

KEY DECISION: YES

REPORT NO. PLN1808

**THAMES BASIN HEATHS SPECIAL PROTECTION AREA AVOIDANCE AND
MITIGATION STRATEGY (AMS) UPDATE**

Summary and Recommendations:

Approval is sought to amend the Rushmoor Thames Basin Heaths Avoidance and Mitigation Strategy, to incorporate arrangements to facilitate town centre regeneration proposals.

Recommendation:

That Appendices 4 and 5 of the AMS are amended based on the draft Appended to this report to facilitate a more flexible implementation period.

1.0 Introduction

- 1.1 The purpose of this report is to ensure that the criteria by which the Council allocates SANGs capacity, or supports the allocation to developers of capacity, in respect of development projects within Rushmoor, can facilitate the delivery of housing forming part of regeneration schemes on designated Town Centre sites, and to agree appropriate changes to the Council's AMS to accommodate this.
- 1.2 This is a key decision as it has implications for continuation of the Council's ability to grant planning permission for, and ensure the delivery of, regeneration schemes within the Borough's town centres.

2.0 Background

- 2.1 The AMS was updated in November 2017 to reflect the recently completed arrangement by which SANGs capacity within Hart District could be made available to support development proposals within Rushmoor Borough.
- 2.2 In order to ensure that the limited resource of SANGs capacity is used for the specific purpose of delivering housing, and not tied up for extended periods by unimplemented permissions or to increase the development value of 'land banked' sites, the Council has adopted the approach of restricting the duration of residential planning permissions involving Council-allocated SANGs capacity to one year. Paragraph 3.2 in Appendix 4 of the AMS currently states:
*"The **second criterion** for consideration will be likelihood of early delivery. It would not be appropriate for SANG capacity to be tied up in speculative or*

outline schemes which are designed to maximize asset value with no likelihood of implementation. Consequently any planning permission for residential development which is supported by SANG allocation from the Council will be subject to a condition limiting the duration of the permission to one year. Similarly, the offer of capacity will reflect the same one year period.”

- 2.3 In the context of its renewed commitment to regeneration of the Borough’s Town Centres, the Council is exploring a number of options to secure and expedite the delivery of town centre development schemes. These may include securing Government funding, partnerships and support from other agencies. In these circumstances, the process, whilst giving a high probability of early and effective delivery, may be impeded by the insistence on a one year commencement condition for a residential planning permission. Comprehensive town centre schemes, by their very nature, are often complex and are likely to involve the support of public bodies, who need the surety of planning permission to be able to progress the viability and deliverability of development. Appendix 4 of the AMS sets out how the allocation of SANGs capacity is at the discretion of the Head of Planning, and goes on to explain the criteria against which requests for allocation will be considered.

3.0 Details of the proposal

- 3.1 In order to facilitate the timely delivery of regeneration proposals involving residential development within designated town centres, which are often the subject of partnership arrangements and funding commitments, it is proposed to amend Appendices 4 and 5 of the AMS to extend the discretion of the Head of Planning to cover the duration of planning applications which have the support of Council-allocated or supported SANGs capacity.
- 3.2 The current strategy imposes a planning condition on any new residential planning permission to seek to ensure commencement within one year of the grant of permission. The amendment would allow a longer period in appropriate cases within the designated town centre boundaries.

4.0 Alternative options

- 4.1 The alternative to the proposal is to make no change to the AMS with the consequent risk that town centre regeneration proposals may be delayed or prevented.

5.0 Consultation

- 5.1 It is proposed to submit the draft revised AMS and allocation arrangement to Natural England for comment and for the revised document to be approved by the Head of Planning, in consultation with the Portfolio Holder for Environment and Service Delivery.

6.0 Implications of decision

- 6.1 Failure to implement the proposal carries the risk of constraining the delivery of new housing and regeneration in our town centres, reducing income from the New Homes Bonus, and rendering the Council unable to pursue its regeneration initiatives.

Legal Implications

- 6.2 The arrangement must be consistent with both planning law and European law.

Financial and Resource Implications

- 6.3 Other than the risk of non-delivery, there are no financial implications.

Equalities Impact Implications

- 6.4 There are not considered to be any Equalities Impact Implications arising from the decision.

7.0 Conclusion and Recommendation

- 7.1 It is recommended the AMS be amended to facilitate a longer commencement period in specific cases within the Borough's designated Town Centres. The proposal will help facilitate the Council's key objective of the regeneration of town centre sites and it will continue to secure income from the New Homes Bonus.

