

**Examination of the North Herts Local Plan
2011 - 2031**

**Written Statement for additional matter 28 – The
main modifications put forward by the Council
relating to biodiversity MM050 and MM166**

On behalf of the Herts and Middx Wildlife Trust

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President
Sir Simon A Bowes Lyon, KCVO

1. This statement is intended to address the following matter:

1.1. Where respondents answering the following questions identify a deficiency in the Local Plan they should make clear how it should be changed.

1.2. 28.1 As part of its response to my letters of 9 July and 9 August 2019, the Council put forward some additional modifications that it proposes to the Local Plan. MM050 and MM166, which relate to Policies SP12 and NEx (and the paragraphs supporting it) respectively, both include changes proposed by the Council in relation to biodiversity.

1.3. a) Are modifications to Policies SP12 and NEx (and the paragraphs supporting it) necessary for soundness? If so;

1.4. b) Are the modifications proposed effective, justified and consistent with national policy?

2. Herts and Middx Wildlife Trust does not support main modification 166 to the local plan made in November 2019, in the Draft list of further modifications proposed by the Council.

2.1. MM166: In this main modification NHDC put forward the reason that the changes are required for effectiveness and consistency with national policy and in response to the Inspector's August letter (paragraph 14). HMWT believe;

2.2. that the fundamental and consequential changes put forward do not correspond with the Inspector's comments,

2.3. are therefore **not justified** because the policies and supporting words have already been through the consultation and examination exercise unchallenged and unchanged,

2.4. and significantly reduce the **effectiveness** of the plan because they erode the previously clear and definitive wording.

3. In paragraph 14 of his letter of Aug 9 to NHDC the Inspector states:

3.1. '14. Introduced through draft modification MM157, Policy NEx refers to the Chilterns AONB. Policy NE3 is specifically about the AONB. Neither explicitly refers to the great weight that national policy says should be given to conserving landscape and scenic beauty in AONBs. Should they?

In addition, how do these policies distinguish between the hierarchy of international, national and locally designated sites as set out in paragraph 113 of the 2012 NPPF, to ensure that protection is commensurate with their status?'

3.2. HMWT is not concerned with the AONB question. However we are very concerned with the changes made to the text of NEx that have been justified by reference to the second part of paragraph 14. NHDC justify the changes with the following statement: '*For **effectiveness & consistency with national policy** and in response to the Inspector's August letter (Paragraph 14)*'. **This statement is not supported by evidence, justified or consistent with national policy** and will make the local plan **less effective**. HMWT request that the following passages are returned to their previously examined and approved state (with minor modifications as described below):

3.3. MM166 Current proposed format (changes in red)

Policy NEx

*Planning permission will only be granted for development proposals that **appropriately** protect, enhance and manage **biodiversity** in accordance with the hierarchy of designations listed in policy SP12. **Applicants should, having regard to the status of any affected site(s) or feature(s):***

- c. **Include appropriate measures** to manage construction impacts*
- d. **provide any buffers** of complimentary habitat*

3.4. Previously approved form (differences in red)

Policy NEx

*Planning permission will only be granted for development proposals **affecting designated sites** that protect, enhance and manage **designated sites** in accordance with the hierarchy of designations listed in policy SP12.*

- c. **Manage construction impacts by demonstrating how existing wildlife habitats supporting protected or priority species will be retained, safeguarded and managed during construction; and***
- d. **Providing a buffer of complimentary habitat for all connective features of wildlife habitats, or priority habitats and species;***

Development proposals on non-designated sites that include important habitats and species will be expected to meet the requirements of this policy.

3.5. The Inspector's comment in paragraph 14 concern the hierarchy of sites and not construction impacts on protected and priority habitats or buffers of complimentary habitat to priority habitats and species. Therefore **NHDC has no justification for making these changes** which have been approved and endorsed by consultation and public inquiry. The changes serve to make the policies less clear and open to interpretation – which is guaranteed to make them **less effective**. The key to good ecological planning policy is definition. It reduces conflict, results in quicker decisions and better results for wildlife. HMWT recognise that the policy could retain its originally approved

intension and be made even clearer to reflect **national developments in planning policy** since the original consultation, so would suggest the following solution, which is a compromise between the original and proposed main modifications:

Policy NEx

Planning permission will only be granted for development proposals affecting designated sites that protect, enhance and manage biodiversity in accordance with the hierarchy of designations listed in policy SP12. Applicants should, having regard to the status of any affected site(s) or feature(s):

***c. Manage construction impacts by demonstrating how existing wildlife habitats supporting protected or priority species will be retained, safeguarded and managed during construction; and
d. Providing a buffer of complimentary habitat for all connective features of wildlife habitats, or priority habitats and species;***

Development proposals on non-designated sites that include important habitats and species will be expected to meet the requirements of this policy.'

