

# Land to the South of Ringwood Road, Alderholt Ecology Rebuttal Proof of Evidence of Dr R Brookbank

Prepared on behalf of

Dudsbury Homes (Southern) Ltd

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Final Report

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# Land to the South of Ringwood Road, Alderholt

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### 1. INTRODUCTION

- 1.1 This Rebuttal Proof of Evidence (RPOE) has been prepared to respond to ecology matters raised by Dorset Council (DC) in their Proof of Evidence submitted to this Appeal on 28 May 2024. No other Rule 6 Parties have raised any substantive matters relating to ecology that I consider require further response.
- 1.2 As I will explain within this RPOE, DC in their submitted evidence have raised entirely new issues, without foundation or merit, in addition to the issues raised as part of their Reason for Refusal (RfR) 1.
- 1.3 Verbal advice provided by Natural England during formal Discretionary Advice Service (DAS) meetings held prior to and following receipt of their 25 May 2023 letter of objection (**CDB.21**), indicated that all of the salient issues relating to the HRA of the Appeal Proposals should be capable of being satisfactorily addressed through the provision of further information and through the securement of additional impact avoidance and mitigation measures.
- 1.4 DC has nevertheless maintained their position, despite the submission of further information regarding impact assessment and mitigation, that there are numerous matters which in their view remain outstanding such that a positive HRA conclusion cannot be reached. The inference being that the prevalence of adverse effects is insurmountable, with the final detail of mitigation and/or certainty of delivery necessary to rule out risk of adverse effects not capable of being secured by planning condition or obligation. Whilst I will explore the individual issues in more detail in this RPOE, in my view it is important to establish from the outset that DC's position is not consistent with the stepwise tests set out by Regulation 63 of the Habitats Regulations nor case law that has informed the practical approach to Habitats Regulations Assessment (HRA).
- 1.5 The European Court of Justice (ECJ) in Waddenzee (Case C-127/02) established that an Appropriate Assessment is necessary:
- “...if it cannot be excluded, on the basis of objective information, that it will have a significant effect on that site, either alone or in combination with other plans and projects”*
- “...where such a plan or project has an effect on that site but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on the site concerned” [my emphases]*
- 1.6 Therefore, for an effect to be significant such that the requirement for Appropriate Assessment is triggered, that effect has to have the potential to undermine the site conservation objectives, and that must be considered in light of objective information.
- 1.7 Once the requirement for Appropriate Assessment has been triggered, a plan or project can only be authorised where it will not have an adverse effect on the integrity of the site concerned. The ECJ in Waddenzee ruled that that is where:

*“no reasonable scientific doubt remains as to the absence of such effects”.*

- 1.8 However, as was highlighted by the Supreme Court in *Champion* ([2015] 1 WLR 3710) (with reference to the Advocate General Kokott’s opinion in *Waddenzee* ([2005] All ER (EC) 353)):

*“the necessary certainty cannot be construed as meaning absolute certainty since that is almost impossible to attain. Instead, it is clear from the second sentence of article 6(3) of the Habitats Directive that the competent authorities must take a decision having assessed all the relevant information which is set out in particular in the appropriate assessment. The conclusion of this assessment is, of necessity, subjective in nature. Therefore, the competent authorities can, from their point of view, be certain that there will be no adverse effects even though, from an objective point of view, there is no absolute certainty.”* [my emphasis]

- 1.9 In terms of the judgement to be made regarding risk of an adverse effect, the Court of Appeal in *Boggis* (R (on the application of Boggis) v Natural England [2009] EWCA Civ 1061) found that:

*“a claimant who alleges that there was a risk which should have been considered by the authorising authority so that it could decide whether that risk could be “excluded on the basis of objective information”, must produce credible evidence that there was a real, rather than a hypothetical, risk which should have been considered.”* [my emphasis]

- 1.10 The Habitats Regulations specifically allow for the consideration of mitigation measures that are proposed to be secured through a form of planning control, where Regulation 63 (6) states:

*“the competent authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given”* [my emphasis]

- 1.11 Furthermore, the Administrative Court ruling on *R (on the application of Christopher Prideaux) v Buckinghamshire County Council* [2013] EWHC 1054 (Admin) commented on the importance of making a decision based on the sum of information provided, including any extra material submitted following the initial application:

*“It is important, I think, to view the relevant ecological material as a whole, as it was after a process of consultation, the submission of further information, the refinement of FCC’s proposals, the evolution of the intended measures for avoiding harmful impacts on the species potentially affected by the development....”*

- 1.12 As I hope will be clear from the collective evidence submitted to date, pursuant to the HRA of the Appeal Proposals, the ecological effects that DC assert as remaining at issue either: fail to reflect a credible risk of undermining International Site conservation objectives, such that they do not constitute likely significant effects; or, can be adequately addressed and secured by suitably written planning conditions and/or obligations. Therefore, in my view, none of the issues asserted as outstanding by DC are insurmountable, and thus do not constitute valid reasons for refusal.

