



DPD Matter No. 2

Policy DP1 – Natural Environment: 12th July 2011

Personal ID No. DMPEexam/EPS5/GWC11
(Philip Pearson)

Representation No. 001 - 007 (RSPB)

Broads Authority Local Development Framework

Development Management Policies Examination in Public

**RSPB written representation for:
Matter 2: Policy DP1 – Natural environment**

Matter No. 2: Policy DP1 Natural environment

1. In the light of the comments from the RSPB, Natural England and Broadland District Council, why is the policy and the other policies referred to by those bodies sound?

- 1.1 The RSPB supports the provisions of Policy DP1 to enable protection of important nature conservation assets at all levels: international, national, and local. The proposed policy provides a framework against which developments that may affect these assets can be judged.
- 1.2 The RSPB considers that the policies are compliant with European policy on the protection of biodiversity, namely the Birds Directive¹ and the Habitats Directive² as transposed into national policy through the Habitats Regulations³.
- 1.3 Paragraph 3 of Policy DP1 (p.17) highlights the need for developers to demonstrate to the Local Authority's satisfaction that any adverse effects from a project can be avoided or overcome. If adverse effects cannot be ruled out they will not be consented. A similar principle is applied to nationally designated sites as well.
- 1.4 Paragraph 3.9 (p.18) of the supporting text to Policy DP1 clearly states that developments that could impact on internationally important sites will require an Appropriate Assessment (AA). This would ensure such projects are screened in accordance with the Habitats Regulations. This is supported by the statement that "*proposals will only be permitted if they do not adversely affect the integrity of the site.*" This is also in line with the Habitats Regulations procedure for assessing developments. However, there currently lacks clear guidance on when an AA will be required, as no exercise has been carried out to identify the constraints to development within the Broads Authority's administrative area. Whilst the RSPB understands that development within the Broads area is limited in scale, such information is necessary to indicate what development would be acceptable at different locations. In order to further the strategic approach to development it was therefore agreed at a meeting on 9th February 2011 that a constraints mapping exercise be carried out to detail not just broad European and national constraints but to also identify local constraints. This work would strengthen the DPD currently presented for Examination and also ensure the forthcoming Site Allocations DPD will be based on robust baseline information. Therefore, whilst there remains a deficiency with Policy DP1, the RSPB is satisfied that this will be addressed in advance of the delivery of the small amount of development proposed for the Broads administrative area. It may therefore be necessary to include a minor amendment to indicate that this constraints mapping exercise will be carried out to ensure that development in the Broads will follow a robust strategic framework.
- 1.5 In the RSPB's response dated 27th January 2011, we stressed the need for Policy DP1 to make it clear that the assessment process set out in the Habitats Regulations³ would be followed. We consider that Paragraph 3 of Policy DP1 and paragraph 3.9 of the supporting text adequately address this concern and therefore will ensure the Policy is effective and justified with regards to the Habitats Regulations.
- 1.6 The RSPB considers that the policies are also compliant with other national policy on the protection of biodiversity. Section 3.8 (p.18) of the supporting text to Policy DP1 clearly identifies the Broads Authority's statutory responsibility to protect and enhance the Broads environment. This duty is conferred by the Wildlife and Countryside Act 1981 and Natural Environment and Rural Communities Act 2006 (NERC Act).

¹ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (codified version).

² Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (as amended).

³ The Conservation of Species and Habitats 2010.

- 1.7 In addition, the RSPB considers that the policies accord with PPS9⁴ and the accompanying circular⁵. Six key principles are outlined in PPS9 that Local Authorities should ensure their policies adhere to:
- Base development plan policies on information about the biodiversity resources of their areas (principle i);
 - Attach appropriate weight to internationally, nationally and locally designated sites (principle ii);
 - Seek to conserve, enhance and restore biodiversity and designated sites (principle iii);
 - Promote incorporation of biodiversity features within development (principle iv);
 - Permit development proposals where conservation and enhancement of biodiversity are among the principal objectives (principle v);
 - Ensure that planning decisions prevent harm to biodiversity conservation interests (principle vi).
- 1.8 Each of the six key principles of PPS9 (paragraph 1, (i)-(vi)) are met by the planned approach to development in the Broads Authority administrative area. The key principles of: (i) basing development plan policies on information about the biodiversity resources of their areas, and (ii) attaching appropriate weight to designated sites, and seeking to conserve, enhance and restore these assets, are reflected through the recognition of internationally and nationally important sites within the plan area.
- 1.9 In the RSPB's response dated 27th January 2011, we commented on Policies DP12 and DP14 in addition to Policy DP1. We were concerned that the effectiveness of Policies DP12 and DP14 was limited due to an inadequate baseline to assess current visitor pressure on the Broads. Since submitting our comments we have discussed this issue further with the Broads Authority. It is our understanding that visitor surveys are planned in conjunction with North Norfolk District Council. As work is now being progressed to address this deficiency we understand that appropriate information will be completed prior to significant development being delivered. However, we recognise that this is not reflected in the Development Management Policies Development Plan Document (the DPD) or Appropriate Assessment (AA) and have recommended that additional wording be provided. This does not appear to have been proposed at this time. As it is necessary for the Broads Authority to undertake this work to ensure baseline data gaps are filled we suggest the following wording be included within the supporting text:

