

Review of SG NE1: Protection of nature Conservation Sites

1. Introduction

- 1.1 This paper will review the Aberdeenshire Local Development Plan SG NE1: Protection of Nature Conservation Sites and assess whether any changes are required in light of amendments to national policy and changes in the local context. It will also assess whether the guidance provides a sound and robust basis for promoting the protection of nature conservation sites from the adverse impacts of new development
- 1.2 SG NE1 promotes the protection of nature conservation sites from new development that may affect the qualifying interests of these protected areas.

2. Policy Approach

2.1 SG NE1 will not approve new development where it may have an adverse effect on a site designated for its biodiversity or geodiversity importance, except where in the case of Internationally designated sites:

- a Habitats Regulations Assessment concludes that the development will not adversely affect the integrity of the site or
- it has been demonstrated that there are overriding public interest reasons of a social, environmental or economic nature, there are no satisfactory alternative sites or solutions and suitable compensation measures are implemented; or

In the case of a site of national importance, it has been demonstrated that:

- social, environmental or economic benefits of a national importance clearly outweigh any significant adverse effects to the conservation site; AND
- The objectives of the designation and the overall integrity of the area will not be comprised and any impact will be suitably mitigated; or

In the case of any other recognised nature conservation sites, wetlands or ancient, long established or semi-natural woodlands, where:

- the proposal's public benefits at a local level clearly outweigh the nature conservation value of the site, and any impact will be suitably mitigated.

2.2 NE1 is supported by Planning Advice 11/2012 Nature Conservation Sites, 2/2008 Development affecting Natura Sites, 3/2008 River Dee Special Area of Conservation and 1/2011 Protected Species Surveys.

3. Background

3.1 National context

3.2 In Scotland protection of nature conservation sites is delivered through a hierarchy of designations. This ensures that the level of protection afforded is proportionate to the value of the site. For example, when an area is identified and designated for its natural heritage value (habitats and/or species etc), the designation is classified as local, national or international, depending on the significance of the habitat/species. International designations are afforded the highest level of protection and local sites the lowest. In addition there is a specific duty on Local Planning Authorities to promote biodiversity in all areas.

3.3 Key international designations include Special Areas of Conservation (SAC's), Special Protection Areas (SPA's) and 'Ramsar' sites.

- 3.4 The EU Birds Directive (1979) provides the policy and legislative basis for SPA's by requiring member states to identify appropriate areas (SPA's) for the protection of birds which are rare or vulnerable in Europe, listed in Annex 1 of the Directive, as well as all migratory birds which are regular visitors.
- 3.5 The EU Habitats Directive (1992) complemented and expanded this by creating SAC's to ensure that rare, endangered or vulnerable habitats and species are either maintained at, or restored to, a favourable conservation status. The Habitats Directive combined SPA's and SAC's to establish Natura 2000, an EU wide network of protected areas, while also setting out how these should be protected.
- 3.6 Ramsar sites, which protect wetlands of international significance, are designated under The Convention on Wetlands of International Importance (1971). All Ramsar sites are also designated as either SAC's or SPA's, and are therefore afforded the same level of protection.
- 3.7 In Scotland, Natura 2000 sites are protected under the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended in Scotland); commonly known as the Habitats Regulations. With regard to planning, the Habitats Regulations require that any development, which may significantly affect a Natura 2000 site must be subject to a detailed 'appropriate assessment'. A proposed development may only be permitted if the assessment concludes that there would be no adverse effect on the integrity of the SAC or SPA. If this can't be demonstrated the development can only be approved in particular circumstances, i.e. overriding social and economic reasons. Statutory protection of Natura 2000 sites extends beyond the sites boundaries.
- 3.8 The two key national designations are Sites of Special Scientific Interest (SSSI's); which cover areas of land or water of special interest for their plants, animals, habitats, rock or landforms, and National Nature Reserves (NNR), which include important natural and semi-natural habitats. SSSI's are designated and protected under the 2004 Nature Conservation (Scotland) Act, with SNH identified as the lead authority. All NNR's are also designated as SSSI's and protected as such. Protection under the planning system is detailed in Scottish Planning Policy, below.
- 3.9 Local Natural Heritage designations identify areas that are important to people within a Council area. While there are a number of local designations, Local Nature Conservation Sites (LNCS) and Local Nature Reserves (LNR) are the two key designations. LNR's are designated by local authorities (LA's) under the National Parks and Access to the Countryside Act 1949, with protection provided through the policies of the Local Authority, i.e. the LDP. Nature Conservation Sites are a non statutory designation, with sites identified and proposed by Local Authorities or local conservation organisations. LNCS are also protected through LA plans and policies.
- 3.10 In addition to the direct obligations the Nature Conservation (Scotland) Act 2004 places on Local Authorities to protect national Nature Conservation Sites, the Act also introduced a duty on all public bodies to further the conservation of biodiversity.
- 3.11 The Planning etc. (Scotland) Act 2006 requires development plans to contribute to sustainable development. This requirement reinforces the need for NE1, as the protection and conservation of Natural Heritage is a key part sustainable development.