## 2. CHRONOLOGY OF ISSUES RAISED

- 2.1 In drafting the Ecology Topic Paper (**CDG.37**), I sought to set out matters of fact regarding the evolution of the ecology case, including the chronology of stakeholder consultations, document submissions and issues identified at particular points in time. DC has refuted reference to new issues being raised post-exchange of evidence, though review of a number of Core Documents clearly demonstrates that the Council's Ecology PoE has raised more than one new HRA issue that had not hitherto been raised at the pre-application stage (by the Council nor Natural England); were not specifically raised within their Habitats Regulations Assessment (HRA); were not detailed within their Committee Report; and were not outlined in their Statement of Case (SoC) to this Appeal. This is illustrated by **Table 2.1** below.
- 2.2 Clearly the HRA of the Appeal Proposals, as carried out by the Competent Authority, must consider all and any risk of a likely significant effect, no matter the point in time that the risk is identified. However, case law has established that there must be credible evidence, comprising objective information, of a real (as opposed to merely hypothetical) risk that an effect would undermine site conservation objectives, in view of the site's qualifying features. The fact that additional issues have been raised by DC very late in the determination process acts to undermine the credibility of those issues, especially when they depart from advice provided by Natural England - the statutory adviser for nature conservation.
- 2.3 To be clear, I consider that items referenced by ID 6, 8 and 9 in column 3 of **Table 2.1** to be novel issues, which the Appellant has not to date had the opportunity to submit further information in relation to. I therefore provide a response to these issues in **Section 4** below, whilst **Section 3** responds to the Council's evidence regarding previously identified issues that they assert remain outstanding.
- 2.4 Item ID 1, regarding the detail of the in-combination or cumulative assessment, is covered in **Sections 3** and **4** since the Council originally raised this specifically in relation to air quality matters, but has now sought to migrate the issue to be of relevance to other impact pathways.

**Table 2.1: Chronology of ecological issues raised by Natural England and DC, and DC's stated position**

International Site	Ecological issue	ID	Issue identified in NE/DC documents?					DC Position: outstanding issues (based on Topic Paper)
			NE objection <sup>1</sup>	DC HRA <sup>2</sup>	DC Committee Report <sup>3</sup>	DC SoC <sup>4</sup>	DC PoE <sup>5</sup>	
All	Assessment of in-combination effects – no list of plans and projects	1	NO	NO	YES – in context of AQ	YES – in context of AQ	YES – but broader scope	<i>Outstanding</i>
River Avon SAC	Water quality – nutrient neutrality	2	YES	YES	YES	YES	YES	<i>Outstanding</i>
Dorset Heath(lands) SAC/SPA/Ramsar	Recreational pressure – SANG phasing and mechanism for SANG maintenance	3	YES	YES	YES	YES	NO	
	Recreational pressure – need for land barrier to west of SANG	4	YES	NO	YES	YES	NO	
	Recreational pressure – transport strategy should not promote connections to Verwood via Ringwood Forest	5	YES	YES	YES	YES	NO	
	Recreational pressure – SANG as mitigation for AONB	6	NO	NO	NO	NO	YES	<i>Outstanding</i>
	Loss of supporting habitat for Nightjar – requirement for lighting strategy	7	YES	YES	NO	NO	NO	
	Loss of supporting habitat for Nightjar (within the area of proposed SANGs due to disturbance)	8	NO	NO	NO	NO	YES	<i>Outstanding</i>
	Other urban effects	9	NO	NO	NO	NO	YES	<i>Outstanding</i>
New Forest SAC/SPA/Ramsar	Air pollution – contribution to IAQS	10	YES	YES	NO	NO	NO	
	Recreational pressure – need for SAMM	11	YES	YES	YES	YES	NO	
	Air pollution – revised modelling to include development in Fordingbridge	12	YES	YES	YES	YES	YES	<i>Outstanding</i>

1 – CDB.21; 2 – CDB.33; 3 - CDA.75; 4 – CDC.2; 5 – CDG.6.

