

# **Elmbridge Borough Council**

## **Examination of the Local Plan**

### **Stage 1 – Procedural Compliance**

**Hearing Statement by Peter Edwards**

**On Behalf of Claudel Venture Holdings Ltd**

**February 2024**

**Contents**

1 Introduction .....3

2 Background.....4

3 Conclusions .....12

## 1 INTRODUCTION

1.1 This note has been prepared in relation to Stage 1 of the Examination and addresses the issue of SANG capacity.

1.2 The Inspector's MIQ reference the Council's Statement that there is enough SANG capacity for the first 10 years of the plan, however, an additional 7.5 ha of land will be required for years 11–15.

1.3 In this context the Inspector has sought and update in relation to:

- the potential extension of the Esher Commons SANG and whether the Effingham Common SANG in Guildford can provide mitigation.
- Confirmation as to whether the Council's preferred approach is now to provide additional SANG at Field Common, Hersham
- How the council intends to address the shortfall and
- Is the proposed approach to the provision of SANG acceptable for the Plan period.

1.4 The context of this submission is that since the Council published the Reg 19 Draft Local Plan the Council has failed to identify a sufficient level of SANG, its estimates of SANG capacity are not supported by accurate evidence and the overall SANG requirement has not been based on the local housing needs for the Borough. The Council approach is considered not to be justified and is not consistent with National policy. The approach is therefore considered to be unsound.

1.5 These representations relate to the MIQs and the Council's post-submission updates and Modifications and relate to my original representations into the Plan. **The red text sets out where additional points of clarification/ evidence is required in order for the Council strategic approach to be found sound.**

## 2 BACKGROUND

2.1 Suitable Alternative Natural Greenspace (SANG) – Is an open space designed to provide an enjoyable natural environment for recreation as an alternative to utilising a Special Protection Area for recreational purposes which might adversely affect protected species and their habitat. Any net increase in residential dwellings falling within the SPA Zones of influence are required to provide mitigation in the form of SANG unless the development is providing SANG as part of the development. This is confirmed in the Draft Local Plan Reg 19 – Policy ENV 5.

2.2 Policy ENV5 states at sub paragraph 4 that:

The following principles will be applied when the Council is assessing relevant development proposals within these zones of influence under this policy:

(a) Within Zone A, there will be a presumption against the grant of planning permission for development proposals that will result in a net increase in residential units. That presumption will be rebutted only if it can be demonstrated through a site-specific appropriate assessment that there will be no adverse impact on the integrity of the Thames Basin Heaths Special Protection Area.

(b) Within Zone B, development proposals that will result in a net increase in residential units will be required to deliver suitable mitigation and / or avoidance measures in order to address potential adverse effects arising from increased recreational disturbance. Such mitigation measures will consist of:

- (i) the provision, improvement and / or maintenance of Suitable Alternative Natural Greenspace (SANG) (or a suitable financial contribution towards the same) and / or
- (ii) suitable financial contributions towards Strategic Access Management Monitoring (SAMM)

delivered and secured in accordance with the latest version of the Thames Basin Heaths Special Protection Area Avoidance and Mitigation Strategy and the updated Development Contributions SPD.

(c) Within Zone C, development proposals that will result in a net increase of fifty or more residential units will be assessed on a case by case basis.

2.3 It is understood that in circumstances where SANG capacity does not exist planning permission would be withheld.

2.4 At the Reg 19 Consultation Stage, the emerging local plan SANG requirement and the SANG Capacity was set out within the **TBHSPA Avoidance and Mitigation Strategy May 2022 (position as of 31<sup>st</sup> March 2022)** when SANG Capacity was confirmed at 5ha as set out in Table 4 and paragraph 4.21 (below).

Table 4 – Existing SANG capacity

SANG	Types of site	Area (ha)	Catchment	Original capacity (units)	Exhausted capacity (units)	Remaining capacity (units)
Esher Commons	Strategic	38 ha <sup>[1]</sup>	5km	1021	785	236
Brooklands Community Park	Strategic	24 ha <sup>[2]</sup>	5km	1104	1073	31

4.21 There is capacity for approximately 267 (net homes) remaining on the two existing SANG sites. Moving forward (and as described in paragraph 4.14 above), remaining capacity will be expressed in persons. Using the assumed occupancy rate of 2.4 persons per dwelling, the existing sites have the capacity to accommodate a further 641 persons which equates to **5ha** (using 8ha per 1000 people) of existing SANG provision.

