



## **Consultation Response**

Essex Coast Recreational Disturbance Avoidance and  
Mitigation Strategy Draft Supplementary Planning  
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## **1. Introduction**

### **Background**

- 1.1 These representations on the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy Draft Supplementary Planning Document (SPD) ('the RAMS SPD') are made by Strutt & Parker. Strutt & Parker on behalf of the Chelmsford Garden Village Consortium. This comprises Cliffords Ltd and Clifford Family Trust, Countryside Zest, Hanson Quarry products Europe Ltd, Threadneedle Pensions Ltd and Ptarmigan Land (the Consortium). The Consortium are the landowners and developers taking forward the allocation of Chelmsford Garden Village in the Chelmsford Local Plan in consultation and partnership with Chelmsford City Council (CCC). The Garden Village allocation provides for substantial development, providing for around 3,000 homes (with a further 2,500 homes in the post-plan period), 45000sqm of employment floor space with substantial on-site infrastructure. This would include a new country park and significant new multi-functional green infrastructure.

### **Overview of SPD Consultation**

- 1.2 The RAMS SPD explains at paragraph 1.3 that it is intended to provide a practical document for Local Planning Authorities, applicants and other stakeholders based upon the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy 2018-2038 ('the RAMS').
- 1.3 In general terms, the Consortium welcome efforts to provide clarity on the mitigation that will be required in respect of the impact of proposed development on the Special Protection Areas (SPA), Special Areas of Conservation (SAC) and Ramsar sites; to address the impact strategically; and to provide a clear and consistent approach for developers, Local Planning Authorities and other stakeholders. We welcome the fact that the relevant Local Planning Authorities are collaborating with one another with the aim of ensuring measures are in place to address this issue.

- 1.4 However, we do have several concerns with the approach as currently proposed in the RAMS SPD. In particular, we suggest there is a need to ensure that the contributions proposed be reviewed to ensure they meet the requirements of the Community Infrastructure Levy Regulations (as amended) 2010 ('the CIL Regulations'). Specifically, Regulation 122 and the requirement that contributions must be directly related to development, and not to address an existing situation or a situation which would arise regardless of development.
- 1.5 In addition, given the strategic nature of Chelmsford Garden Village and those garden villages or other similar developments proposed elsewhere in Essex, it is considered appropriate that there should be greater flexibility to the requirements of contributions. This should be applied where those locations offer opportunities for on-site mitigation which would help address the identified impact on the Essex Coast arising from those developments.

## 2. Comments on RAMS SPD

### **Population Growth And Housing Development : Ensuring Contributions Are Only Required To Mitigate The Impacts Of The Latter.**

- 2.1 The RAMS SPD does not appear to acknowledge the difference between the delivery of homes, and population increase.
- 2.2 The development of additional homes cannot, in itself, lead to increased recreational pressure on SPAs, SACs, or Ramsar sites. Rather, it is the increase in population within the relevant Zone of Influence (Zol) that has the potential to require mitigation to avoid any adverse impact on such sites.
- 2.3 In order to comply with Regulation 122 of the Community Infrastructure Levy Regulations (as amended) 2010 ('the CIL Regulations'), contributions sought must only be sought where they are:
- necessary to make the development acceptable in planning terms;
  - directly related to the development; **and**
  - fairly and reasonably related in scale and kind to the development.
- 2.4 To require contributions from development where the above tests of Regulation 122 are not all met would not only be contrary to planning policy, but could also be considered unlawful.
- 2.5 All three of the tests must be met when requesting contributions. As such, it is essential that the RAMS SPD will only require contributions to be made where they are to mitigate impacts which *inter alia* are directly related to the development in question. They cannot be used simply to address an existing situation, or a situation that would arise irrespective of the development in question. It is therefore necessary to distinguish between the impacts of development and those that are simply of population increase which would have occurred regardless.

