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**Responses re: Matter 10, Site Allocations, Respondent ID: 760**

**Kirkby Area Site Allocations – Site H1Ka: Beacon Farm, Derby Road, Kirkby-in-Ashfield**

Responses submitted by John Collins, BSc Hons T&CP, Dip LA on behalf of the Land Owners, Mrs Sheila Parker and Mr Brett Parker.

**10.25 - In light of the proposed restriction on development (Site H1Ka) within 400m of the ppSPA, is there a reasonable prospect that mitigation measures can be secured?**

**10.26 - Is the allocation of Site H1Ka justified? Does its identification accord with the Conservation of Habitats and Species Regulations (2017)? How has the Council considered the ‘mitigation hierarchy’ as set out in the Planning Practice Guidance1? Would any mitigation measures affect the site’s viability?**

Response:

Being interrelated, our response deals with these 2 points together.

The Sherwood Forest ppSPA is an important habitat for Nightjar and Woodlark. Most of the area lies well to the north of Ashfield District and only a small fragment lies within the Plan area. In the 2016 survey, two of the 96 total recorded ‘churring Night Jar males’ were recorded in the ppSPA closest to Kirkby-in-Ashfield, suggesting that 2 males probably had their territories there. However, there is no heathland within the ppSPA in the Plan area. Heathland is the favoured nesting habitat for both Nightjar and Woodlark.

Whilst Site H1Ka lies within 400m of the proposed ppSPA, the presence of the busy A611, which separates the two sites, means that in practice the interaction and potential for harm will be greatly reduced. Undoubtedly the very noisy A611 will be having a significant impact upon the ppSPA. Shy birds like Nightjar and Woodlark will not choose to frequent areas within sight or sound of such a busy main road. Nature conservation experts maintain this effect will extend to approx 200m from the main road. Equally, they are likely to avoid proximity to the well-used public footpaths.

In response to the Consultation on the Regulation 19 Pre-Submission Draft Plan, the allocation of Site H1Ka received one objection. This was from Natural England, on the grounds that Site H1Ka lies within 400m of the proposed ppSPA. As the Inspectors will be aware, that objection has since been withdrawn.

Notwithstanding the already present adverse impacts upon that fragment of the ppSPA closest to Beacon Farm, the possibility exists that some harm may arise from building works associated with site development and from future residents and, more particularly, from any pets, most notably cats and dogs. Accordingly, in line with the ‘Mitigation Hierarchy’, we set out below mitigation measures in order to reduce/minimize the extent of any potential impact.

Firstly, however, the Inspectors’ attention is drawn to a number of key points emerging from the HRA Report on the work done by Lepus Consulting on behalf of the Council.

1. Following the Rufford Colliery Public Inquiry, Natural England provided advice to local planning authorities in relation to the ppSPA. This recommends a precautionary approach be adopted to ensure reasonable and proportionate steps are taken to avoid or minimize any potential adverse effects from development on the breeding populations of Nightjar and Woodlark (Local Plan HRA Report Para 6.1.3).
2. Whilst the HRA undertaken adopted a rigorous, precautionary approach, as part of their work, Lepus Consulting drew attention to relevant case law. (HRA Paras 4.4.5 – 4.4.7) Rulings from the 2012 “Sweetman” case provide clarification that “it is not necessary for the Council to show the Local Plan will result in no effects whatsoever on habitats sites.” Rather, mitigation measures should aim to avoid, minimize or reduce significant effects on habitats sites – the ppSPA. (HRA Para 4.7.2)
3. Importantly, the HRA Report concluded “The Local Plan will have **no** adverse impact on site integrity of the ppSPA either alone or in combination.” (Statement of Common Ground, Ashfield District Council & Natural England Para 3.1) and “Ashfield Council and Natural England will work together to agree and apply mitigation measures for sites within 400m of the ppSPA to ensure that its integrity is maintained.” (Para 5.1)

The following is submitted to assist this process and the Inspectors in their deliberations:

Undoubtedly the busy main road itself is a strong separating barrier. Unaccompanied pets – cats and dogs – are unlikely to risk trying to cross it. However, it is accepted that future occupants with dogs could choose to take their dogs across the busy main road to utilize the already well-used, public footpaths within the ppSPA. The signposted public footpath is approximately 200m south of Site H1Ka (Appendix 1, photo Nos 1, 2, 3 and 4). It is impossible to predict, but probability suggests that the actual numbers of dog walkers coming from the site would be small in total and especially in relation to the numbers already using the paths on a regular basis for dog-walking, many of whom may live on the same side of the main road as the ppSPA and hence, for them, access is very easy.

