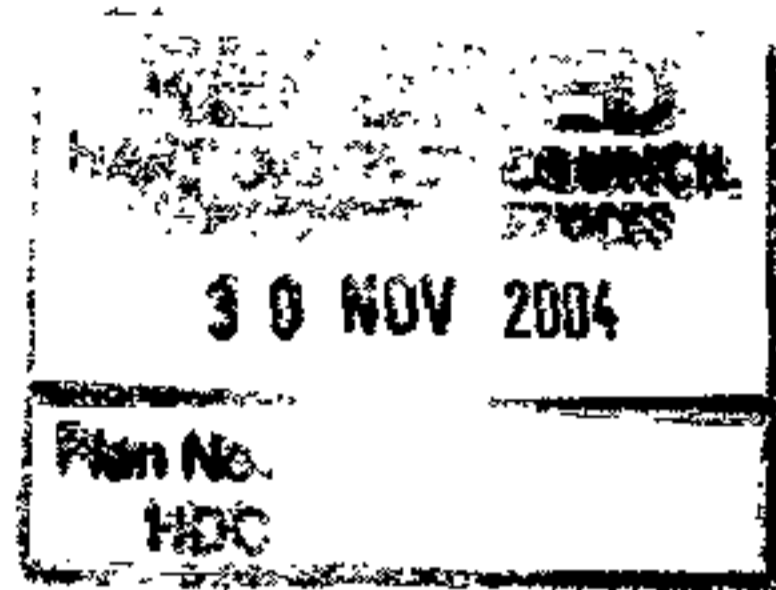




for birds  
for people  
for ever



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26 November 2004

FAO Janette Davis

Dear Sir/Madam

**RE OUTLINE PLANNING APPLICATIONS FOR 1132 DWELLINGS AND ASSOCIATED WORKS AT QUEEN ELIZABETH II BARRACKS AND WAKEFORDS COPSE, FLEET**

Thank you for consulting the RSPB on the above applications (**the revised applications**) from Taylor Woodrow (**the developer**) in respect of the proposal to construct 1132 dwellings and associated works at Queen Elizabeth II Barracks and Wakefords Copse, Fleet (**the proposals**). Our comments here, and in previous correspondence, relate to the potential effects of the proposals on wildlife within the internationally designated Thames Basin Heaths proposed Special Protection Area (**the pSPA**), the closest part of which (Bourley and Long Valley Site of Special Scientific Interest (**the SSSI**)) lies approximately 500m to the east of the application site.

We are in receipt of certain elements of the revised Environmental Statement (**the ES**) that accompanies the revised applications. Our comments are therefore based on the contents of the following ES documents:

- Environmental Statement
- Recreational Strategy (Technical Appendix A)
- Conservation Strategy (Technical Appendix B)
- Natural heritage (Technical Appendix D)
- Visitor Management Strategy (Technical Appendix L)
- Implementation Plan
- Management Plan

We therefore reserve the right to amend our comments on sight of any further information that comes to our attention, which is not contained within the above documents.



We have also received within the last few days, from Terence O'Rourke, a final copy of the Information for Appropriate Assessment. As you will appreciate, we have been unable to assess the contents of this document within the timescale for comments on the revised applications. Therefore, we would like to address any matters relating to the appropriate assessment in a separate response, which we will provide as soon as practicable. I hope that you find this approach acceptable.

#### Relationship with earlier RSPB representations on the proposals

The RSPB raised an objection to the previous applications for development at Queen Elizabeth II Barracks and Wakefords Copse (letter dated 8 October, 2003). This objection was due to flaws in the approach to an appropriate assessment and serious omissions from the EIA, which in our opinion precluded the Council's ability to ascertain that there would be no adverse impact on the pSPA.

We are pleased to note that since registering that objection, further more detailed discussion with the developers their consultants has resulted in many of our previous concerns being satisfactorily addressed in the revised applications, and a scheme is now brought forward that has the potential to remove or avoid any adverse impacts on the pSPA.

In particular, we welcome the following amendments to the proposals:

- additional further work carried out by MORI to address the deficiencies of the previous visitor survey;
- confirmation of the securing of a 999 year lease for the 'southern area'; and
- assessment of recent historical fire events on the Bourley and Long Valley SSSI/pSPA ('the SSSI/pSPA').

Nevertheless, there remain a number of critical issues which, until satisfactorily resolved, mean we are unable to remove our outstanding objection.

