The baseline has been identified in the RAMS Strategy Document and will be used to assess the effectiveness of the RAMS.

The effectiveness of the Essex Coast RAMS has been considered/examined as part of Chelmsford City Council's Local Plan Examination. Chelmsford City Council's Local Plan Inspector's Report states that: "Overall, the HRA concludes that there will be no adverse effect on the integrity of European protected sites, either alone or in-combination with other plans or projects, subject to the mitigation set out in the Plan policies. Natural England agrees with these conclusions and I have no substantive evidence to counter these findings. The requirement to undertake an appropriate assessment in accordance with the Regulations has therefore been met." The mitigation set out in the Plan policies includes reference to the Essex Coast RAMS. The Inspector states that it is necessary to incorporate RAMS into strategic policies to ensure that all relevant development within the Zol contribute accordingly and reference to RAMS should be incorporated into several site allocation policies. These modifications will be incorporated into the adopted Local Plan for Chelmsford

As part of the examination of the Section 1 Local Plan for North Essex, inclusion of a specific policy relating to RAMS was discussed and recommended as an amendment.

The Supplementary Planning Document (SPD)

The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD) focuses on the mitigation that is necessary to protect the wildlife of the Essex coast from the increased visitor pressure associated with new residential development in-combination with other plans and projects, and how this mitigation will be funded. The SPD sets out the guidance to be followed in the determination of planning applications and formalises the arrangements for securing the developer contribution of £125.57 per dwelling.

On 19th July 2019 the Planning Policy and Local Plan Committee agreed for the draft SPD to be published for consultation. Essex Place Services led the consultation process on behalf of the 12 authorities and consulted the following:

- Statutory bodies including neighbouring Councils, local Parish and Town Councils, utility companies, health representatives and Government bodies such as Highways England, Natural England, Historic England and the Environment Agency;
- Local stakeholders including the Business Forums, Essex Wildlife Trust, Sport England, and the Police;
- Developers and landowner and their agents;
- Local businesses, voluntary and community groups, and
- The public.

The consultation material was available to view and comment on the Essex County Council 'Citizen Space consultation portal' during the consultation dates. It was also available to view on partner

Council's websites, from their main offices and at a number of local public libraries. Information was also provided on the project Bird Aware website www.essexcoast.birdaware.org
For those who did not have access to computers, paper response forms were made available.

The Councils sent direct emails/letter notifications to all consultees registered on their Local Plan consultation databases. A public notice was also included in the Essex Chronicle to advise how to respond and the consultation dates and information on the consultation was also posted on social media.

The SPD consultation received a total of 146 comments, 87 of these being from Essex residents and 59 being from various organisations.

Of the resident responses, the following numbers of responses were received from individual administrative areas:

- 21 were made from residents of Chelmsford;
- 18 were made from residents of Tendring;
- 16 were made from residents of Basildon;
- 14 were made from residents of Braintree;
- 12 were made from residents of Rochford;
- 11 were made from residents of Colchester;
- 8 were made from residents of Maldon;
- 6 were made from residents of Uttlesford;
- 2 were made from residents of Brentwood;
- 2 were made from residents of Castle Point;
- 2 were made from residents of Southend-on-Sea; and
- 0 were made from residents of Thurrock.

Comments were received on a wide range of themes, relating to the SPD, the RAMS itself and also the format of the consultation exercise. The main issues that were raised included:

- Confusion about the purpose and aims of the RAMS;
- Scope and detail of mitigation measures;
- Concern regarding the effectiveness of the RAMS approach;
- Query whether the right key stakeholders have been involved in the RAMS;
- Questioning the status of protected wildlife sites following the UK's withdrawal from the European Union;
- Concern that RAMS will enable inappropriate development to be allowed;
- Suggestions that money should be spent on other projects;
- Concern with the calculation and definition of the Zones of Influence;
- Arguments that the tariff is set too high, or alternatively too low;
- Questions over the adequacy of the proposed budget and staff to deliver project across such a wide area;

- Concerns about monitoring (both in relation to the tariff and Zones of Influence);
- Suggestion that other land uses (other than residential) should come within the scope of the tariff;
- Perceived conflict of RAMS purpose (protecting against recreational disturbance) and aims with the England Coastal Path project (increasing public access to the coast);
- Concerns that RAMS will impact on existing and future strategies and aspirations for tourists and residents to access and enjoy the coast, for economic growth and health and wellbeing; and
- Suggestions that alternatives to paying into the RAMS should either not be allowed, or that alternative approaches should be more clearly set out.