Notwithstanding, we would suggest a number of mitigation measures for Site H1Ka as part of the site development process. These can be enforced by planning conditions or legal agreements. This accords with the ‘risk based’ approach recommended by Natural England for development sites which could, potentially, impact upon the ppSPA:

1. Restrictions should be imposed upon any planning consent issued to the effect that:
2. No construction works with the potential to create noise will be permitted after dusk when Nightjar and Woodlark are likely to be active. This restriction may be relaxed in winter, October to April, when Nightjar will have migrated back to Africa and Woodlark will have changed their feeding habits and joined with flocks of finches, skylarks and buntings.
3. No construction work generating noise having the potential to be audible beyond 200m (the area deemed to be affected by the A611) should take place during the main breeding season, ie late May to August for Nightjars and March to July for Woodlark. Hence adopting a cautious approach between March and August;
4. No development should take place before a landscaping plan has been approved which:
5. Provides:

safe, convenient dog-walking routes **within** the site itself. Site H1Ka is unique amongst proposed housing sites in benefitting from the presence of extensive, well-established woodland areas (+/- 1 hectare in total) along the entire northern and western boundaries. These should be managed for the benefit of wildlife and future residents. Already visual assets, by carefully introducing a footpath network, preferably in part all-weather, these can become a valuable asset for informal recreation. Undoubtedly they would be appreciated and utilized by residents with dogs, providing safe, very accessible opportunities to exercise dogs. These woodland and edge of woodland walks should also link with all-weather paths in other parts of the site.

1. Incorporates:

a ‘pet-proof’ fence to be installed and maintained to a minimum height of 1.2m along the entire eastern and southern site boundaries to effectively ‘contain’ any on-site pets, preventing them from being able to potentially access the ppSPA. This fence to be installed **before** any dwellings can be occupied on site. We are open to other options, but recommend sturdy, close-meshed fencing, the lower edge buried and backed on both sides by native hedgerow planting, utilizing thorny/prickly species such as hawthorn, blackthorn, dog rose and holly. Within a few years, the fence would be visually ‘lost’ within an attractive, native hedgerow. The agreed maintenance programme for the site should allow for this hedgerow to grow to a minimum 1.5m, but ideally 1.8m, trimmed in an A-shaped format. The native species and A-shaped form are important, as this barrier will then itself become a haven for wildlife, including nesting birds. An effective ‘containing barrier to cats and dogs’, it will be an attractive feature in the street scene and act as a road noise buffer for the benefit of future residents.

We believe these practical on-site measures, coupled with the barrier presented by the busy A611, would mean that in practice the development of Site H1Ka would have no tangible adverse impact upon the integrity of the ppSPA. However, the owners are willing to consider alternative/additional measures which the Council and/or Natural England consider would be beneficial.

Finally, we believe action is needed to address/mitigate adverse pressures **already** impacting the ppSPA from walkers, especially dog walkers, and from trail bikes. Action is needed to encourage/foster more responsible use of paths within the ppSPA.

We believe the Council and Natural England have a key role to play by ‘educating’ the public – raising awareness of the special qualities of the ppSPA. In addition to waymarked public footpaths, there are a number of well-established ‘informal’ paths within the ppSPA. Observation confirms that dogs are routinely let off leads in the area. We suggest that informative signage be installed designed to raise awareness and appeal to walkers and dog owners in particular to act responsibly. People are accustomed to exercising due care when crossing farmland where stock are present, having been alerted to the potential problem by appropriate signage. Something similar is needed here, most notably at the entrance beside the Public Footpath sign. Natural England have specialist knowledge, but restrictions advising that dogs should be kept on leads could be relaxed during the less sensitive winter months. Signs need to be robust and to the point regarding dogs on leads and the need to proceed quietly, but could also incorporate a QR-Code providing more detailed information. We believe these measures would greatly reduce levels of intrusion currently experienced within the ppSPA. Whether signs will deter the unauthorized use of trail bikes is a different matter, but needs addressing.

**10.27 – Do the exceptional circumstances exist to justify amending the Green Belt boundary in this location?**

Response:

Most definitely, as our fully-reasoned submissions to the Local Plan have clearly demonstrated. The key points are:

