

## Comments

### Local Plan Main Modifications Extension - MM18, MM119 & MM148 only (03/04/19 to 15/05/19)

Comment by	Mr Chris Smith (1209979)
Comment ID	17
Response Date	15/05/19 16:57
Consultation Point	5.29 Paragraph ( <a href="#">View</a> )
Status	Processed
Submission Type	Web
Version	0.1

**To which proposed Main Modification does your representation relate? Please state the relevant reference number that you are commenting on from the Schedule of Proposed Main Modifications e.g. MM1**

MM119 (supporting text to ENV3)

**Do you consider the proposed modification is:  
(please mark the appropriate box)**

**If you consider the proposed Main Modification to be UNSOUND, please identify which test of soundness your representation relates to?** . Is it justified?

**Please give us details as to why you think the Local Plan with proposed modifications is NOT legally compliant or sound?**

Text states : "5.29 The 2013 research also suggests that the planting of woodland/screening as a mitigation measure is unlikely to be effective and that the effect of nest density is strongest as a result of the amount of buildings rather than type.

One of the key aims of the research was to differentiate the effects of nest density due to different building classes. Due to the sample size and number of buildings identified there needs to be an element of caution applied to the results, however, the research indicates that there was no evidence of a negative impact of agricultural or commercial buildings. As such, the analysis suggests project level HRA for non-residential development in the SPA buffer zones may be able to demonstrate that adverse effects can be ruled out."

Screening

The 2013 analysis as published (Clarke et al 2013a) is based on a pseudo Poisson-model to consider nesting densities within grids of cells and is not vector based. There is therefore no examination within the research of the effectiveness of intervening woodland or other screening around buildings as a

factor within the model. There is therefore no evidence provided either way within this study as to the effectiveness of screening.

#### Effects of building classes

Similarly the referenced study as peer-reviewed and published makes no analysis of the effects of different building classes ? The published paper states : "Further work could potentially incorporate building type (for example differentiating residential, industrial/commercial and agricultural) and include this within further analyses." The unpublished paper to Breckland (Clarke et al 2013b) notes a POSITIVE relationship between the density of agricultural buildings and stone curlew numbers and negative with residential. The model would appear to suggest that building more agricultural buildings would increase stone curlew populations.

As indicated before correlation does not imply causation ? An alternative explanation is that there is confoundment between where stone curlews nest and the type of building present e.g. the most suitable areas are in the more rural localities with highest agricultural building densities; the least suitable urban with greatest housing. Unfortunately this would also raise queries as to whether the negative relationship with residential development is similarly a spatial autocorrelation issue.

The analysis does not present clear evidence either to support or refute evidence of the effects of building new housing without considering the parallel conclusions with respect to agricultural buildings.

The statement as to the weight to be attached to the evidence on different building types is therefore perhaps misleading as the results have been selectively presented to remove contrary evidence i.e. that building more barns increases stone curlew numbers.

References Clarke RT, Liley D, Sharp JM, Green RE (2013a) Building Development and Roads: Implications for the Distribution of Stone Curlews across the Brecks. PLoS ONE 8(8): e72984. <https://doi.org/10.1371/journal.pone.0072984> Clarke, R., & Liley, D. (2013b). Further assessments of the relationship between buildings and stone curlew distribution. Unpublished report by Footprint Ecology for Breckland Council.

### **Please set out what changes you consider necessary to make the proposed main modifications to the Local Plan legally compliant or sound.**

#### Screening

The statement within the supporting text on screening is misleading as to the evidence as no investigation was made and should be removed.

#### Effects of building classes

The wording in referring to the study within the supporting text is misleading as to the strength of support provided by the evidence for policy ENV03. As such this text should either be deleted or modified to provide greater clarity.

#### General approach to considering effects within HRA

The evidence by the studies as presented shows correlation but not causation, since it does not demonstrate a pathway or pathways for the effect. It would be helpful for such pathways to be clearly identified by alternative evidence or reasoning, so that projects can be proportionally screened and any HRA can be adequately conducted. Where this causation can be considered based on known ecology of the species, then this should perhaps take precedence over correlations within the study? Logic in the utilisation of the present evidence would otherwise demand that building more barns should increase stone curlew numbers ?

As a minimum the strength of the evidence supporting policy needs to be more clearly presented to make the basis of the plan making process clear. In preference, clear causal routes should be identified.