#### Legal framework

Following discussions with the RSPB and English Nature, as well as the Council, the developer has identified that, in order for the proposals to be able to receive planning permission, it will be necessary for the Council to be satisfied that the proposals will not have an adverse effect on the qualifying interests of the pSPA. In the context of this scheme, that will require the securing of a mitigation package that guarantees, in perpetuity, there will be no adverse impacts on the pSPA arising from the construction and use of the housing development.

The RSPB agrees with this analysis, which is consistent with the requirements of Policy DEV2 from the adopted Hart District Local Plan.

Consideration of the proposals by the Council is complicated by the fact that the Thames Basin Heaths has not been formally designated by the Government as a Special Protection Area. It is still a proposed SPA (pSPA). It is therefore necessary for the Council to consider the proposals under two legal regimes:

- the Conservation (Natural Habitats, &c.) Regulations 1994 (the Habitats Regulations)
- the EU Directive on the Conservation of Wild Birds 79/409/EEC (the Birds Directive).

The uncertainty over which legal regime operates is due to lack of clarification from the Government on when a pSPA benefits from the Habitats Regulations. A ruling by the European Court of Justice (ECJ) in a case known as 'Basses Corbieres'<sup>1</sup> held that where a site had not been included within a classified SPA there was no scope for it to benefit from the full range of derogations for damaging development under Article 6 of the EU Habitats Directive (implemented by Regulations 48 and 49 of the Habitats Regulations).

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<sup>1</sup> European Court of Justice Case C-374/98 Commission v French Republic

This could mean that the Habitats Regulations would not apply to the Council's determination of the proposals. Instead, the Council would be bound by the first sentence of Article 4(4) of the Birds Directive i.e. in respect of SPAs:

*"...take appropriate steps to avoid pollution or deterioration of habitats of any significant disturbance affecting the birds..."*

In essence, and based on ECJ rulings in respect of the Birds Directive, this means that a damaging development can only proceed in very restricted circumstances e.g. imperative reasons of human health and safety.

If the Habitats Regulations were to apply (in accordance with Government policy in PPG9), it would be necessary for the Council to be satisfied that the proposals would cause no adverse effect on the integrity of the pSPA. This would be through the application of appropriate conditions or restrictions under Regulation 48(6). Given that this is an outline planning application, unless the Council could be satisfied that there was no adverse effect, it could not grant consent (Regulation 54(4)).

In reality, whether assessing the proposals under the Habitats Regulations or the Birds Directive, the Council will need to be completely satisfied that the mitigation proposed will guarantee no adverse effect on the pSPA in perpetuity. The assessment process will therefore be essentially the same.

### **Consideration of the mitigation proposals**

#### *Generic comments*

The revised applications outline a proposed mitigation strategy aimed at removing any risk of an adverse effect on the pSPA and, if possible, having a net beneficial effect. We agree with English Nature (Annexe 3 of their letter dated 25 November 2004) that the approach of the mitigation strategy can be summarised as follows:

- minimise the number of people using the SSSI/pSPA for recreation purposes
- reduce the ecological impact of those people who continue to use the SSSI/pSPA for recreation purposes.

The developer has adopted a multi-stranded approach to the mitigation strategy:

- provision of formal and informal open space within the red line of the revised planning applications
- provision of c50ha of informal open space to the south of the proposals i.e. the southern area
- provision of access, via a new car park, to Greendane Copse and Beaconhill/Parkhurst Hill SINC's
- a visitor management strategy (the VMS) for the pSPA, including:
  - reduction of car parking spaces at the Bourley Road Car Park and other informal car parks; and
  - management of existing informal footpaths on the pSPA
- provision of rangers to implement various elements of the above

We welcome the developer's proposed mitigation strategy and consider it has the potential to remove or avoid any risk of any adverse effect on the pSPA. A key part of this strategy is the commitment to secure key elements of the strategy before the first houses are occupied. This is critical and will need to be set out in relevant legal agreements.

This is a complex and, to a large extent, untested package in the context of reducing the urbanisation effects of housing development on adjacent internationally important heathland sites. It will rely on a series of comprehensive legal agreements that enable the Council to be satisfied that the mitigation effects will be permanent and that there is appropriate flexibility to enable the mitigation package as a whole to be adapted to changing circumstances.