- 2.6 Paragraph 1.5 of the RAMS confirms that it is population increase which will result in increased recreational disturbance.
- 2.7 At paragraph 1.4, the RAMS states that “*Housing and consequent population growth in Essex is likely to increase the number of visitors to these sensitive coastal areas, creating the potential for impacts from increased recreational disturbance...*”. This implies that population growth is a function of housing development, but this is not the case. On the contrary, the quantum of homes that current national policy now requires be delivered within Essex is directly linked to population growth projections, ie. the homes to be delivered are to house Essex’s growing population.
- 2.8 There will still be population growth without development, but without development such population growth would be increasingly housed in overcrowded conditions or, in the worst case, rendered homeless. Lack of development within an area can also result in displacement of population growth, but this displacement will of course be to somewhere else.
- 2.9 Development will influence the spatial distribution of population growth, and in turn the impact of such population growth and the resultant mitigation required. However, in the case of the RAMS SPD, it should be noted that the area in which mitigation is considered necessary is vast. The combined Zol, as illustrated by Figure 4.2 of the RAMS show that the entirety of the administrative areas of Southend-on-Sea, Castle Point, Rochford, Maldon, and Colchester are within the Zol. So too is the vast majority of Basildon and Chelmsford, as well as significant proportions of Braintree and Thurrock.
- 2.10 The only administrative areas in Essex which are outside the Zol in this document are Harlow and Epping Forest District Councils (EFDC). It is noted that EFDC are in the process of developing a mitigation strategy for Epping Forrest SAC where atmospheric pollution mitigation is required alongside recreational pressure effects. Its Zol is currently 6.2km. Also some SSSI’s now have a RAMS such as Hatfield Forest where the Zol is 14.6km and requires a similar payment per unit.
- 2.11 As such, there is not a case of there being multiple options available for distributing development in Essex with opportunity to seek to direct population growth to areas where it will not have an impact. Furthermore, it is not a case where the impacts are

localised and it is only the spatial distribution of development that has resulted in the need for mitigation. As a result, across Essex the mitigation will be required to address population growth, regardless of where development to accommodate such growth is to be located.

- 2.12 There may be an argument that additional recreational disturbance as a result of population growth is, at least in part, the result of development, if development is proposed in order to meet the needs of an authority outside of the Zol by an authority within the Zol. However, we are not aware of instances where this is currently the case, or proposed to be in the Essex administrative area.
- 2.13 In such circumstances it is questionable whether any contribution from developments should be sought to mitigate the impacts of additional recreational pressure, particularly where such development is within administrative areas wholly within the Zol.
- 2.14 If, however, it is considered that it is appropriate and CIL Regulations compliant, the principle of seeking a contribution from developments should be to ensure that it is only to address additional population anticipated to be brought into the Zol by the development.
- 2.15 Many of the people who will occupy future developments within the combined Essex coast Zol will already be living within the Zol. Such people are no more likely to place additional recreational pressure on the SPAs, SACs, or Ramsar sites than if the development had not been delivered, and they had remained living elsewhere within the Zol.
- 2.16 This was an issue recognised in respect of the preparation of Suffolk Coastal Core Strategy and Development Management Plan. The Appropriate Assessment of the Plan acknowledged that the occupancy ratio for the District was 2.35 persons per dwellings, projected to drop to 2.25 by 2027. However, the Appropriate Assessment recognised the need to differentiate between 'new' people moving into the District and those already living in the District who may occupy new development. Factoring in this, it determined the appropriate figure to use for the purposes of considering the impact of development was equivalent to 1.57 persons per dwelling.
- 2.17 We have been unable to identify how the proposed Essex Coast RAMS has differentiated between 'new' residents and those who are already living within the Zol.



It appears that the RAMS is simply based on the assumption of an average household size of 2.4 persons per household (paragraph 1.13 of the RAMS) and the need to mitigate the impact of this, rather than on considering the 'new' people who will be living within the Zol as a result of development. We suggest that this issue will need to be addressed in order to ensure contributions are not inadvertently being demanded where mitigation is not required / not required as a result of development.