### 3. RESPONSE TO PREVIOUSLY IDENTIFIED ISSUES

#### River Avon Nutrient Neutrality

##### *Mitigation Liability*

- 3.1 Despite the submission of a revised full nutrient budget calculation within the Addendum Information for HRA (IfHRA) report (CDA.99), using Natural England’s most up-to-date calculator, DC has criticised the approach to the calculation completed and continues to state that they remain unclear as to the nutrient mitigation liability of the Appeal Scheme.
- 3.2 The Appellant has provided a full nutrient assessment on the basis of the provisional information available at this outline stage. It is the nature of an outline application that fully definitive information is not available. ‘Waiting’ for subsequent detailed planning submissions is not a matter of ‘preference’, as has been asserted by the Council, it is a fact that further nutrient budgeting will be required to inform HRA of subsequent Reserved Matters Applications.
- 3.3 The Council asserts that the Competent Authority “*needs to be clear at outline stage how the nutrient liability pre-2030 and post-2030 will be dealt with*”. The Addendum IfHRA is very clear that the nutrient liability will be met through acquiring approved third-party in-perpetuity mitigation credits and that no additional ‘bridging’ mitigation is required as the project’s interim pre-2030 requirements will not exceed its in-perpetuity requirement at full occupation post-2030.
- 3.4 As set out in the Addendum IfHRA, a total of 360 dwellings is considered to represent a reasonably precautionary projection of the maximum likely occupation level by 1 April 2030. At pre-2030 treatment standards, the occupation of 360 units would generate 34.08 kg/year of total phosphorus in treated wastewater – less than the 40.24 kg/year generated by the occupation of 1,700 new dwellings under post-2030 standards.
- 3.5 On this basis, the project’s maximum pre-2030 nutrient contribution will clearly be lower than its in-perpetuity post-2030 contribution – even before the effects of land use change are taken into account. The quantity of nutrient export from the site is projected to increase post-development, as the balance of proposed uses is attributed with higher nutrient export rates than the site’s baseline use (Natural England’s calculator considers that the proposed ‘residential urban land’ will generate Phosphorus at a rate four times higher than the existing arable use and more than six times higher than the existing dairy use). At interim construction stages, the extent of this overall increase and the resultant nutrient contribution from land use change will be duly reduced, as only a proportion of the ‘residential urban land’ will actually have been delivered. Moreover, the interim-stage nutrient contribution from land use change will be further inhibited by the requirement to ‘frontload’ the delivery of large areas of SANG – a land use type attributed with a very low nutrient export coefficient.
- 3.6 These points notwithstanding, regardless of the extent to which land use change may have progressed across the site, the project’s interim nutrient liability will not exceed the projected in-perpetuity liability as the pre-2030 wastewater contribution from 360 units is lower than the post-2030 contribution from 1,700 units. Consequently, no additional bridging solution is required to offset the project’s pre-2030 effects.

### *Means for Securement*

- 3.7 The other issue asserted as remaining outstanding by the Council is the satisfactory demonstration by the Appellant that the required Phosphate credits have been secured and therefore will be available in the future to mitigate the impacts of the development.
- 3.8 In their SoC the Council state that “credits would need to be secured to provide certainty that effects would be mitigated.”
- 3.9 Exactly what is meant or required by the term ‘secure’ has been a point of debate and contention between the parties.
- 3.10 In the October 2023 DAS meeting (**CDA.86**), Natural England explained what they require to be satisfied that the Appeal Proposals can achieve nutrient neutrality, the minutes of which record:

*“Confirmation from one or more of the two fish farms that they have enough credits and are willing to sell. NE needs to see an ‘In principle’ letter so NE can confirm suitability of potential supplier(s) and confirm sum is affordable (price does not need to be disclosed). Best supplier can be selected at future stage.....NE do not require any formal arrangement committing to the purchase of the mitigation credits, this would be unreasonable and unnecessary at outline stage.” [my emphasis]*