Keith Holland
Head of Planning

Appendix:

- 1 Draft revisions to Appendices 4 and 5 of the AMS

Background documents:

Town and Country Planning Act 1990
Habitats Regulations 2010
Rushmoor Local Plan
Rushmoor AMS

Contact details:

Report Author:

John W Thorne john.thorne@rushmoor.gov.uk 01252 398791

Appendix 4: Criteria for allocation of SANG (Amendments are highlighted in *bold italics* below)

ALLOCATION OF MITIGATION OPPORTUNITIES

1.0 Introduction

1.1 The basis on which available mitigation capacity should be allocated to prospective development schemes was considered and agreed by Rushmoor's Cabinet on 17th June 2014. This has been amended in part to reflect more recent legal advice.

2.0 Background

2.1 The responsibility to address the impact of a proposed development on the Special Protection Area rests with the developer. The Council has an identified objective, supported by the policies of its development plan, of ensuring and promoting the delivery of housing, and has therefore sought to secure and distribute SANG mitigation capacity to support this. The Council is however under no legal obligation to make this capacity available to any particular developer or scheme.

2.2 It is therefore important for the Council to have appropriate criteria for the allocation of the SANG capacity which is at its disposal in order to ensure that it results in the delivery of housing at the earliest opportunity. SANG capacity is limited and therefore the Council has adopted the approach set out below to the allocation of SANG capacity within its ownership or control.

2.3 The allocation of SANG capacity will be at the discretion of the Head of Planning in response to a written request from developers. In exercising this discretion, consideration will be given to the deliverability of the proposed scheme. Proposals which are unlikely to be implemented due to complex land ownership or tenancy issues, or which are submitted as part of a valuation exercise, should not prevent the delivery of housing by locking up SANG capacity for extended periods. The commitment to funding should be secured by S.106 undertaking or contractual agreement and the allocation should reflect the life of the planning permission. If the planning permission expires without being implemented, the mitigation opportunity would be available for reallocation, and there could be no assumption that mitigation capacity would automatically be made available in the event of an application being received to renew an unimplemented planning permission.

3.0 Allocation of mitigation capacity

3.1 In considering any request for the allocation of mitigation capacity, the first criterion for consideration will be whether the scheme is policy compliant and represents good development. The Council offers pre-application advice to developers and will seek, at this stage, to establish whether the scheme proposed is satisfactory in relation to national and local planning policy. If it is not considered likely to receive a recommendation that permission is granted, the developer will be advised that the scheme will need to be amended or revised before an allocation of SANG capacity can be offered or supported.

3.2 The second criterion for consideration will be likelihood of early delivery. It would not be appropriate for SANG capacity to be tied up in speculative or outline schemes which are designed to maximize asset value with no likelihood of implementation. Consequently any planning permission for residential development which is supported by SANG allocation from the Council will be subject to a condition limiting the duration of the permission to one year. Similarly, the offer of capacity will reflect the same one year period. ***At the discretion of the Head of Planning, consideration may be given to permission with a duration of longer than one year in the case of regeneration schemes within designated town centres where partnership and/or funding arrangements may impact on the ability to implement within one year, but where those arrangements however do provide certainty of delivery and completion.***

3.3 With regard to the third and fourth criteria, it should be noted that a scheme proposing a lower proportion of affordable housing that required under development plan policy on viability grounds, will not pass the 'policy compliant' test and receive or be supported by an allocation of Council controlled mitigation capacity unless the viability position has been first demonstrated. Provision of on-site affordable housing and contribution to town centre regeneration will assume particular significance if the Council is in a position where two competing schemes are the subject of requests for limited remaining mitigation capacity and there is only sufficient available to support one of them at the time. In these circumstances, the allocation will be made to the scheme which is considered to best address all the above criteria.

4.0 Procedure and Advice for Developers

4.1 Any residential developer wishing to be provided ***or assisted*** with SANG mitigation capacity by the Council should first prepare a draft scheme and engage in pre-application discussion. Only when it has been established that the scheme represents good development and addresses the requirements of Council's development plan and national policy will the opportunity to take up available SANG capacity be offered.

4.2 Funding will be secured by S.106 obligation and the allocation will extend to the life of the planning permission. Should the applicant fail to submit an application within the specified period, or should planning permission be refused or lapse without being implemented, the capacity will be returned to the pool of available mitigation and may be allocated to another scheme. In the case of a developer seeking capacity from SANG sites within Hart District, whilst payment towards SAMM (Strategic Access Management and Monitoring) will be secured through a S.106 Planning Obligation, the securing of, and payment for, this allocation will be a contractual arrangement between the developer and HDC. Only on receipt of written confirmation of such an arrangement will the capacity be accepted in support of a planning application to Rushmoor. This procedure is set out in greater detail at Appendix 5.