- 3.12 Scottish Planning Policy (2010) directly supports the need for NE1 by stating that “*Statutory natural heritage designations are important considerations where they are directly or indirectly affected by a development proposal*”.
- 3.13 SPP aligns with the Habitats (Scotland) Regulations and supports the approach used in NE1 to assess proposals likely to affect an international designation, stating that “*any...(development) proposal which is likely to have a significant effect on a Natura site....must be subject to an appropriate assessment by the planning authority*”. In addition, SPP provides the basis for the criteria used in NE1 to determine when a proposal will be acceptable, stating that planning approval can only be granted if an applicant can demonstrate that the proposed development “*will not adversely affect the integrity of the site, or there are no alternative solutions and there are imperative reasons of overriding public interest, including those of a social or economic nature*”. SPP also supports the requirement for compensatory measures to be implemented. With regard to developments which are likely to have a significant impact on priority habitats or species, SPP points out that “*prior consultation with the European Commission via Scottish Ministers is required unless the proposal is necessary for public health or safety reasons or will have beneficial consequences of primary importance to the environment*”.
- 3.14 SPP also provides the basis for NE1’s approach to development which may affect a National Nature Conservation Site, stating that proposals will “*only be permitted where it will not adversely affect the integrity of the area or... qualities for which it has been designated, or any such adverse effects are clearly outweighed by social, environmental or economic benefits of national importance*”. SPP highlights the need for planning authorities to adopt the precautionary principle where “*the impacts of a proposed development on nationally or internationally (designated)..natural heritage resources are uncertain, but there is sound evidence for believing that significant irreversible damage could occur*”. In cases where the precautionary principle is applied, SPP requires proposals to be modified to remove the risk of irreversible damage to the site.
- 3.15 While SPP does not set out any detailed criteria for how local designations should be protected, it broadly supports the criteria based approach of NE1 by requiring development plans to identify the “*factors which will be taken into account*” when assessing applications which may impact on a local designation. SPP also highlights local designations should receive a lower level of protection than international or national designations.
- 3.16 The National Planning Framework² broadly supports the need for NE1 by stating that “*Development plans should include policies designed to promote sustainable development*”, adding that the planning system has an important role to play in “*safeguarding and enhancing.... rural biodiversity*”.

3.17 Strategic/Regional Context

- 3.18 The Proposed Strategic Development Plan broadly supports the need for NE1, stating that “*local development plans.. will make sure the North East’s natural environment and historic sites and buildings continue to be protected and improved*”.

3.19 Local Context

- 3.20 The SEA Environmental Report of the Aberdeenshire LDP (2012) shows that there are 19 SAC’s, 10 SPA’s and 4 Ramsar sites within Aberdeenshire, covering 10.3% of the land area. With regard to national designations, there are 82 SSSI’s and 6 NNR’s, occupying 8.4% of the land area. In relation to local designations,

there are 2 LNR's covering 0.004 % of Aberdeenshire, and over 100 local Sites of Interest to Natural Science (SINS). The SEA points out that housing pressure on designations is increasing and future development will put additional pressure on these resources, either directly or indirectly, i.e. through increased access to the sites.

- 3.21 NE1 aligns with the national/regional objectives and approach outlined above in the following ways. With regard to the protection of international designations, Criterion A and paragraphs 7 and 8 of the justification text align with the requirements of the Habitats Regulations and the approach detailed in SPP.
- 3.22 Criterion B and C align with the requirements of the Nature Conservation Act (2004) and the approach detailed in SPP.
- 3.23 The last paragraph of the policy and paragraph 11 of the justification text both accord with SSP's requirement for the precautionary principle to be applied when impacts of a development on an international and/or national designation are uncertain.
- 3.24 With regard to the need for a Habitats Appraisal, which includes 'appropriate assessment', Paragraph 6 of the justification text accords with the requirements of the Habitats Regulations and the approach detailed in SPP.
- 3.25 Paragraph 9 of the justification text aligns with SPP's requirement for appropriate assessments/surveys, including EIA's, to be carried out in certain circumstances.