- 3.11 As set out in my MPoE, **CDA.84** constitutes a letter from the operator of the Bickton Strategic Mitigation Scheme (PO4), one of a number of River Avon Phosphate credit suppliers, confirming that a sufficient number of credits can be supplied to the Appeal Scheme.
- 3.12 The Council’s Ecology PoE refers to a conversation between their witness and Natural England, set out as follows:

*“a brief telephone conversation between myself and Nick Squirrel the Natural England Case officer did suggest that Natural England were in agreement that sufficient evidence to demonstrate that the mitigation in the form of phosphate credits was both available and had been secured....”*

- 3.13 If the above has been set out in the Council’s PoE correctly, this would appear to confirm that Natural England is satisfied with the letter provided by PO4. However, the Council’s PoE states that “*This is not accepted as evidence that credits have actually been reserved or otherwise secured.*” The Council explain their position in their PoE as follows:

*“the Bickerton project does have a finite number of units available, the Section 33 agreement for the Bickerton Project indicates a total capacity equivalent to of 920kg Phosphate/year, and other development schemes in the area will likely be looking for units and may purchase them ahead of the Appellant. Therefore, in my opinion, the competent authority would require assurance not only that these credits are available when they are required, but also that they have been reserved or otherwise secured.” [my emphases]*

- 3.14 As has been explained in the Addendum IfHRA, the current nutrient budget calculation is based on the provisional information available at the outline planning stage, and has taken no account of the effects of the detailed surface water drainage strategy (SuDS) on the removal of Phosphorus released in surface water runoff post-development. As discussed in the Addendum

IfHRA, a suitably designed SuDS strategy would be capable of significantly reducing the project's final nutrient mitigation liability and could indeed have a transformative effect on the final nutrient budget if it transpires that infiltration drainage is achievable.

- 3.15 It makes no commercial or sound planning sense for the Appellant to make a financial investment in the purchase or reserving of credits when the quantity required remains to be confirmed at the detailed design stage, and given the considerable scope for on-site mitigation in the form of SuDS.
- 3.16 If the future availability of Phosphate credits is the Council's concern, and as I have already highlighted in my MPoE, the Appellant's preferred mitigation provider is one of a number of mitigation providers in the Avon catchment. The Bickton scheme alone has more than 10 times the credits required by the Appeal Proposals (even before the potential effect of SuDS is taken into account). If other developments in the catchment have a proportionate mitigation requirement to that currently estimated for the Appeal Scheme, then the Bickton project has sufficient credits available to mitigate over 16,000 new dwellings. DC's doubt regarding the future availability of Avon Phosphate credits effectively entertains the possibility of a future moratorium on development within the catchment, which is often the case when new strategic issues arise, but in my professional experience rarely endures once mitigation solutions begin to come to market.
- 3.17 With regards to the viability assessment, a mitigation liability of around 50kg/year seems to me to be a reasonable approximate basis for forecasting given the likely additional and currently unaccounted for beneficial effects of the surface water drainage strategy, though it is for other witnesses to comment on this non-ecological matter.

### **New Forest Air Quality (including In-combination) Assessment**

- 3.18 Despite the Addendum IfHRA providing further information regarding the assessment of potential air quality effects on the New Forest International Sites, which remain outside of the Zol of the Appeal Proposals, the Council has summarised their outstanding concern in the Ecology Topic Paper (**CDG.37**) as follows:

*"Results of revised traffic flows and air quality modelling for the New Forest not yet available. Currently unable to conclude if there will be an air quality impact or not."*

- 3.19 Contrary to DC's assertion, I am informed by the Appellant's transport witness that the revised transport data has been provided to Entran, DC's Highways Consultant, and is being reviewed with a view to agreeing matters as part of producing the Transport Topic Paper. The revised air quality assessment, produced by Waterman Group and dated 29 April 2024, was also submitted to DC alongside the Addendum IfHRA as part of the Environmental Statement (ES) Addendum submission (**CDA.95**).
- 3.20 It is for the Appellant's transport witness to speak to the transport assessment carried out; however, details of the plans and projects included within the future baseline modelling and therefore considered within the air quality assessment set out within the Shadow HRA, are provided within the ES Transport Addenda, and not duplicated within the Addendum IfHRA report. The revised assessment work has taken account of planned development around Fordingbridge, as identified as a requirement by the New Forest National Park Authority, Natural England, and DC.



