

BY EMAIL ONLY to:

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**The Hartlepool Borough Council Local Plan – Examination
Submission of Hearing Statements**

MATTER 1: Legal and Procedural Matters – including the Duty to Cooperate

Issue 1: Has the plan been prepared in accordance with statutory procedures and Regulations?

Habitat Regulations Assessment

The presence of protected sites both within, and in proximity to, the Borough means the Plan has been subject to a Habitats Regulation Assessment, which accompanied the publication version of the Plan (HLP01/9). The assessment has not been able to rule out that there would be indirect likely significant effects (principally related to recreational disturbance) arising from Plan's proposals (alone or in-combination with other plans and projects). Consequently an Appropriate Assessment has been carried out. Various submissions have been made, notably from Natural England, the RSPB and Durham Bird Club and in response the Council has indicated further updates to the Plan and evidence.

Question 6. Does the Plan take an appropriately precautionary approach in light of the available evidence including applying the RSPBs source-pathway-receptor methodology?

The RSPB has had the opportunity to provide further feedback to the Council on Version 3 of the HRA. We welcome that HBC has used the RSPB's preferred methodology of source-pathway-receptor when undertaking Habitat Regulations Assessment (HRA) screening exercise.

However, we are still concerned that the potential for some Plan policies to have a likely significant effect (LSE) upon Natura 2000 sites has been inadequately assessed. Our main concerns relate to assessment of allocated sites where there is some evidence to suggest that they are functionally linked to the SPA but



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where there is insufficient bird data to provide a robust assessment. We consider that, in such cases, the precautionary principle should apply.

In particular, there is a potential for **employment (EMP)** policies to have an adverse effect on the Teesmouth and Cleveland Coast Special Protection Area (SPA) Ramsar and the proposed extension to the SPA (pSPA) through individual or combined land allocations, on (or near) sites that are within (or functionally linked to) the SPA either through direct habitat loss or through indirect displacement/disturbance of SPA interest features. We consider that this potential is still not adequately assessed in the HRA. We offer further detail within Hearing Statement: **Matter 4: Jobs Growth, Employment Policies and Employment Land Supply**

Policy HSG3 Urban Local Plan sites provides allocations for the following new housing development.

- Britmag South - approximately 30 dwellings
- Coronation Drive - approximately 100 dwellings
- Seaton Coach Park - approximately 30 dwellings

We agree with the HRA Stage One Screening conclusion that there is potential for these housing sites to add additional recreational pressure upon the SPA, thus requiring further assessment within the AA. However, the HRA suggests that some (or all) of the three named sites could be functionally linked to the SPA – but that further evidence of bird use is required. Therefore, further assessment is also required in respect of loss of functionally linked habitat in addition to recreational disturbance.

Appropriate Assessment

The RSPB *agrees* with the conclusion of the Appropriate Assessment that there is an adverse effect on the integrity of the Teesmouth and Cleveland Coast SPA - arising from the potential for combined housing, leisure and tourism Plan policies to increase recreational disturbance of SPA species.

However, we do not agree with some of the analysis of the data. This may be important when assessing the efficacy of the proposed mitigation strategy.

Hartlepool BC review of bird and recreational disturbance studies covering Hartlepool beaches (Section 6.4.3.7)

We note that analysis throughout this section refers to 100% or maximum disturbance of SPA birds - in relation to analysing disturbance of the breeding little tern site at Crimdon (page 88)

"It is assessed that any increase in the frequency of people taking this route (caused by housing development) will not cause an additional impact, ie, maximum disturbance has already been reached at a lower level of usage".

and recreational use of Hartlepool beaches (page 89)

"Recreational disturbance is already at or near 100% some of the time. For example, if 50 people prevent a flock of birds from settling on a stretch of beach, then that is LSE and 100% disturbance. If an extra ten people arrive on the beach, the disturbance is still 100%. In this scenario, an increase in visitors cannot increase LSE. It is important going forward to target reducing the rate of disturbance".

There are already legal requirements to ensure that any potential harm of protected areas is addressed. Consequently, we consider that regardless of the current level of disturbance any additional recreational pressure (arising from Plan policies) requires mitigation to ensure that the situation is not made any worse by new development.