4. Drivers of Change

- 4.1 National and regional policy/legislation on the protection of Nature Conservation Sites has not changed significantly since NE1 was written.
- 4.2 The Council's Environment Team is currently undertaking a review of the Aberdeenshire area to identify areas of local and regional importance for biological diversity and geological diversity, with the intention of designating them as LNCS. This review will include existing SESA SINS sites and lead to LNCS replacing these designations. The review may lead to some boundary changes and the removal/addition of sites. While the review will not impact on the level of protection required in NE1, consideration should be given as to whether map based information on LNCS should be provided in the proposals maps and /or in an Appendix to NE1. SPP provides some support for this by stating that "*local designations should be clearly identified... through the development plan*". Overall, there is a general need for NE1 to take account of the Council's review of local nature conservation sites.
- 4.3 Paragraph 1 of the justification text refers to Planning Advice: Natural Heritage, which is no longer in use. This should be removed.
- 4.4 Paragraph 3 of the justification text should be removed, as it does not, directly, justify or clarify the policy position.
- 4.3 There is a need for the justification text to signpost all relevant Planning Advice, including 2/2008 Development affecting Natura Sites, 3/2008 River Dee Special Area of Conservation, 9/2012 Baseline Ecological Survey and 1/2011 Protected Species Surveys. Scottish Natural Heritage website SNHi should also be referenced.
- 4.4 There is a need for all surveys and/or assessments to be carried out in line with British Standard: BS 42020:2013. Paragraph 10 of the justification text should be amended to reflect this.

5. Recommendations

- The first paragraph of criterion C should be amended to read ‘In the case of other recognised nature conservation sites such as LNCS, non-statutory nature reserves, Annex 1 habitats, LBAP priority habitats, Ancient semi-natural woodland, LNR’s (or Community nature Areas) ‘.
- Further consideration should be given as to whether map based information on LNCS should be provided in the proposals maps and /or in an Appendix to NE1. This should be taken forward as a main issue within the Main Issues Report.
- Paragraph 1 of the justification text refers to Planning Advice: Natural Heritage, which is no longer in use. This should be removed.
- Paragraph 2 of the justification text should be amended to read, ‘Within settlements, areas of semi-natural habitat...’
- Paragraph 3 the justification text should be removed.
- Paragraph 4 of the justification text should be amended to read, ‘As part of our commitment to sustainability, it is vital that biodiversity and geodiversity are conserved...’.
- Sentence 5 of paragraph 5 should be amended to read, ‘Local Nature Conservation Sites and Local Nature Reserves, which are identified by the Council, provide vital links between different sites of nature conservation value, and contribute to the development of habitat networks’.
- The last sentence of paragraph 5 should make reference to SNH information service at <http://www.snh.gov.uk/publications-data-and-research/snh-information-service/>
- Paragraph 10 should be amended to read, ‘All surveys and/or assessments should be undertaken by an independent and competent consultant, in line with British Standard: BS 42020:2013. Further guidance is provided in Planning advice; 9/2012 Baseline Ecological Survey and 1/2011 Protected Species Survey.
- Paragraph 12 should be amended to read, ‘It is important that individual developments and the cumulative impact of proposals (e.g. new roads and houses) do not lead to a significant loss or deterioration of Aberdeenshire’s designated nature conservation sites....’. This paragraph should become paragraph 2.
- Paragraph 5 of the justification text should be amended to signpost Planning Advice 2/2008 Development affecting Natura Sites, 3/2008 River Dee Special Area of Conservation.

6. Summary of Main Points

- 6.1 Current national policy and legislation supports the need for NE1. The policy provides a sound and robust basis for protecting nature conservation sites from new development that may affect the qualifying interests of these areas. While the legislative and policy context has not changed significantly since NE1 was written, this paper recommends that, following the completion of the LNCS review, further consideration should be given to how map based information on LNCS should be provided. In addition, all surveys and/or assessments should be

carried out in line with the British Standard: BS 42020:2013, while all relevant planning advice should also be signposted. It is also recommended that a number of minor amendments are made to the justification text, in order to improve clarity.

References

Aberdeen City and Shire *Proposed Strategic Development Plan* (2013)

Aberdeenshire Council (2012) *Aberdeenshire Local Development Plan 2012*

Aberdeenshire Council (2012) Strategic Environmental Assessment: Environmental Report of LDP

Aberdeenshire Council Nature Conservation

<http://www.aberdeenshire.gov.uk/natural/conservation/index.asp>

Scottish Natural Heritage Protected Areas <http://www.snh.gov.uk/protecting-scotlands-nature/protected-areas/>

Scottish Government (2010) *Scottish Planning Policy*

Scottish Government (2009) *National Planning Framework for Scotland 2*