## 4. RESPONSE TO NEW ISSUES

### Lack of Detailed In-combination Assessment

- 4.1 In addition to earlier complaints by DC that the projects considered as part of the in-combination transport and air quality assessment had not been adequately set out by the Appellant, the Council in their Ecology PoE (**CDG.6**) have sought to extend this asserted issue to encompass other impact pathways – referred to in their Table 1 as hydrological change, loss of supporting habitat and recreational pressure.
- 4.2 Notwithstanding the detail set out within the ES and its subsequent Addendum regarding the cumulative developments considered, the Council has failed to understand the fact that the impact pathways considered do not, in practical assessment terms, require the detail of other plans and projects to be actually considered.
- 4.3 The strategic approach to avoiding adverse effects on site integrity, both alone and in-combination, from nutrient pollution and recreational pressure, is effectively for proposed developments to ‘consume their own smoke’.
- 4.4 With regards to water quality in the River Avon catchment, this involves securing ‘nutrient neutrality’ – whereby development at any scale is required to avoid any increase in additional nutrient loading and to accordingly make no contribution to any potential in-combination effect, irrespective of the detail of other developments that would have the potential to act in-combination in the absence of mitigation.
- 4.5 With regards to recreational pressure on the Dorset Heaths and the New Forest, this involves securing SANGs, the purpose of which is to secure ‘no net increase’ in visits to the heaths – on the basis of which, as is the case with nutrient neutrality, no contribution is made to a potential in-combination effect.
- 4.6 The same can be said for potential in-combination effects on offsite supporting habitat. Where that habitat would be enhanced alongside development, thereby supporting the achievement of the site conservation objectives, there is no residual negative effect that could act in-combination with other plans and projects to present a credible risk of an adverse effect on site integrity.
- 4.7 It is therefore my view that the Appellant has provided sufficient information to assist the Competent Authority in undertaking an HRA of the Appeal Proposals (as set out in the IfHRA and Addendum IfHRA reports, which are accompanied by the evidence submitted to this Inquiry), and that a positive Appropriate Assessment conclusion can be reached on the basis of the objective information provided.

### SANG as Mitigation for the Cranborne Chase and West Wiltshire Downs AONB

- 4.8 The Council in their Landscape and Ecology PoEs (**CDG.5 & CDG.6**) have erroneously conflated matters considered as part of an assessment of potential landscape and tranquillity effects on the above-mentioned Area of Outstanding Natural Beauty (AONB), with the specific requirement to provide SANG as mitigation for recreational pressure effects on the Dorset Heath(land)s SAC, SPA and Ramsar.

4.9 Whilst falling under the jurisdiction of Natural England, in terms of their remit for providing statutory advice, the assessment of potential impacts on an AONB is strictly a landscape matter and is unrelated to nature conservation and consideration of a proposal under the Habitats Regulations. Natural England also provide statutory advice on the use of 'Best and Most Versatile Agricultural Land', which is similarly not a nature conservation or Habitats Regulations matter.

4.10 The Council's Ecology PoE states:

*"In this section I highlight concerns that the Appellant is making the claim that the proposed SANG network would offset recreational pressure on both the Cranborne Chase an [sic] West Wiltshire Downs AONB and the Dorset Heaths but without a reasoned explanation as to the efficacy of this claim.....In my opinion the potential impact of recreational pressure on the AONB needs to form part of the in-combination assessment as potentially the number of new recreational users of the proposed SANG network may have been underestimated, once the anticipated visitor pressure to the AONB is factored in" [my emphasis]*

4.11 The basis for the Council's misunderstanding regarding the function of a SANG in the context of the AONB appears to have originated from a statement in the ES, cited in the Council's Landscape PoE as follows:

*"The Consolidated ES asserts that:*

*the proposed development will deliver extensive areas of open space and SANG which will mitigate both recreational pressures on the landscapes close to the Site, including Cranborne Common, and those further afield including the AONB (CDA.83 Table 1.1 p. 7, 8.258 p.68)".*

4.12 The above comments from the Council seem to have confused the established function of a SANG as a means of securing no net increase in visits to designated nature conservation sites of International importance, which are afforded strict legal protection under the Habitats Regulations, with a similar anticipated function in respect of the AONB.

4.13 Section 7 of the Appellant's Landscape PoE sets out the stated objectives of the AONB Management Plan, which seeks to promote the enjoyment of the AONB. There is no established requirement to provide SANGs as mitigation for recreational pressure effects on an AONB, and this is categorically not what has been suggested by the Appellant in relation to the AONB in question.