**Would you like to be notified of future stages of the Local Plan?** Yes

How would you like to be notified? . By email to my email address

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**Comment by** Mr Chris Smith (1209979)  
**Comment ID** 16  
**Response Date** 15/05/19 16:35  
**Consultation Point** 5.28 Paragraph ([View](#))  
**Status** Processed  
**Submission Type** Web  
**Version** 0.1

**To which proposed Main Modification does your representation relate? Please state the relevant reference number that you are commenting on from the Schedule of Proposed Main Modifications e.g. MM1**

MM119 (supporting text to ENV3)

**Do you consider the proposed modification is:  
(please mark the appropriate box)**

**If you consider the proposed Main Modification to be UNSOUND, please identify which test of soundness your representation relates to?** . Is it justified?

**Please give us details as to why you think the Local Plan with proposed modifications is NOT legally compliant or sound?**

Text states : 5.28 In 2013 a "Further Assessments of the Relationship between Buildings and Stone Curlew Distribution" study was carried out to update previous work on the effect of buildings and roads on Stone Curlews in The Brecks. Including new analysis and using additional survey data, this study report focused on the effects of buildings on the distribution of breeding Stone Curlew in The Brecks. The report provides strong support for the continuation of a 1500m zone around the areas capable of supporting Stone Curlews. Within this zone additional development is likely to have a significant effect on the SPA.

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With respect to 5.28, whilst not disputing the suitability of a 1500m zone for screening, the analysis did not identify a temporal decrease in stone curlew nesting densities based on development during the period that data was available for i.e. more building did not mean less stone curlews. Therefore this is not evidence that additional development is likely to have a significant effect, but simply that stone curlews appear to nest at lower densities within 1500m. The basis for the screening zone could therefore be justified as reasonable.

Correlation does not however imply causation. For instance proximity measurements from settlements may equally be explicable via a Rayleigh distribution.

Since no mechanism for impacts is identified a causal link between development and stone curlew densities is not established. There is no implied likelihood of a significant effect from the evidence.

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The final sentence "Within this zone additional development is likely to have a significant effect on the SPA. " would be better worded as "No causal link has been established. However within this zone, the potential for development to affect the SPA via any identifiable pathways should be considered."

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**Comment by** Mr Chris Smith (1209979)

**Comment ID** 15

**Response Date** 15/05/19 16:23

**Consultation Point** 5.27 Paragraph ([View](#))

**Status** Processed

**Submission Type** Web

**Version** 0.1

**To which proposed Main Modification does your representation relate? Please state the relevant reference number that you are commenting on from the Schedule of Proposed Main Modifications e.g. MM1**

MM119: Supporting Text ENV 03: Title and paragraph 5.19 to 5.26

**Do you consider the proposed modification is: (please mark the appropriate box)**

**If you consider the proposed Main Modification to be UNSOUND, please identify which test of soundness your representation relates to?** . Is it consistent with national policy?

**Please give us details as to why you think the Local Plan with proposed modifications is NOT legally compliant or sound?**

Text states that : 5.27 "Within these areas [i.e. outside the SPA boundary] development may be brought forward, providing a project level Habitats Regulations Assessment can demonstrate adverse effects have been prevented, for example where alternative land outside the SPA can be secured to adequately mitigate for the potential effects. With respect to 5.27, the approach of compensation does not appear adequately cross referenced with recent caselaw on Habitat Regulations [People over Wind ] or to the NPPF. The presumption is always for avoidance of impact on the integrity of the SPA - not "prevention" and this policy would appear to contravene that approach.

The approach with respect to considering mitigation has been raised in the "People over wind" judgement, in that mitigation cannot be applied to obviate an HRA.

Any development causing an effect on the integrity of the European site and requiring compensation would need to apply an OROPI test for derogation from the Habitat Regulations. Additional safeguards also apply. Case C-323/17 : People Over Wind, Peter Sweetman v Coillte Teoranta REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 10 May 2017, received at the Court on 30 May 2017, in the proceedings <http://curia.europa.eu/juris/document/document.jsf?docid=200970&doclang=EN>

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Therefore it must be decided whether

- i. the SPA and therefore Habitat Regulations extend into the additional area ( in which case it should perhaps be designated as such ?) or
- ii. that the Habitat Regulations are not applicable to such developments being outside of the site boundary.

If the approach as presented is retained, it would need to allow for any development causing an effect on the integrity of the European site and requiring compensation to have applied an OROPI test for derogation from the Habitat Regulations and for additional safeguards to be put in place.

**Would you like to be notified of future stages of the Local Plan?**      Yes

**How would you like to be notified?**      .      By email to my email address