"In order to better understand visitor numbers and distribution within the Broads surveys will be conducted jointly with North Norfolk District Council to ensure that suitable baseline data is available in advance of development occurring within the administrative area."

2. For clarification, the Authority's response to my preliminary questions seems to suggest that the RSPB, Natural England and Broadland District Council consider the DPD to be sound. What evidence is there of this? I would be grateful if the views of these bodies could be clarified.

- 2.1 In our response to the consultation on the submission draft of the DPD dated 27th January 2011, the RSPB considered that Policies DP1 (Natural Environment), DP12 (Access to Waterways) and DP14 (General Location of Sustainable Tourism and Recreation Development) were unsound. Our major concerns were related to the quality of the AA carried out on the DPD policies to ensure they were in accordance with the Habitats Regulations. As a result we concluded that the DPD was unsound.
- 2.2 Following the consultation period, the RSPB and Natural England met with the Broads Authority to discuss our concerns regarding the DPD (meeting on 9th February 2011). As a

⁴ Planning Policy Statement 9: Biodiversity and Geological Conservation.

⁵ ODPM Circular 06/2005.

consequence of the meeting, amendments to the DPD and AA were recommended to clarify and strengthen the text included in both documents, which would ensure that they were in accord with national policy. It was agreed that gaps in the current baseline data would be addressed in the near future through visitor surveys (in conjunction with North Norfolk District Council) and a stakeholder event would be arranged to establish a development constraints map for the Broads Authority administrative area. The Broads Authority also indicated that the level of development within the administrative area would be very small, which would therefore reduce the potential for adverse impacts on protected sites and species to occur. Based on the outcome of the meeting (changes to policy wording and supporting text, a programme of work for the coming year to address data deficiencies, and reassurances about the proposed scale of development in the administrative area) the RSPB was satisfied that our concerns would be effectively addressed and that we could have greater certainty that the DPD would be justified and effective, and therefore sound.

- 2.3 The RSPB has detailed its reasons for considering Policies DP1, DP12 and DP14 sound in Section 1 above. Where additional amendments are considered necessary, suitable text for inclusion in the DPD has been suggested.
- 2.4 In establishing if the DPD is sound, it is important to note that Policy DP1 should form an overarching framework against which impacts on the Broads environment will be assessed. Whilst links with Policy DP1 are not expressed throughout the DPD, the policy highlights the need for development to be assessed against the Habitats Regulations and establishes a rigorous assessment process for screening potential impacts on locally important sites.
- 2.5 In 2010, the government undertook a review of England's wildlife sites and ecological networks⁶. The Lawton Review concludes that England requires more, bigger, better and joined ecological networks. It is the RSPB's opinion that the measures outlined in the DPD could help contribute to this recommendation, with Policies DP1 (Natural Environment), DP2 (Landscape and trees), DP3 (Water Quality and Resources), and DP4 (Design) all requiring development to contribute towards protection and enhancement of species and habitats. These measures would also help the Broads Authority meet the requirements of the NERC Act⁷ and PPS9.
- 2.6 Within the Broads administrative area wetland habitats and their associated biodiversity will likely be the focus of benefits from development. Whilst enhancing and creating habitats such as wet grassland, reedbed, fen and wet woodland will maximise biodiversity benefits, a range of additional benefits can also be derived. By ensuring wetland habitats are protected and enhanced this can improve flood risk management, improve carbon storage, and improve an area's resilience to climate change. This is supported through the Lawton Review, which states that:
- “Establishing a coherent and resilient ecological network will ... improve the ability of our natural environment to provide a range of high quality ecosystem services today and in the future. It can help us both mitigate and adapt to climate change by, for example, storing carbon or improving the security of water supplies”* (p.vii, paragraph 2).
- 2.7 The DPD provision for environmental protection and enhancement could also contribute to climate change mitigation and adaptation in accordance with paragraph 24 of PPS1⁸. Creation of wetland habitats can provide flood water storage and attenuation which could contribute to the sustainable management of flood risk in the Broads catchments. Improved maintenance of water levels across the Broad's habitats will also act to reduce carbon emissions from the desiccation and decomposition of peat.