2.5 In calculating the SANG requirement it is to be noted that the Reg 19 Draft Plan confirmed that the Council was aiming to deliver 6,785 dwellings (approximately 70% of the Council's housing need using the Standard Methodology). Based on this overarching figure the Avoidance and Mitigation Strategy calculated the number of dwellings planned to come forward within the individual zones of influence as follows:

Table 6 – Anticipated residential units within the zones of influence and required provision of mitigation land

Zone of Influence	Anticipated net units in Plan period	Anticipated number of persons to be mitigated	Windfall units	Persons to be mitigated from windfall units	Natural England standard of provision	SANG Required
400m – 5km	607	1212	140	336	8 ha / 1000 population	12.3ha
5km – 7km	445	143	0	0	2 ha / 1000 population	0.2ha

2.6 It was estimated that 12.5 ha of SANG would be needed to mitigate the effects of planned growth, including a provision for windfall sites (12.3 ha within the 400m- 5km, and 0.2 ha in the 5-7Km, zones of influence).

2.7 On this basis, the Council confirmed the need to identify a further 7.5ha of SANG (12.5 ha – 5ha = 7.5 ha shortfall) to address growth during the Plan Period.

**ENV011 – SANG Options Assessment, September 2023**

2.8 This document updates the TBHSPA Avoidance and Mitigation Strategy dated May 2022 (position as of 31<sup>st</sup> March 2022) to provide the position on 31<sup>st</sup> March 2023.

**Table 4 – Existing SANG capacity**

SANG	Types of site	Area (ha)	Catchment	Original capacity (units)	Exhausted capacity (units)	Remaining capacity (units)
Esher Commons	Strategic	38 ha <sup>[1]</sup>	5km	1,021	498	523
Brooklands Community Park	Strategic	24 ha <sup>[2]</sup>	5km	1,104	780	324
<b>Total</b>		<b>62 ha</b>		<b>2,125</b>	<b>1,278</b>	<b>847</b>

4.21 There is capacity for approximately 847 (net homes) remaining on the two existing SANG sites. Moving forward (and as described in paragraph 4.14 above), remaining capacity will be expressed in persons. Using the assumed occupancy rate of 2.4 persons per dwelling, the existing sites have the capacity to accommodate a further 2,032 persons which equates to **16.3ha**

**CD011 - Habitats Regulations Assessment of Proposed Main Modifications (August 2023).**

2.9 This document confirms that as a result of the September 2023 review, SANG Capacity has increased to 16.3ha.

2.10 It is noted that at the time of preparing the HRA, the Council concluded that two options should be explored in greater detail, notably the extension of the Esher Common SANG and obtaining capacity at Effingham Common SANG (Guildford Borough) under the Duty to Corporate, but for the Effingham SANG this would require the provision of car parking.

- 2.11 It is understood that subsequent discussions between the Council and Natural England have discounted the potential to extend the existing Esher Common SANG and that The Effingham SANG in Guildford cannot be used as mitigation for development in Elmbridge (see CD028).
- 2.12 Reference was also made to a residential / educational application at Brooklands College that included a 12 ha SANG. Whilst planning permission has been granted the SANG has been reduced in size following review by Natural England to 9ha and is not considered suitable to mitigate potential impacts on the TBHSPA.
- 2.13 **The Statement of Common Ground between the Council and Natural England (CD028)** makes no specific reference to the recalculation of SANG Capacity, it merely acknowledges the calculations take into account new planning permissions and removes sites where planning permission has expired and duplicate applications.
- 2.14 Accordingly, it is not known whether NE has agreed to this change in the methodology to assessing SANG Capacity. Detailed evidence of the Council's new calculations of capacity should be made available and Natural England should confirm its satisfaction that the revised methodology is appropriate. The evidence should demonstrate that all permissions that have generated a SANG requirement since the policy requirement came into effect have been taken into account. This should also include all permissions granted under Permitted Development Rights/ Prior Approvals and any other non- Class C3 permission that are required to provide SANG.
- 2.15 This latest SANG requirement based on the amended housing delivery target set out in the Council's Modifications to the Plan which confirms 6,680 dwellings coming forward in Plan period (still only 70% of the local housing need figure using the Standard Methodology)

**Table 6 – Anticipated residential units within the zones of influence and required provision of mitigation land**

Zone of Influence	Anticipated net units in Plan period Local Plan	Anticipated number of persons to be mitigated	Windfall units (1 – 4 units)	Persons to be mitigated from windfall units	Natural England standard of provision	SANG Required
400m – 5km	619	1,247	128	307	8 ha / 1000 population	12.4 ha
5km – 7km	106	214	0	0	2 ha / 1000 population	0.4 ha
<b>Total</b>	<b>725</b>	<b>1,461</b>	<b>128</b>	<b>307</b>		<b>12.9 ha</b>