4.3 A developer may seek the allocation of SANG capacity to support a scheme to change the use of a building or part thereof to residential as permitted development under GPDO Schedule 2, Part 3, Classes M-Q. Even if a scheme does fall within permitted development tolerances it cannot be implemented or begun unless the

developer has first succeeded in obtaining consent under Regulation 75 of the Conservation of Habitats and Species Regulations 2010. If a developer is able to demonstrate through pre-application discussion and the Prior Approval process that a proposal of this type is indeed permitted development, an allocation of SANG capacity (if available) will be made. However, this will be subject to them, within a six-week period, making an application pursuant to S.75 of the Conservation of Habitats and Species Regulations 2010, supported by a completed S.106 obligation and/or notice of a contractual agreement securing the necessary mitigation. A condition of any allocation offer in respect of a 'permitted development' scheme will be that its duration is one year from the date of the S.75 approval. As with planning permission, failure to implement within this time-period will result in the mitigation capacity being withdrawn and made available to other deliverable schemes.

- 4.4 Subject to the above, schemes of 10 or more units will, where appropriate, receive allocation if the site lies within the 5km catchment of a SANG or SANGs which have sufficient available capacity at the time of the request.
- 4.5 The allocation of capacity to schemes of 9 or fewer units will not be restricted by catchment and will be made on a case by case basis subject to availability.
- 4.6 Requests for SANG capacity from developers who are deemed to be putting forward parts of sites or buildings which have been sub-divided in an attempt to benefit from the circumstance described at 4.5 will not be considered favourably.
- 4.7 In the event of a request being received from a potential developer for allocation of SANG capacity where there is, at the time, insufficient remaining capacity, the applicant will be informed that:
 - (a) SANG capacity for the project is not available for allocation at present;
 - (b) a reserve list will be maintained in order of receipt of requests and, in the event of sufficient capacity becoming available through the return of capacity from an unimplemented planning permission, they will be contacted and given the opportunity to apply for allocation;
 - (c) any planning application which has not first demonstrated that it had secured the revised SANG capacity will be refused planning permission or prior approval on the grounds of failure to address the requirements of Policy CP13 of the Rushmoor Core Strategy and Saved Policy NRM6 of the South East Plan, in respect of SPA impact;
 - (d) If a request is placed on the 'reserve list' referred to at (c) but the developer chooses to submit an application in any event without first securing an allocation, they will be considered to have withdrawn the request and will be removed from that list;
 - (e) Mitigation capacity which was not available at the time of submission will not be conferred on a submitted planning application retrospectively;
 - (f) Only one scheme for a particular site will be included on the reserved list at any one time.

Appendix 5

Allocation of SANGs capacity in Hart to Developments in Rushmoor

Procedure Note

(Amendments are highlighted in *bold italics* below)

1. The developer should first take the scheme through the pre-application process with Rushmoor Borough Council in accordance with the procedure set out on our website, including the payment of the appropriate fee.
2. Once the developer has the agreement (without prejudice) that the presented scheme is policy compliant and could be supported by a recommendation to grant planning permission, a letter from RBC to HDC will be provided, requesting the allocation of the requisite SANG capacity to support the submission of a planning application (or if appropriate a Regulation 75. Application) to RBC. The developer will be advised that an application must be submitted within 6 weeks of the date of written confirmation from HDC of the allocation, that they are responsible for any contractual arrangement and associated payment requirement between themselves and HDC in respect of the SANG allocation, and that the duration of any resulting planning permission or approval will be one year ***unless otherwise prescribed by the Head of Planning in accordance with paragraph 3.2 of Appendix 4.***
3. On receipt of an application accompanied by written confirmation from HDC that the applicant has secured SANG capacity, the application will be validated and determined. Natural England will be consulted. The duration of the planning permission, if granted, will be one year from the date of the issue of a decision ***unless otherwise indicated.*** The developer will be required to enter into a S.106 Planning Obligation in order to pay the required SAMM (Strategic Access Management and Monitoring) contributions to Rushmoor.
4. In the event of planning permission being refused, an unsuccessful Regulation 75 application, an unsuccessful appeal against refusal, or the failure of the applicant to implement the permission within the ***prescribed*** period, any arrangement to recover payment made to HDC in respect of the allocation will be a contractual one between the developer and HDC.
5. No such allocation can be transferred by the applicant to another application, applicant or project.
6. Only allocations obtained through the process set out above will be accepted as addressing the potential recreational impact on the Thames Basin Heaths Special Protection Area of net new development proposals. Allocation of capacity will not be supported in respect of developers who do not first establish the credentials of their proposal using the requisite pre-application process.