⁶ Lawton, J.H. *et al.* (2010). *Making Space for Nature: a review of England's wildlife sites and ecological network*. Report to Defra.

⁷ Natural Environment and Rural Communities Act 2006.

⁸ Planning Policy Statement: Planning and Climate Change – Supplement to Planning Policy Statement 1.

2.8 In addition, the DPD highlights the need to incorporate measures such as Sustainable Drainage Systems in development, the benefits of appropriate landscaping within urban areas to adapt to climate change, and the need for adequate provisions to enable appropriate access to the Broads environment. All of these accord with the principles of PPS1.

3. How would Policy DP1 be effective in protecting Natura 2000 sites? In order to ensure effectiveness, is it necessary to amend the policy to make it clear that the assessment process set out in the Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) must be followed?

3.1 As the RSPB has highlighted under question 1 above, we consider that Policy DP1 in its current form would be effective in protecting Natura 2000 sites. Whilst it is not explicitly stated that development will need to be assessed against the Habitats Regulations⁹, the procedure outlined in the Policy and supporting text to assess developments is in line with the Habitats Regulations process.

3.2 Paragraph 3 of Policy DP1 highlights the need for developers to demonstrate to the Local Authority's satisfaction that any adverse effects from a project can be avoided or overcome. If adverse effects cannot be ruled out they will not be consented.

3.3 Paragraph 3.9 (p.18) of the supporting text to Policy DP1 clearly states that developments that could impact on internationally important sites will require an Appropriate Assessment (AA). This would ensure such projects are screened in accordance with the Habitats Regulations. This is supported by the statement that "*proposals will only be permitted if they do not adversely affect the integrity of the site.*" This is in line with the Habitats Regulations procedure for assessing developments.

3.4 The RSPB therefore considers that Policy DP1 and its supporting text accords with the requirements of the Habitats Regulations without repeating national legislation or policy, which would be contrary to the guidance of PPS12⁹ (paragraph 5.2) in this respect.

3.5 Policy DP1 therefore provides an overarching framework against which impacts on the Broads environment will be assessed. Whilst links with Policy DP1 are not expressed throughout the DPD, the policy highlights the need for development to be assessed against the Habitats Regulations and establishes a rigorous assessment process for screening potential impacts on locally important sites.

3.6 As highlighted in 3.4 above, guidance clearly indicates that the DPD should not repeat national legislation. However, in some circumstances it may be appropriate to provide greater clarity within a few policies by outlining policy approaches in line with legislative procedures, or reference Policy DP1. The RSPB therefore supports the proposed minor amendments to Policies DP13 (Bank Protection) and DP16 (Moorings), as these development types could occur within or adjacent to Natura 2000 sites.

3.7 With regards to the proposed minor amendments to Policies DP15 (Holiday Accommodation – New Provision and Retention), DP18 (Protecting General Employment), DP19 (Employment Diversification), DP20 (Development on Waterside Sites in Commercial Use, including Boatyards), DP21 (Conversion of Buildings in the Countryside), DP22 (Residential Development within Defined Settlement Boundaries), DP23 (Affordable Housing), DP24 (Replacement Dwellings), DP26 (Permanent and Temporary Dwellings for Agricultural, Forestry and Other Workers), and DP27 (Visitor and Community Facilities and Services), the RSPB agrees that the proposed minor amendments would clarify the need to screen projects in line with the Habitats Regulations. However, we accept that Policy DP1 does provide a mechanism to ensure this process be followed in the absence of this amendment.

⁹ Planning Policy Statement 12: creating strong safe and prosperous communities through Local Spatial Planning.

4. Minor points:

- 4.1 The RSPB is pleased that a number of minor changes have been submitted on the Appropriate Assessment (AA) (Document DM10). We support the majority of the changes as these will greatly improve the accuracy of the information presented in the AA. We have, however, noted that one of the proposed changes (change identified for Page 17 Paragraph 1) is inconsistent with the current management of the little tern colony at Great Yarmouth North Denes Special Protection Area. The RSPB manages this site, with consent and financial and physical support from Natural England. The management is conducted with the permission of, and on behalf of, Great Yarmouth Borough Council. This is not reflected in the proposed amendment and should be amended.
- 4.2 In Section 3.10 of the DPD (p.18), the Conservation of Habitats and Species Regulations 2010 are described as the Habitats Directive. This should be corrected to Habitats **Regulations**. This minor change has not been identified in Document DM6.
- 4.3 In accordance with 4.2 above, the use of the Habitats Directive in Section 3.11 of the DPD (p.18) is incorrect and should also be amended to Habitats **Regulations**. This minor change has not been identified in Document DM6.