- 2.16 It is now estimated that 12.9ha of SANG is required to mitigate the effects of planned growth within the proximity of the SPA , including a provision for windfall sites (12.43 within the 400m- 5km and 0.44 ha in the 5-7Km zone of influence).
- 2.17 Equating to a SANG residual capacity of 3.4ha (existing capacity – requirement : 16.3 – 12.9 = 3.4ha)
- 2.18 Based on the above, paragraph 1.7 of the Options Assessment goes on to state that:

*‘The existing SANG sites have sufficient capacity remaining to mitigate the amount of residential development expected to come forward during the plan period. As set out in the Council’s TBH [Stet – SANG] Avoidance and Mitigation Strategy (September 2023), it is anticipated that there is **3.4 ha of remaining SANG capacity** in the Borough after taking account of the development forecast over the Plan period including a small sites windfall allowance. However, 3.4 ha is a small amount of remaining SANG capacity that could easily be exhausted by development coming forward outside of the allocations proposed in the Draft Elmbridge Local Plan. For example, through permitted development rights or large-scale windfall planning applications. This document sets out the steps taken by the council to identify and assess sites for their potential to provide additional SANG capacity in the Borough.’*

- 2.19 The document goes on to state that this is a marginal level of capacity as demonstrated by the Prior Approval for a net increase of 148 C2 units at Brooklands Road in July 2023 (immediately after the Avoidance and Mitigation Strategy was update) which immediately reduced the residual capacity to 0.6ha.
- 2.20 This document goes on to reference to a number of sites that had the potential to deliver SANG but all of the sites were dismissed for a variety of reasons, with the exception of Land at Field Common Farm. We would draw attention to the potential site at Hershams Golf Club which was dismissed because it was dependent upon receiving either a residential allocation or planning permission.
- 2.21 [It is to be noted that the owner of Hershams Golf Club (CVHL) submitted a planning application in December 2023 for 221 dwellings (including 111 affordable units) on the previously developed area of the golf course, which extends to 5.55 ha. The application also promotes a SANG of 21.83 ha and a biodiversity site of 10.17 ha. The application does not generate the need for any mitigation as it falls outside the 7Km SANG Zone. The application is yet to be determined]
- 2.22 Ultimately the Options Assessment concluded that the only remaining option for a SANG within the Borough is at Field Common Farm (52 ha), located south-west of Molesey Lane, and that the authority was working with Landowner to bring forward part of site as a SANG – 16 ha (excluding the lake), with a residential development identified to the Southwest corner of the farm. The Assessment estimated that this SANG option would have the potential to mitigate an additional 1,875 people (**The Council should confirm why the capacity has been reduced from 2,000 people**). It also states that it would serve a 5 km catchment



(The Examination needs to be advised why the proposed catchment is larger than advised in the SANG Avoidance and Mitigation Strategy (September 2023) which says SANGs of 12 - 20ha will have a catchment of 4Km).

2.23 It is our understanding that the Council has not secured any interest in the land at Field Common Farm and that the landowner is not prepared to sell the land for SANG.

2.24 The Examination needs to be provided with an update on the status of the negotiations with the landowner and whether this land will come forward within the local plan period to address any shortfall in SANG provision that may arise, which could frustrate the delivery of allocated and windfall sites.

2.25 At Para 4.16 the Council states that:

2.26 In terms of allocating residential units to a particular SANG, a proposal for a net increase of less than 10 dwellings will not be allocated to a specific SANG as the impact of these smaller-scale proposals is considered acceptable provided that, overall, there remains sufficient SANG capacity within the borough.

2.27 The Council's LAA of residential sites includes a large number of sites within the SPA Zones of Influence that are smaller than 10 units. These will all lead to increased pressure on the SPA and also generate a SANG requirement. The Examination needs to know how the council calculated what level of SANG these sites would require by way of mitigation must demonstrate that sufficient capacity would In fact remain.

#### **CD009 - Schedule of Proposed Main Modifications Elmbridge Local Plan (June 2023)**

2.28 Modification Reference M4.4:

Additional criteria added after existing criterion 4 of ENV5:

5. The following principles apply to the provision of SANG:

a) A minimum of 8 hectares of SANG land (after discounting to account for current access and capacity) should be provided per 1,000 new occupants.

b) Developments must fall within the catchment of the SANG that provides avoidance, except developments of fewer than 10 net new residential units.

c) The Council will collect developer contributions towards avoidance and mitigation measures, including SANG (unless bespoke SANG is provided) and SAMM.

d) Developments may secure or provide bespoke SANG. Proposals for new SANGs are unlikely to be acceptable unless agreed by Natural England. Large developments may be required to provide bespoke SANG.

e) The Council will cooperate with Natural England and other landowners and stakeholders in monitoring the effectiveness of avoidance and mitigation measures and monitoring visitor pressure on the SPA and review/ amend the approach set out in this policy, as necessary.