It is, in this respect, significantly different from most mitigation packages. It underlines the need for the Council to secure through legal agreement, *inter alia*, the following:

- a financial and resource (including staff) package that will support the mitigation package in perpetuity and which will be protected from other, unrelated demands from the organisations responsible for implementing the mitigation package
  - we note in particular that the mitigation strategy relies heavily on the employment of three staff (2 rangers and an environmental co-ordinator). We note that that the Western Corridor and Blackwater Valley sub region is a highly expensive area to live in and significant issues in respect of affordable housing. We consider it will be necessary for the issue of affordable housing available to the three staff to be addressed if the ongoing success of the mitigation strategy is to be secured.
- a straightforward management structure for the rangers/environmental co-ordinator with a clear and common overarching objective. A possible objective could be along the following lines:

*“to implement the mitigation strategy to ensure the Thames Basin Heaths (p)SPA suffers no adverse effects on its integrity due to recreational use by the residents of the Queen Elizabeth II Barracks and Wakefords Copse housing development”.*

- Clarify the relationship between and reliance on the MoD's current and proposed management of the pSPA (military and ecological) in respect of the VMS;
- A comprehensive monitoring package, covering all elements of the mitigation strategy, to assess progress against ecological and more practical objectives e.g. repetition of the MORI survey at set intervals to assess effectiveness of mitigation strategy, monitoring (against baseline) of use of “selected routes” on pSPA, analysis of breeding bird distribution against VMS proposals etc. The timescale of the monitoring package will need to be agreed but it is likely to be at least 10 years after the completion of the development. This will ensure that the full effects of the strategy have been felt and allow for any necessary adjustments to the strategy in light of experience.
- A steering group (or equivalent) to oversee implementation of the mitigation strategy and monitoring package and to make recommendations for necessary adjustments over time.

This list is far from exhaustive, but simply outlines some of the main provisions we would expect to see brought forward in the legal agreements that will be necessary to enable the Council to conclude there will be no adverse effect on the pSPA from the proposals.

The RSPB has had considerable experience in recent years in devising, negotiating and agreeing comprehensive mitigation and monitoring agreements for developments affecting SPAs. This is complemented by our comprehensive knowledge and understanding of the urbanisation effects of housing developments on heathland. We therefore request that we be closely involved in discussions and negotiations on those aspects of the legal agreement relevant to mitigating the effects on the pSPA.

#### *Specific comments*

Below we set out some more detailed, specific comments in respect of the different elements of the mitigation strategy. We will continue to assess the proposed mitigation strategy and reserve the right to add to or amend the comments below.

#### Implementation plan

Our principal concern relates to the considerable uncertainty regarding the future sources, amount and duration of funding necessary for the implementation of ongoing mitigation measures: most notably for the ongoing management and rangering of the formal and informal open space provisions, and implementation of the VMS on the SSSI/pSPA. The ES and supporting documents refer to various potential contributors and possible durations.

Paragraph 1.25 of the Implementation Plan offers the most explicit estimate of duration, stating that 'the possible funding arrangements....could be for a period of 10, 20 or 25 years'. We accept that in normal circumstances 10-25 years may be considered adequate for future financing of open space management. However, as outlined above this scheme clearly does not represent a 'normal' case. In order to comply with the requirements of the Habitats Regulations and ensure maintenance of the integrity of the pSPA, it will be necessary to secure management, and hence sufficient protected funding to carry out that management, in perpetuity.

Further uncertainty exists regarding the management organisations that will take on responsibility of the rangering duties. From the proposed models presented in the Implementation Plan, we would offer our support for a straight forward management structure, with optimal co-ordination between the VMS and management of the SINC's and the southern area. At the moment, this suggests Model 1 as that option would take advantage of existing experience and resources within the proposed organisations. However, this needs to be the subject of careful discussion to assess the pros and cons of each option.

There needs to be a clear management structure with clear objectives so that each ranger/co-ordinator understands their role and how it relates to each other. The overarching objective must be to avoid damage to the (p)SPA arising from the residents of the housing development (see comments above).

#### Visitor Management Strategy

We note in paragraph 2.18 the linkage between the VMS and the Integrated Land Management Plan (ILMP) for the SSSI. This is welcome. Given the implications of the current and future ILMPs for the VMS, consideration should be given to a legal tie-in between the ILMP and the VMS to ensure that nothing in future ILMPs will undermine the VMS. This suggests to us that the objectives of the VMS must be related back to the site conservation objectives of the (p)SPA/SSSI.

In paragraph 4.4, reference is made to the prohibition of informal parking in pull ins and military access points. We welcome this proposal. However, we would like clarification on how any breaches of this will be enforced and by whom.