1. The site no longer fulfils the purposes for which Green Belt is designated. As the Council’s Green Belt studies demonstrated, it is the lowest scoring of all the proposed Green Belt release sites, ie **it makes the least contribution to Green Belt purposes**. It scored an overall Harm Rating of 6 out of a possible 20. However, since the system used made it impossible to score less than 4, it is more meaningful to consider it scored just 2 from a possible 16. With this in mind, we would draw attention to an advisory letter from Inspector Jeremy Youle to the Council dated 15th April 2014. Paragraph 11 reads, “….. if you conclude that parcels of land have, at most, negligible value as Green Belt, it inevitably follows that a designation other than Green Belt might be a more appropriate option”. Undoubtedly, the appropriate time to do this is when preparing a new Local Plan. Whilst this advice was given in relation to an earlier version of the Plan, the principle surely still applies and, from the objectively assessed evidence now available, must surely apply to Site H1Ka.
2. The site is well contained and has very strong, defensible boundaries. Bound on 2 sides by existing housing (west and south), the eastern boundary abuts the main A611 and the northern boundary is Balls Lane. Here the visual and physical separation to the wider Green Belt beyond is reinforced by semi-mature woodland growing along the whole boundary (Photo 5). The revised Green Belt boundary will be **more** logical and **more** clearly defined/defensible than the current boundary and can persist long term in accordance with NPPF Guidance Para 140
3. The site abuts the existing urban/built-up area of Kirkby and is in a highly sustainable location. An open-all-hours grocery store (Photos 6 and 7) and a number of bus stops are within easy walking distance (200-400m ). These various bus stops give access to **and** from the town centre, schools and medical facilities and to other major centres – Mansfield to the north and Nottingham to the south and places between – for extended shopping, community facilities and employment opportunities.
4. The site is **brownfield** in part and arguably in whole. The southern section – essentially the entire area south of the centrally located bungalow – is universally recognized as brownfield (Photos 8 & 9). Now disused, indeed incapable of beneficial use without development, this extensive area was used by the main contractor, BIRSE, during construction of the Robin Hood Rail Line, 1993 to 1998, and subsequently by Diamond Cable. Whilst underground services remain (sewerage, water and electrics), all buildings have been removed, leaving just foundations and extensive surfaced compound areas used by both companies for storage of plant and equipment.

Whilst known as the ‘Beacon Farm’ site, the name is somewhat misleading. The intensive poultry farming activity flourished in the 1970’s, but was winding down in the early 80’s and ceased altogether in 1984.

For a time a ‘farm shop’ operated in one of the buildings, selling products brought in from elsewhere, but by the early 1990’s the business had evolved, transformed and greatly expanded into a much bigger storage and sales of building materials operation. This was more or less confined to the very large, former poultry buildings, whilst at the same time BIRSE and Diamond Cable were operating from the previously open area to the south of the site. The business majored on reclaimed building materials, but also sand, cement, plasterboard, sanitary ware, etc. This continued as the sole on-site business activity until 2005, when ill health forced Mr Parker Senior to cease work. Sadly he passed away in 2008, when the vast majority of building materials were sold off.

Since then the buildings have been disused and become increasingly dilapidated. Their age and construction incorporating lots of asbestos makes them unsuitable for alternative uses. As the photographs show (Photos 10 – 18), remnants of building materials still remain, scattered throughout the buildings, indicative of their former use. They also show that the entire footprints comprise reinforced concrete. Now disused and derelict (Photo 19), we have always maintained these buildings should also properly be regarded as brownfield, their most recent long-term use having been unconnected with farming. Irrespective of their status, they are a significant problem and an eyesore, which in view of the cost of clearance (extensive areas of reinforced concrete and asbestos sheeting) can only realistically be achieved by allowing development, which is not permissible whilstsoever the current, inappropriate Green Belt designation persists.

One of the purposes of Green Belt (Para 138 e) is “to assist in urban regeneration by encouraging the recycling of derelict land”. Somewhat uniquely, allowing this small but visually prominent site to be removed from the Green Belt will achieve precisely that worthy aim. To their credit, the owners have striven to keep the site looking tidy, at least when viewed from the street, but, as the photographs show, they are increasingly fighting a losing battle (Photos 20-26). Only by allowing beneficial development can the site break out of the downward spiral. In the absence of enabling beneficial development as currently proposed in the Plan, this site will remain largely unuseable, condemned to deteriorate further into increasing dereliction – an eyesore and an environmental problem. The Plan provides the means to check and reverse the downward spiral and enable the site to make a significant, positive contribution to the environment whilst at the same time making a locally significant contribution to identified Local Housing Need.

**It is worth stressing that Site H1Ka is one of the very few brownfield sites potentially available and being put forward for development within the entire Local Plan area.**

Redevelopment for housing would be consistent with the Government’s objectives to optimize the use of brownfield land in sustainable locations.

5. Compliance with the Local Plan’s key central philosophy to provide

dispersed housing opportunities to address housing needs throughout the plan area (Strategic Policy S1). Being on the south side of Kirkby, it will provide much needed housing opportunities associated with the wider Annesley/Kirkby Woodhouse area, where very few opportunities for development exist.

The allocation of Site H1Ka is also important because it is one of the very few virtually flat, sustainably located sites proposed for residential development in the Plan area. As such it would be especially suitable for elderly people (predicted to grow substantially in number over the Plan period) and those with mobility needs, for whom purpose-designed accommodation within a purpose-designed, accessible layout, is currently lacking in Ashfield.

1. The Draft Plan has been through several stages of public consultation and it is noteworthy that Site H1Ka, unlike many other proposed development sites, did not generate specific objections to its development. In the eyes of the wider general public, its development is clearly acceptable, indeed justified.