6. The Council will work with Natural England and landowners to bring forward adequate SANG capacity, and where necessary will consider using all options available.

7. Where further evidence demonstrates that the integrity of the SPA can be protected using different distance thresholds or with alternative measures (including standards of SANG provision different to those set out in this policy), the Council will agree these in consultation with Natural England.

2.29 Criteria 5b) seems to suggest that sites of fewer than 10 units do not need to provide SANG mitigation. This appears to be a different approach to that set out in the Habitats Regulations Assessment (CD011 – see below), the Avoidance and Mitigation Strategy which says all developments resulting in a net gain are required to provide mitigation, and the Options Assessment which states at paragraph 4.16 (above) that smaller sites will not be allocated to a specific SANG provided there is capacity.

2.30 **The Council and Natural England need to provide clear explanation as to how small sites are mitigated and demonstrate that ENV criteria 5 and 6 sound in terms of para 179-182 of the NPPF.**

#### **CD011 - Habitats Regulations Assessment of Proposed Main Modifications (August 2023)**

2.31 It is noted that the **HRA (August 2023)** confirms a paragraph 6.1 that as part of the Thames Basin Heaths Strategic Partnership Programme, it has been established that all new housing developments within 5 km of the SPA, and developments over 50 dwellings within the wider 5–7 km buffer zone (assessed on the case-by-case basis), must provide SANG and contribute to SAMM.

2.32 Based on the Council's 2022 Land Availability Assessment (LAA) which seeks to bring forward only 6,785 dwellings in the plan period, (which equates to 70% of the Local Housing need of 9,705 dwellings using the Standard Methodology), the Council has calculated that in total:

- 619 dwellings are likely to come forward on sites between 400m and 5 km of the TBHSPA, **(the Council should confirm why, for example Foxholes, Weybridge been discounted if it falls within 400m-5Km Zone? It is included in Zones B and C and discounted at a different rate. Also, Council needs to demonstrate how the additional 619 dwellings generate 1,247 persons as indicated and not 1,486 persons )**
- A windfall allowance of 14 dwellings per annum (210 dwellings) within the 400m- 5Km Zone (Note: SANG Avoidance and Mitigation Strategy Sept 2023 refers to 13 dwellings pa) based on historic levels of delivery.
- 445 dwellings requiring mitigation for 106 persons within the 5 km –7km Zone. **(Foxholes double counted and it is not clear how the figure of 106 persons has been derived.)**

2.33 The additional population requiring 12.9 ha of mitigation based on the TBHSPA Avoidance Strategy. **It is not clear how this figure is derived, especially given Foxholes position.**

2.34 As of 31<sup>st</sup> March 2023, the council's calculation of residual capacity within the existing Elmbridge strategic SANGs equates to 847 dwellings (523 at Esher Common, and 324 at Brooklands Community Park), which amounts to  $847 \times 2.4 = 2,033$  people (with 125 people requiring 1 hectare of SANG) = 16.3ha.

2.35 The Council's needs to provide the Examination with workings of how these figures have been derived (what permissions have been taken into account, including Prior Approvals and qualifying non Class C3 developments)

### 3 CONCLUSIONS

3.1 It is to be noted that the 12.9 ha of SANG identified by the Council to support the level of development set out in Policy SS3 – 6,785 dwellings, which will generate the minimum quantum of SANG. As yet it is not known if such a reduced level of housing provision will be found to be sound.

3.2 In such circumstances, the Council should be calculating its SANG requirement based on its local housing need using the Standard Methodology. However, in the absence of specific housing allocations to meet the full local housing need figure (using the standard methodology) it is not possible to identify the exact additional SANG requirement.

3.3 Accordingly, it would be better to err on the side of caution and seek to deliver more SANG than may be required, rather than less and then be in a position where housing delivery was restricted.

3.4 In order to better understand whether the Council's approach is sound:

The Council should provide all the additional information outlined above and should ideally also provide a SANG Requirement that acknowledges the local housing need of 9,705 dwellings identified using the Standard Methodology.

For the Council's approach to be found sound the SANG Capacity must be fully explained by accurate up to date evidence and to be found consistent with national policy the Plan should demonstrate its provision of SANG is based on meeting the Borough's local housing needs in full, using the Standard Methodology.

Peter Edwards 4<sup>th</sup> February 2024