### **The Number of New Homes Expected to Fund Mitigation Measures**

- 2.18 The RAMS SPD also confirms that the proposed mitigation is required as a result of population increase, and identifies the cost of this mitigation. The per-dwelling financial contribution to the fund the mitigation package is calculated based on the number of new homes planned within Local Plans, within the combined Zol.
- 2.19 The total cost of the mitigation (plus 10% contingency) to address projected population increase is £8,916,448. The total number of dwellings identified by the RAMS within Local Plans but not yet benefiting from detailed permission is 79,907.
- 2.20 However, the total number of new homes planned within the combined Zol does not reflect the total number of new homes required to meet the projected population growth. A number of Essex Local Planning Authorities' strategic housing policies are out-of-date, and do not meet current projection and household projections.
- 2.21 By formulating a strategy based on mitigating population growth, but then introducing a per-dwelling charge to fund this based on current allocations which are not sufficient to meet this population growth, the current allocations will be required to make a disproportionately large contribution to the mitigation.

2.22 If the approach of a standardised per-dwelling contribution is ultimately considered appropriate (putting to one side concerns in relation to whether mitigation is required as a result of development rather than simply population growth) we suggest it should not simply be based on existing allocations. Instead, where Local Planning Authorities do not have a Local Plan in place which was considered in relation to the 2018 or 2019 NPPF, we consider it would be more appropriate, to seek to estimate numbers of dwellings that may be expected to be developed within the ZOI having regard to the local housing needs of the relevant authorities (as per the NPPF and the standard method<sup>1</sup>).

#### **Alternative sources of funding**

2.23 As already set out within this representation, it is clear that concerns in respect of recreational disturbance to SPAs, SACs, and Ramsar sites are principally linked to general projected population increase in Essex, as opposed to development.

2.24 Even if the need to comply with CIL Regulations were set aside and the resultant need to avoid for charging for mitigation which is not required as a direct result of development, we would still expect for sources of funding to be explored rather than to rely upon developer contributions.

2.25 We note reference in Table 2.3 to the brief for the preparation of the RAMS that this included identifying measures that have already been funded and providing details in respect of current funding mechanisms. Separately, we note reference at paragraph 6.6 of the RAMS the potential for Local Planning Authorities to identify mitigation measures to be provided through separate funding streams, citing the Local Growth Fund and Local Enterprise Partnership. However, the RAMS appears to conclude that full costs of the mitigation strategy (plus a further 10% contingency allowance) be borne by new developments, without explaining how alternative sources of funding have been explored.

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<sup>1</sup> Paragraph: 004 Reference ID: 2a-004-20190220

- 2.26 We note that many of the areas which the RAMS seeks to mitigate recreational pressure contain visitor facilities. These include, for example, car parks at RSPB reserves at Old Hall Marshes, Wallasea Wetlands and Stour Estuary. We understand that these car parks are currently free to use. We would have expected the RAMS to have explored the possibility of introducing car parking charges, with the money generated from this used to help fund mitigation measures. Such an approach would have added the benefits of limiting the cost of mitigation for those who do not visit the protected areas and having no impact on them, as well as incentivising the use of more sustainable transport modes to access these reserves.
- 2.27 The above is one example of a potential source of funding, but we suspect there will be others if a detailed review of opportunities were to be undertaken. There may well be robust reasons why such approaches cannot be implemented, but this is not referred to in the proposed SPD. We would suggest they should at least be explored and the evidence of them having been considered set out. Until evidence regarding the lack of alternative forms of funding has been set out, the total contribution proposed to be demanded from developers lacks the necessary justification.

### **Viability and the relationship between the RAMS SPD and Local Plans**

- 2.28 It is considered that the RAMS itself has the potential to provide Local Planning Authorities with useful evidence in the preparation of their Local Plans.
- 2.29 The PPG<sup>2</sup> confirms that policies on planning obligations should be set out in plans and examined in public, and informed by a proportionate assessment of viability. It goes on to expressly state that Supplementary Planning Documents should not be used to set out formulaic approaches to planning obligations, as these would not be tested through examination. At the same time, it is recognised that, given the various different stages Local Planning Authorities across Essex are with their Local Plans, it is important to ensure interim measures are in place to address the impact of developments on SPAs, SACs and Ramsar sites. However, this does not mean that the issue of viability can be overlooked in the setting of any planning obligations policy in this way.