Conclusion (Section 6.4.3.9) (page 90)

"There is existing recreational use of the T&CC and a similar percentage of new householders are likely to also recreationally use the site. The fact that SPA bird numbers appears from local studies to have decreased between 1995 and 2015 has been considered, but is not in itself a relevant factor under the precautionary principle. However, it is noted that recreational disturbance is likely to be only one factor in this decline, others being the reduced availability of prey on beaches polluted with coal deposits, climate change and adverse factors effecting birds elsewhere on the East Atlantic Flyway. The fact that different qualifying bird species utilise different parts of the shore for feeding, eg: sanderling on sandy beaches and purple sandpipers on rocky shores is an ecological fact. However, these species may roost away from their preferred substrate".

We note the assessment of the ornithological evidence and disturbance studies presented in this section. We particularly note the evidence presented that the number of overwintering SPA/Ramsar birds has declined since 1995. However, evidence shows that some SPA species have recently been present in significant numbers (when compared to the SPA population at designation) and the capacity for this stretch of coast to support the same. In light of the previously significant numbers of the SPA species, it is incumbent upon HBC as competent authority to consider the conservation objective to ensure that the integrity of the SPA is maintained or restored across the entirety of the SPA.

HBC has concluded that there is evidence of recreational disturbance but there is no clear evidence that this is the cause of shore bird declines. It is our opinion that, using the precautionary principle, the onus is upon HBC to show that recreational disturbance is not the cause. We would like to see the justification behind the assertion that declining numbers of SPA birds is not a relevant factor under the precautionary principle. If there is a deteriorating baseline of birds upon the SPA and a reliance on existing levels of recreational disturbance to say that a further increase will not cause a problem, there is difficulty in proving that the current level of use is not the reason for the decline noted.

Consideration of N2K sites

The HRA is not clear as to whether LSE arising from Plan policies (in particular new housing) on the Northumbria Coast SPA/Ramsar site can be ruled out.

Regarding Tables 5/6 - Hartlepool's relationship to the site, paragraph 1 (page 24) states:

"It is therefore concluded that residents coming from new housing sites are unlikely to have a significant effect on populations of purple sandpiper, turnstone and little tern within the Northumbria Coast SPA / Ramsar."

In contrast Paragraph 1 of Section 6 (page 71) of the HRA states:

"These Appropriate Assessments apply to the Teesmouth and Cleveland Coast SPA/ Ramsar, Northumbria SPA/ Ramsar, Durham Coast SAC and Thrislington SAC".

and Paragraph 6.4.3.9 (page 90) concludes:

"The additional recreational use of all of the other N2K sites assessed, is concluded as being insignificant and does not trigger LSE".

Little further evidence/analysis has been presented within the Appropriate Assessment in relation to the Northumbria Coast SPA/Ramsar site to support this statement. We suggest that the Stage 1 screening is reviewed for this site and if sufficient evidence/analysis is presented to be able to conclude that there is

no LSE arising from increased recreational disturbance upon its interest features then there is no need for further consideration as to adverse effect on integrity (AEOI) within the AA.

Question 10: Are the proposed mitigation measures at Section 7 of the Habitats Regulation Assessment capable of being effective (including coordination across administrative boundaries) and enforceable such that an overall conclusion of no adverse effect on the integrity of internationally designated sites can be reached?

HBC has committed to providing avoidance/mitigation through three pathways:

- Strategic guidance
- HBC day to day service provision
- Planning obligation developer contributions

The RSPB has provided the following feedback to the Council regarding Section 7 of the HRA.

Strategic Guidance

The HRA (page 92-93) states:

"The need for mitigation has been written into relevant Hartlepool Local Plan Quality of Place and Housing policies following consultation responses received to version 1 of this HRA. This puts mitigation onto a strategic basis.

We advise that this sentence is amended so the emphasis is on making changes to the Plan to actually remove the risk rather than modifying policy wording.

Regarding Housing Policies the HRA (page 93) states:

"HSG4 (South West Extension) requires 50.92 Ha of multi-functional green infrastructure to be provided. Some of this will form SANGS which will encourage householders undertaking outdoor recreation (including dog walking) to stay on site.

HSG5 (High Tunstall) plans for approximately 13.5 Ha of greenspace.