Officers also submitted a response to the consultation on behalf of Tendring District Council to emphasise the importance of the Tendring coast to the tourism industry and the health and well-being of residents and to ensure any measures aimed at mitigating the impact of recreational disturbance are appropriately balanced with those economic and social considerations. It also highlighted some specific concerns raised by landowners in the Hamford Water area and asked that these be given careful consideration.

In response to the various comments received, Essex Place Services have produced a 'You Said, We Did' document which considers the comments and recommends whether or not changes to the SPD are required. These have been considered by the RAMS Steering Group of Officers from the 12 Essex Authorities and a revised version of the SPD has been agreed. The main revisions include:

- A glossary and list of acronyms and a description of what they mean is now included at the beginning of the SPD.
- A clearer description of how overheads and other costs have been identified within the RAMS mitigation package.
- The first paragraph of the SPD will be amended to state 'birds and their habitats' rather than 'Wildlife' to make it clearer from the outset as to what type of wildlife the RAMS and the SPD is primarily seeking to protect.
- More recognition of the South East Marine Plan and the East Inshore and East Offshore Marine Plans which, when adopted, will become part of the statutory Development Plan for the relevant Councils.
- An amendment to include reference to fishing / bait digging to paragraph 2.2 is proposed.
- Reference to the 'Outer Thames Estuary SPA' rather than the 'Thames Estuary SPA' is proposed.
- Previous maps replaced with higher resolution images.
- Additional clarification within Paragraph 3.7 making the SPD more explicit regarding proposals for single dwellings being subject to the RAMS tariff.
- More explanation of requirements of development proposals in regard to statutory HRA procedures and on-site mitigation, and that the specific effects the RAMS will mitigate in accordance with Regulation 122 of the CIL Regulations.
- More justification for the inclusion of C2 Residential Institutions and C2A Secure Residential Institutions as being liable for tariff payments.

- Inclusion of the National Planning Policy Framework (NPPF) within the 'useful links' section.
- Clarification that non-residential proposals are exempt from the tariff.
- Amendments to the map in Appendix 2 of the Essex Coast RAMS SPD SEA/HRA Screening Report be amended to reflect the Outer Thames SPA designation.
- Clarification on the requirements for project-level Habitat Regulations Assessment (HRA) and Appropriate Assessment (AA) of development proposals which will explore the hierarchy of avoidance and mitigation, and that the SPD is relevant to 'in-combination' recreational effects only.
- Clear explanation that the intention of Essex Coast RAMS mitigation is to enable the conclusion of no adverse effect on the integrity of the international designated sites.
- Removal, from the relevant map in the SPD and RAMS Strategy, all areas of Suffolk from the Zone of Influence.
- Clearer explanation of the relationship between the effects of a population increase resulting from net new dwelling increases.
- Reference included to other statutory mitigation requirements (such as Suitable Alternative Natural Greenspace (SANGS)), and explanation of how they might represent an exemption to the tariff..

The entire 'You Said, We Did' report can be found at Appendix 3 and the revised SPD can be found at Appendix 2.

Partnership Agreement

A Partnership Agreement is a legal document which shows how Chelmsford City Council will administer the RAMS project. In brief this document states that:

- A list of projects recommended by the Delivery Officer, and agreed by the Steering Group is reported to the Project Board every six months for sign off, and six monthly updates to the Coastal Forum.
- Every quarter the S106 Officer of each LPA sends RAMS contributions to Accountable Body (CCC) and a contributions report to the Delivery Officer.
- Once all contributions collected, Accountable Body and Delivery Officer provide Steering Group details of money available.
- Delivery Officer recommends projects based on money available, priorities in RAMS Strategy, and best information available from rangers, Natural England and interest groups.
- Steering Group meets quarterly and agrees projects and AOB, Steering Group makes recommendations to Project Board.
- Once Project Board has agreed spending, the Delivery Officer implements and project manages projects, all invoices are sent to the Accountable Body
- Delivery Officer to provide Steering Group with an annual report to inform LPA Annual Monitoring Reports.

In Conclusion

Officers request that Members consider the 'You Said, We Did' report, the amended SPD and Partnership Agreement and allow these reports to be brought before Cabinet for approval in line with the constitution.

APPENDICES

Appendix 1 - Essex Coast RAMS Strategy Document

Appendix 2 - Essex Coast RAMS revised Supplementary Planning Document (SPD)

Appendix 3 – You Said, We Did report

Appendix 4 – Draft RAMS Partnership Agreement

BACKGROUND DOCUMENTS

None