4.14 The Appellant's Landscape PoE states:

*"In addition, an area of over 53ha will be provided as Suitable Alternative Natural Green Space (SANG) to mitigate the impacts on the Dorset Heathlands SPA and New Forest SPA/SAC. The SANG will provide significant recreational opportunities for residents, including countryside walks and access to the green, natural environment, without travelling to the AONB."*

- 4.15 The SANG is therefore being referred to as an incidental, beneficial, countryside resource that will reduce the propensity for residents to pursue trips elsewhere within the AONB, such that undue pressure and an unacceptable loss of tranquillity within the AONB would not arise.
- 4.16 The SANG would not be promoted as part of an ‘AONB access management strategy’, in the way that it would be as part of the Dorset Heathlands SAMM Project funded via contributions to the Dorset Heathlands Planning Framework SPD, and the SANG is not being proposed as a means of absorbing a proportion of existing visits to the AONB made by residents living outwith the Appeal scheme, to offset visits made by residents of the Proposed Development. If the SANG happens to be effective in absorbing a proportion of visits that would otherwise be made within the AONB, this in no way prejudices its capacity to absorb visits that would otherwise be made to the Dorset Heath(land)s International Sites. For the same reason, the number of International Sites within the vicinity of a proposed development has no bearing on the quantity of SANG required as mitigation: people cannot be in two places at once.

### **Disturbance to Offsite Supporting Habitat for Nightjar**

- 4.17 As Nightjar, one of the qualifying features of the Dorset Heathlands SPA, have been recorded foraging within the western parts of the Site proposed as SANG, the IfHRA considered the potential for the Appeal Proposals to impact on this land in its capacity as providing offsite supporting habitat for the SPA.
- 4.18 The existing, predominantly agricultural land that is of relatively low foraging value to Nightjar, would be significantly enhanced to create a variety of higher value semi-natural habitats within the SANG, including woodland, wildflower grasslands and wetlands. These habitats would be managed for nature conservation in perpetuity. The IfHRA concluded, however, that a sensitive lighting strategy would be required to ensure that habitat suitability is not diminished by artificial lighting from the new residential areas – noting that sensitive lighting is a requirement in respect of protected species of bat and in respect of the AONB.
- 4.19 Natural England’s letter of objection (**CDB.21**) agreed with the mitigation proposed, commenting as follows:
- “Natural England advise that the authority will need to require a lighting strategy through a planning condition. This will need to confirm sensitive locations and secure lighting in accordance with the Bat Conservation Trust Lighting Standards. This will avoid impacts to bats as well as foraging nightjar.” [my emphasis]*
- 4.20 The requirement for a planning condition to secure a lighting strategy was then set out within DC’s HRA (**CDB.33**).
- 4.21 No further mention of impacts on offsite supporting habitat was made, until the exchange of evidence, wherein DC’s Ecology PoE (**CDG.6**) has identified an entirely new issue – ‘*inadequate assessment of impacts on supporting habitat for Nightjar*’. The Council’s concern is set out as follows:

*“as the SANGs provide functional habitat for foraging Nightjar there is a risk that increased recreational usage of the SANGs particularly on warm summer evenings and early in the morning could potentially disturb foraging nightjar”.*

4.22 Their PoE goes on to explain:

*“The HRA document has scoped out the potential impact of recreational disturbance in the SANGs on the supporting foraging habitat, on the basis that nightjar forage at night when there will be no recreational activity....The HRA report suggests that the only potential impact could be from lighting. However, nightjar churr and forage at from dusk until dawn, and therefore their foraging activity could still coincide with recreational disturbance, particularly on warm summer evenings or early morning dog walkers.”*

4.23 The Council raise even more tenuous concerns regarding disturbance arising from public visits to the heath to hear Nightjar churring, and from summer evening barbeques in the SANG.

4.24 These asserted risks are, in my opinion, the very definition of ‘hypothetical risk’. They are entirely without foundation as activities that could genuinely undermine the conservation objectives for the SPA and thereby result in likely significant effects. This is why disturbance to Nightjar within the SANG was not raised by Natural England during the consultation meetings held, nor within their letter of objection, nor was it raised within the Council’s HRA. The reasons for this are numerous, which I will explain below.