HSG6 (Wynyard) plans for 8.99 Ha of greenspace. HSG7 (Elwick Village) plans for 0.4 Ha of greenspace. HSG8 (Hart Village) plans for 1.23 Ha of greenspace".

We would welcome further detail as to the justification for (and calculation of) the area of Strategic Alternative Natural Green Space (SANGS) required from each policy.

Hartlepool BC day to day service provision (Section 7.3)

The HRA (page 93-96) details the day to day service provision measures that HBC already undertake. These include foreshore management; dog control; public awareness and bird disturbance monitoring (some of which have been secured through planning obligations). These are all legitimate measures that could be included within a wider strategic mitigation strategy.

Regarding Public Space Protection Orders (PSPOs), HBC has not yet assessed the efficacy of these in controlling dogs. HBC has undertaken to consult on a borough-wide PSPO by the end of 2017. This consultation forms part of a review of Dog Control Order, which is required under new legislation. Until this review has been completed, it is not yet possible to assess the efficacy of PSPO's in mitigating disturbance by dogs on the SPA. Nevertheless, we acknowledge the work that HBC has undertaken in mapping key areas for concentrations of birds, which will in turn assist in prioritising priority bird conservation effort - including dog control measures. If the ornithological evidence supports these locations and the efficacy of PSPOs is proven, then we agree that this measure may go some way to mitigating the increase in recreational disturbance.

Planning obligations (Section 7.4)

The HRA (page 96) states that "*having accepted that there will be some level of LSE through recreational disturbance, housing developments of a significant size will need to provide and/or fund mitigation in the form of (at least) on-site SANGS provision and/or a financial developer contribution. A Supplementary Planning Document (SPD) is being prepared on Planning Obligations including developer contributions. This will include the need for financial contributions to mitigate for recreational disturbance*".

It is important that HBC provide clarity and guidance within the Plan as to what is expected of developers in order to mitigate the potential impact from their proposed scheme. In particular which developments would be required to provide mitigation and the nature of the mitigation. To this end, please see previous comments as to the need for clarity on whether Leisure and Tourism proposals will be expected to contribute. We are making the assumption that **all** new housing developments arising from Plan policy will be required to contribute. Lack of clarity in this regard will cause difficulties for HBC in accurately assessing whether the mitigation strategy proposed can be sufficiently funded: without confidence on funding it is not possible to conclude that the mitigation will be delivered, and consequently it cannot be relied upon in the Appropriate Assessment. The proposed SPD should provide that further detail.

We also note detail within the HRA (page 93) the additional wording to **Policy QP1**

'The Habitat Regulations Assessment (HRA) stage 1 screening identified a likely significant adverse effect on the Teesmouth and Cleveland Coast Special Protection Area and Ramsar European Protected Site. This adverse impact would be caused through recreational disturbance of birds which are the interest features of the site, including a breeding colony of little terns in the summer and shorebirds in the autumn, winter and spring. The HRA established that at least some new residents of housing developments would visit the SPA/ Ramsar and that these additional visits would cause harm. Each housing development is responsible for mitigating potential harm and developers can ensure this through Planning Obligations by providing an adequate provision of Suitable Alternative Green Space (SANGS) to absorb new recreation, such as daily dog walking, on site and/or by providing a financial contribution to be spent on managing recreational pressures on the European Protected Site'".

The HRA (Section 7.4.2 - page 98) states:

"HBC assesses that the pull of open countryside, whether it is the coast, heathland or other natural habitats, is equally strong for those communities living within reach of it and wishing to pursue recreational activities. Hartlepool BC does not think that it would be proportionate to



undertake research to demonstrate this, when it has used the precautionary principle to assess the impact of recreational disturbance on its coastal European Sites".

We consider it vital that robust evidence is used to justify the measures detailed within the mitigation strategy and that continued monitoring is undertaken to assess their efficacy.