4. Similarly the following unrequested and unjustified change has been put forward:

4.1. Proposed changes in red:

*'11.xx Ecological surveys will be expected to involve an objective assessment of ecological value. Surveys should be consistent with BS42020 Biodiversity- Code of Practice for Planning and Development, or as superseded, and use **appropriate** biodiversity impact **tools** to assess ecological value.'*

4.2. Previously approved form

*'11.xx Ecological surveys will be expected to involve an objective assessment of ecological value. Surveys should be consistent with BS42020 Biodiversity- Code of Practice for Planning and Development, or as superseded, and use the biodiversity impact **calculator, or as superseded**, to assess ecological value.'*

4.3. This is a particularly damaging and unhelpful change which is out of step with changes to the NPPF, planning guidance on the natural environment, the development of the Defra metric v2 and the Environment Bill currently passing through parliament. The Environment Bill is set to mandate the use of the Defra metric to determine net gain, so why would NHLP not reflect this by specifically stating the use of the metric? Without a designated mechanism for determining the NPPF and NHLP requirement for net gain – net gain becomes subjective and open to interpretation. This is unfair,

ineffective, not transparent and most importantly – unmeasurable or auditable.

4.4. If net gain is to mean anything tangible it must be accompanied by an approved way of measuring it. Since the original consultation on the NHLP finished a new Defra metric (v2) has been produced to accompany the changes to NPPF and the Planning Guidance on the Natural Environment <https://www.gov.uk/guidance/natural-environment>

4.5. To invite ambiguity into your local plan by using the phrase, ‘use appropriate biodiversity impact tools to assess ecological value’ **is not effective, justified or consistent with national policy.**

4.6. It is however recognised that the original wording should reflect developments in the quantification of net gain and the promoted mechanism to determine this (i.e. the Defra metric v2), so the following changes are proposed to reflect these developments in national policy and procedure:

11.xx Ecological surveys will be expected to involve an objective assessment of ecological value. Surveys should be consistent with BS42020 Biodiversity- Code of Practice for Planning and Development, or as superseded, and use the Defra biodiversity metric, as amended, to assess ecological value.

4.7. Without this word format NHDC will invite the use of spurious calculators to drive down the requirement for net gain. There are several biodiversity impact calculators in current use and all of them give slightly different results. If you do not specify which one is acceptable, developers will use the one which results in the least amount of compensation. There is a large financial incentive to do so. This is not consistent or fair and must be discouraged.

5. The final unacceptable, unjustified and unrequested changes are:

5.1. Proposed changes:

*11.xx Developments are required to demonstrate how existing wildlife habitats such as trees, hedgerows, woodlands and rivers will be retained, safeguarded and managed during and after development, including the provision of buffers where required. **Our evidence recommends that buffers should provide, 12 metres of complimentary habitat around wildlife sites (District Wildlife Site level and above). The appropriateness of any buffers will be considered having regard to the status of the relevant habitat.***

11.xx Development proposals will be expected to maximise opportunities for net gains, or contribute to improvements in

*biodiversity, which can be demonstrated by using **recognised biodiversity impact tools**.*

5.2. Previously approved form

*11.xx Developments are required to demonstrate how existing wildlife habitats such as trees, hedgerows, woodlands and rivers will be retained, safeguarded and managed during and after development, including the provision of buffers where required. **Where buffers are required these should be a minimum of 12 metres of complimentary habitat for all connective features for wildlife habitats or priority habitats.***

*11.xx Development proposals will be expected to maximise opportunities for net gains, or contribute to improvements in biodiversity, which can be demonstrated by using **the biodiversity impact calculator**.*

5.3. In order to retain the originally approved intention of the wording, respond to changes in the biodiversity and planning environment i.e. demonstrate **consistency with national policy**, the following alterations are required:

11.xx Developments are required to demonstrate how existing and retained wildlife habitats such as trees, hedgerows, woodlands and rivers will be safeguarded and managed during and after development, including the provision of buffers where required. Where buffers are required these should be a minimum of 10 metres of complimentary habitat for all connective habitat features for wildlife or priority habitats.

11.xx Development proposals will be expected to maximise opportunities for net gains, or contribute to improvements in biodiversity, which can be demonstrated by using the Defra biodiversity metric (as amended).

5.4. Buffering is extremely important for the conservation and enhancement of priority habitats. The conservation and enhancement of priority habitats is a **requirement of NPPF**. If you build right up to a hedgerow, for example, its value for biodiversity is significantly eroded due to the impacts of the development. Disturbance, the proximity of human activity, even shading will mean that it will not be as good for wildlife as it would have been before development. It is accepted that in some circumstances it may not be possible to protect this buffer, but if it is lost, the hedgerow cannot be considered to have been conserved or enhanced. Its ecological functionality has been compromised. In this instance it must be compensated appropriately by reference to the Defra metric. The retention of the originally approved wording clarifies how priority habitats will be considered

and how **national policy will be applied**. The plan will be more **effective** with this policy.

6. Summary

There is no justification provided by the Inspector's comments on the local plan for the changes that have been made in MM166. The original policies and wording have been through public inquiry and consultation unchanged. This infers the approval of the public and the Inspector for these policies and there is no mandate for their change. However, it may be practical in response to changes in national planning policy and guidance, to slightly change the wording and retain the original intention of the policy and supporting text. HMWT have put forward practical solutions to accomplish this aim and ensure that changes are **effective, justified and consistent with national policy**.