4.25 Nightjar are one of the qualifying bird species of the Dorset Heathlands. They are summer migrants from Africa, arriving to breed on the heaths from early May to early June and leaving from late June to early September. Their ecology is unique, and they have been studied extensively through radiotracking and GPS studies in several locations in the UK, but most comprehensively in Dorset. EPR has been involved in a long-running Nightjar GPS tracking project that has studied the activity of the Nightjar resident on Canford Heath, as well as carrying out Nightjar surveys across numerous other sites across central southern England through vantage point surveys.

4.26 Nightjar reside during the day on the heaths, where they nest on the ground. They are extremely well camouflaged and near impossible to find. Being a crepuscular species, they are active between dusk and dawn - so the period after sunset just before total darkness and when the first light appears in the sky before sunrise. Nightjar spend most of their time on the heath, foraging at dusk, but then make several nightly excursions beyond the heaths to forage within the wider landscape – hence the importance of habitat beyond the designated site boundary in providing resources necessary to support the favourable conservation status of the population, i.e. ‘offsite supporting habitat’.

4.27 Nightjar can range across very large areas, commuting across unsuitable habitat such as urban areas to reach foraging sites. Early research recorded birds foraging up to 7km from nest sites (Alexander & Cresswell, 1990 – as cited in Natural England’s Conservation Objective Supplementary Advice, **CDX**), and the research carried out at Canford Heath has recorded birds travelling several kilometres from the heath to reach foraging sites, and even flying across the New Forest to Southampton Water and across Poole to Brownsea Island.

4.28 Nightjar have been found to use the Appeal Site for off-heath foraging, as shown by **Maps 4** and **5** of the IfHRA report (**CDA.30**), though the surveys recorded a handful of sightings of individual birds on any one night, with no churring recorded on the Appeal Site itself. Given the extensive availability of highly suitable habitat surrounding Cranborne Common, in particular Ringwood Forest, Nightjar are far from reliant on the Appeal Site for critical foraging resources.

- 4.29 Visitor monitoring surveys carried out across the Dorset Heaths (the most recent being in 2019, **CDX**) target the period between 7am-7pm, because this covers the most representative period when the majority of people recreate on the heaths. It is this activity that the SANG is designed to divert. Between May and August, the main period when Nightjar are present on the heaths, the timing of dusk (in 2024) ranges from 9.30pm to just after 10pm. I am not aware of any evidence to indicate that high numbers of people would be expected to be utilising the SANG for typical recreational uses (walking and dog walking) at or after this time of night, in near darkness to complete darkness, in countryside surroundings that would be unlit. Use of the SANG for late night barbeques would be expected to be an irregular occurrence at most, if at all.
- 4.30 Further to the above, there is no evidence to suggest that this level of human presence in the SANG would significantly disturb Nightjar foraging, or even if individual birds chose to move on to alternative locations, to significantly impact on the ability of the population to obtain sufficient resources to rear young and maintain a favourable conservation status. The Urban Heaths Partnership Long Term Analysis & Evidence Base Review (**CDX**) reports that Nightjar numbers have increased across the majority of monitored locations during the study period, despite public access being prevalent across the heaths and surrounding land, including numerous Heathland Infrastructure Projects (HIPs) and SANGs that have been delivered as part of the Dorset Heathlands SPD. This is clearly at odds with the Council's apparent objection on the basis that providing accessible greenspace near the heaths, with undesirable urban effects on said greenspace, will disturb Nightjar when foraging off-heath to such a degree that it would affect their conservation status.
- 4.31 In summary, recreational use of the SANG beyond daylight hours would in my experience be extremely unlikely to be a regular occurrence and would not diminish the value of the enhanced habitats for foraging Nightjar. It would therefore not undermine the SPA's site conservation objectives, and does not represent a credible risk of a likely significant effect.
- 4.32 I reach exactly the same conclusion with regards to the Council's asserted concern that the SPA would be adversely affected by people visiting the heaths at night to hear Nightjar churr. The suggestion that volumes of people would choose to visit a remote heathland location at night in the hope that they hear Nightjar, and that such activity could adversely affect the integrity of the Dorset Heathlands SPA as a coherent site, has in my opinion, no merit whatsoever.