Financial contributions (Section 7.4.1)

The HRA (page 96) summarises how financial contributions from developers might be spent to mitigate for recreational disturbance. These measures include financial contribution to established schemes/projects. HBC should satisfy itself that the aims, objectives and outputs of the projects will meet the need to mitigate specifically for the impact arising from housing policies i.e. recreational disturbance. For example, the primary focus of the Tees Estuary Partnership (TEP) is to develop a holistic and collaborative approach to promoting the needs of existing and potential future ***industrial development*** and nature conservation interests. Whilst a collaborative and estuary-wide solution to recreational disturbance is to be welcomed, and may form part of the TEP's work going forward, the TEP is unlikely to provide an effective and timely solution to HBC's mitigation needs in respect of the Plan.

The RSPB welcomes protection of both wintering and breeding shorebirds. In particular, that continuation of wardening of the little tern breeding colony is an essential part of the mitigation package. We would advise caution, however, in the assumption (page 97) that holiday makers, rather than local residents are the main source of disturbance. Indeed, clarification on this point may be important when assessing Plan policies and their potential to impact the SPA. We note some inconsistencies within the HRA which makes it unclear as to whether developer contributions will only be sought from new housing, rather than leisure and tourism developments. We are assuming that the provision of wider SPA wardening will be guided by the locations detailed in Appendix 7 of the HRA: Breeding and roosting concentrations of SPA birds forming PSPO dog control areas.

Regarding the Council's proposed mitigation strategy, please also refer to the RSPB's submitted Hearing Statements: **MATTER 13: Natural Environment** and **MATTER 18: Monitoring and Implementation.**

Question 11: Has the Council updated the HRA in response to the RSPB submissions (in representation Pub0091)? Is this available for the hearings or will it form part of any post-hearing updates and modifications?

The RSPB has had the opportunity to review the following documents:

HLP01/1: Hartlepool Borough Council (HBC) Local Plan (Plan) and associated modifications
HLP01/3: The Monitoring Framework - Hartlepool Local Plan HLP (2017) (Monitoring Strategy)
EX/HBC/59: Habitat Regulations Assessment Version 3 (HRA)
EX/HBC/60: Hartlepool Local Plan Mitigation Strategy and Delivery Plan (Mitigation Strategy)

The RSPB previously provided comment on earlier versions of the Plan and (associated HRA versions) - during consultations on the Draft Plan (22 July 2016) and the Publication Version (3 February 2017). In the latter submission, the RSPB considered that the Plan was unsound as it lacked detail in the HRA, and insufficient assessment of the potential for policies to have an adverse effect on European Sites. We considered that the HRA required improvement before conclusion that the Plan would have no adverse effect on the integrity of European sites could be reached. This raised questions about the deliverability of the Plan and therefore, its effectiveness.

We acknowledge that HBC has continued to develop the Plan/HRA and the associated mitigation strategy and are pleased to see that our further comments have been taken into consideration and, in part, implemented.

The RSPB has now provided HBC with detailed feedback on the latest version of the HRA and associated mitigation strategy above. We return to our key points of concern:

There is a potential for **employment (EMP)** policies to have an adverse effect on the Teesmouth and Cleveland Coast Special Protection Area (SPA) Ramsar and the proposed extension to the SPA (pSPA) through individual or combined land allocations, on (or near) sites that are within (or functionally linked to) the SPA either through direct habitat loss or through indirect displacement/disturbance of SPA interest features. **We consider that this potential is still not adequately assessed in the HRA.**

There is a potential for **combined leisure, retail and tourism** policies to have an adverse effect on the SPA through an increase in recreational disturbance arising from tourists/visitors. We note HBCs revised assessment of these policies within the HRA. **We consider that the HRA and mitigation strategy should provide further clarity as to the proposed contributions required from developments arising from these policies to mitigate any predicted impacts.**

We consider that the information provided in support of the proposed **mitigation strategy** is insufficient to allow an assessment of its efficacy in negating the potential effects of increased recreational disturbance arising from combined housing (HSG) policies and combined leisure and tourism policies. **Whilst HBC has provided further detail on the range of measures it proposes to implement, further clarity is required as to the how those measures will be secured and funded. This impacts upon the deliverability of Plan policies. As such the RSPB considers that the Plan, as written, does not provide adequate information to enable the soundness of the Plan to be evaluated under paragraph 182 of the**



National Planning Policy Framework. It is not possible to demonstrate the Plan is effective as questions remain about whether the policies are deliverable and the updated HRA does not adequately address those questions.

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