In paragraph 4.10, reference is made to the strategic closure of paths on the pSPA and the introduction of carefully selected routes. We support this strategy in principle and it is a key element of the VMS. Paragraph 4.20 of the Visitor Management Strategy describes the reasoning for the selection of footpaths proposed for closure. While we welcome these closures, there remain large areas containing concentrations of Annex 1 breeding birds to the south and north east of the site, where no proposals have been made to reduce access. The SSSI/pSPA is covered by a vast network of footpaths, only a small percentage of which have been proposed for closure.

Given the complex path network on the pSPA and the implications of and reliance on the recently published ILMP, it is possible that better alternative approaches exist. We would like to work with the developer, English Nature and the Council to consider further whether other closures in the most sensitive parts of the SSSI/pSPA should be included within the mitigation strategy. Similarly, we would like to consider further the potential implications of the proposed "selected routes" and whether there are better alternatives [as it appears to us that some of these direct visitors in to some of the highest concentrations of Dartford warbler on the pSPA].

#### Agreements between the developer and the MoD

In a recent meeting with the developer (27 July 2004) it was indicated to the RSPB that a private interest agreement relating to the southern area, and a licence between the developer and the MoD in respect of the pSPA, would be made publicly available. We have yet to see either of these documents, and would very much welcome their publication in order to increase transparency and confidence.

We understand from discussion with the developer that the MoD have retained rights to use the southern area 'in a national emergency'. If this still remains we seek clarification as to the type of situation that would qualify as a 'national emergency' under the terms of the agreement, and hence the likelihood that the MoD would *regain use of the site for training purposes.*

#### *Summary*

We welcome the proposed measures aimed at securing no adverse effect on the pSPA. In particular, we welcome the proposed provision of alternative open space within and adjoining the application site, the reduction of parking spaces (at both formal and informal locations) around Bourley and Long Valley SSSI/pSPA, the introduction of a ranger scheme for the SSSI/pSPA and the Greendane Copse, Beacon Hill/Parkhurst Hill and Claycart Bottom/Rushmoor SINC's, and the proposed closure of a number of footpaths *within the most sensitive areas of the SSSI/pSPA.*

I however, we have highlighted some critical issues that will need to be addressed if the mitigation strategy is to succeed. These concerns should be seen as an initial list. We are in no doubt that more will be identified by the parties as detailed discussions proceed on the terms of and linkages between the various legal agreements.

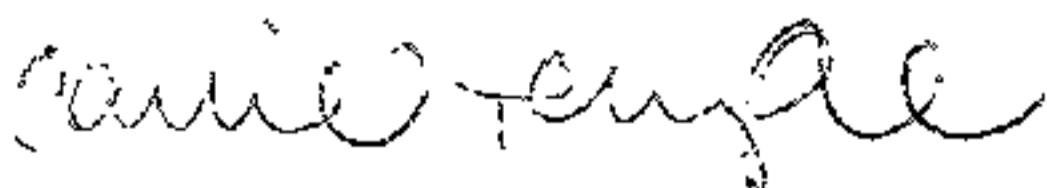
#### Conclusion

The RSPB will be willing to withdraw this objection subject to the satisfactory agreement of the detailed section 106 agreement(s) critical to securing the delivery of the proposed mitigation in perpetuity. The successful implementation of the proposed mitigation measures is clearly essential to the ability of the scheme to remove any adverse impacts on the pSPA, and therefore we suggest that the Council carefully considers any decision to determine (even be it 'in principle') the applications prior to the finalisation of the section 106 agreement(s).

Given our experience in matters related to such legal agreements, and as the RSPB's willingness to withdraw its objection relies on the confidence in the details of the legal agreements, we request that the RSPB be consulted on and closely involved in the preparation of these agreements to ensure that the mitigation proposals are fully secured.

We would strongly welcome an opportunity to meet with you as soon as practicable to discuss the issues raised in this letter and to explore in a constructive and positive manner a way forward that will enable the Council to secure a mitigation and monitoring package that will guarantee no adverse effect on the Thames Basin Heaths pSPA.

Yours sincerely



Carrie Temple  
Conservation Officer

cc: Andrew Dodd, RSPB UK Headquarters, Sandy  
Dr John Day, RSPB Arne Reserve, Dorset  
Catherine Chatters, English Nature, Lyndhurst  
Dr Judy Halpin, Hampshire County Council  
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