### **Other Urban Effects**

- 4.33 The other entirely new issue raised by DC in their Ecology PoE is *'the incorrect scoping out of other urban effects'*.
- 4.34 The Council state:

*"potential negative impacts arising from the provision of new residential units such as vandalism, and fire have been scoped out of the HRA with little justification. These effects could potentially affect the SANGs and in the absence of mitigation measures could undermine the SANG function and could potentially affect Nightjar that breed in adjacent Heath and use the SANGs for foraging."* [my emphases]

- 4.35 As has been the case elsewhere within the Council's evidence, two separate issues appear to have been conflated:
- 1) Whether there is a risk of likely significant urban effects on the designated heathland; and
  - 2) Whether unmitigated urban effects within the SANG would diminish its effectiveness as an impact avoidance and mitigation measure or affect foraging Nightjar.
- 4.36 With respect to point 1) the Dorset Heathlands SPD (**CDD.4**) sets out a clear strategy for impact avoidance and mitigation to ensure that adverse urban effects will not arise as a result of development. This includes restrictions on development within the inner 400m zone around the heath (the 'exclusion zone'), where urban effects are most marked and cannot be addressed through mitigation. Then within the outer 400m to 5km zone, SANG and SAMM are delivered alongside development to avoid and mitigate adverse effects.
- 4.37 In this context, there are differing types of 'urban effects'. There are those that predominantly arise due to the occupation of housing in close proximity to the heaths, such as flytipping, spread of non-native species, creation of BMX bike ramps, risk of wildfire, pet predation, vandalism, disruption to hydrology, pollution from runoff; and there are those that arise due to public access across the wider zone of influence, including disturbance, trampling, eutrophication, littering.
- 4.38 The Shadow HRA scopes out 'other urban effects' on the basis that the residential elements of the Proposed Development are located beyond the 400m exclusion zone, the occupation of housing within which Natural England advises would result in likely significant effects that cannot be mitigated. Remaining urban effects linked to public access arising from the occupation of housing in the 400m-5km zone are then considered under the impact pathway 'increased recreational pressure', where adverse effects alone and in-combination are addressed through the provision of SANG and SAMM measures. This is because the SANG, when designed in accordance with the stated quality criteria and agreed with Natural England, secures no net increase in visits to the heaths, such that there is no net increase in related urban effects; and because SAMM measures are delivered on the heath to address other residual urban effects.
- 4.39 Since the Appeal Proposal respects the 400m exclusion zone and will deliver a compliant SANG and a contribution to SAMM, in accordance with the Dorset Heathlands SPD, then the totality of its potential urban effects, as described by the SPD, are adequately mitigated.
- 4.40 With respect to point 2) any urban effects on the SANG would fall to be addressed by the long-term management body as part of its in-perpetuity management and maintenance responsibilities. The management solution proposed by the Appellant follows that agreed for the very successful Canford (Riverside) SANG in Poole. However, in the event that the SANG was managed incorrectly, or deleterious urban effects such as flytipping or vandalism, were not addressed and the efficacy of the SANG as an impact avoidance measure was brought into question, then the Council would have step-in rights under the S106 agreement to take control of the management of the SANG. This would also ensure the habitat within the SANG remains suitable for foraging Nightjar.
- 4.41 Overall, in my view the Competent Authority can have confidence that adverse urban effects on the Dorset Heaths International Sites and the SANG would not arise, subject to securement of the package of mitigation measures proposed.

## **5. SUMMARY AND CONCLUSION**

- 5.1 Having reviewed the evidence submitted to the Inquiry by DC, I have not read any arguments or seen any evidence that has compelled me to change my view regarding the acceptability of the Appeal Proposal in light of the relevant legislative and policy tests that I have summarised within my MPoE.
- 5.2 In my view the Appellant has provided the Competent Authority with sufficient, robust, objective information with which to carry out an HRA of the Appeal Proposals. Based upon the delivery of the comprehensive package of mitigation measures proposed, which can be adequately secured by planning condition or obligation, a positive conclusion to the necessary Appropriate Assessment should be capable of being reached.
- 5.3 Beyond the comprehensive package of impact avoidance and mitigation measures proposed to ensure compliance with the Habitats Regulations, the scheme will deliver significant benefits for biodiversity, both in terms of habitat enhancements and benefits for valued fauna.
- 5.4 In conclusion, I have considered all of the challenges made by DC, as well as the Rule 6 Parties, and my professional opinion is that none represent valid ecological grounds for dismissing this Appeal.