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<sup>2</sup> Paragraph: 004 Reference ID: 23b-004-2019090

- 2.30 A number of Local Planning Authorities are at advanced stages in the preparation of new Local Plans. Chelmsford City Council expects to adopt their new Local Plan shortly. Other Essex Authorities' Local Plans are under examination / submission for examination is imminent. Emerging Local Plans in Essex comprise a mix of those being examined under the 2012 NPPF, and those that will be examined under the 2019 NPPF. In either case, the viability of Local Plans – including the infrastructure requirements they have identified and the approach to their funding – will be, or in the case of Chelmsford, have been, tested through examination.
- 2.31 In addition to the planning contributions required of emerging Local Plans, we are mindful that Essex County Council recently published a proposed Developers' Guide to Infrastructure Contributions (2019) for consultation. This set out a proposed approach to requiring contributions for an array of different items, introducing further costs to development. The proposed Essex County Council Developers' Guide to Infrastructure Contributions (2019) did not appear to have properly considered viability.
- 2.32 The RAMS SPD introduces another contribution that will be sought from developers.
- 2.33 It is not clear if the RAMS SPD and the contribution it proposes to require have been subject to viability testing, which considers the extent of obligations already required and which are proposed in the Essex County Council Developers' Guide to Infrastructure Contributions (2019) proposes be sought. If this has been undertaken, it is important that the results are published. If not, then we suggest it is important this work is undertaken and the results incorporated into any policies which demand contributions. In the case of Chelmsford Local Plan, nearing adoption, it is the case that the viability assessment informing the document and the allocations did not account for the additional contributions now being sought. It is important that additional requirements imposed on top of these do not undermine delivery of development and/or necessary infrastructure.

#### **Alternatives to paying into the RAMS**

- 2.34 Section 5 of the RAMS SPD acknowledges that applicants may propose alternative mitigation to paying into the RAMS, but appears to seek to steer applicants away from taking a bespoke approach.

2.35 It should be recognised that if a strategic growth area is able to successfully demonstrate that its proposed, bespoke mitigation in any particular case is effective then this should be considered as an acceptable alternative to paying the RAMS contribution in full or part. It cannot be the case that proposals which incorporate effective mitigation be required to also contribute fully to the RAMS and it could be argued that this would be contrary to the CIL Regulations in such circumstances.

2.36 Policies contained in Local Plans tested through examination may acknowledge the potential for alternative mitigation to be acceptable, and the potential that RAMS contributions will not always be required. The main modifications proposed in respect of the Chelmsford Local Plan, in order to make it sound, have included the introduction of policy text in relation to Strategic Policy S6, conserving and enhancing the natural environment. This now includes the text:

*“**Where appropriate**, contributions from developments will be secured towards mitigation measures identified in the Essex Recreational disturbance Avoidance and Mitigation Strategy (RAMS) which will be completed by the time the Local Plan is adopted. Prior to RAMS completion, the authority will seek contributions, **where appropriate**, from proposed residential development to deliver all measures identified (including strategic measures) through project level HRAs, **or otherwise**, to mitigate any recreational disturbance impacts in compliance with the Habitat Regulations and Habitats Directive.”* (MM8. Emphasis added).

2.37 It is important that the RAMS SPD quite properly does not contradict or undermine this policy or those that may come forward in other Local Plans within Essex by reducing the flexibility they contain. The RAMS SPD should be amended to ensure that it is consistent with emerging Local Plan policy.

- 2.38 Certainly as far as Chelmsford Garden Village is concerned, as indicated at 1.1 above, the requirements set out in the emerging Local Plan are that it delivers a significant amount of multi-functional green infrastructure, including green corridors, open spaces, and a new country park; and goes on to explain that this will provide new and enhanced recreational opportunities. These requirements have been supported by the Consortium and will be delivered through a masterplan that is currently being prepared in collaboration with the City Council. These features will be critical to the Garden Village concept. They will provide an important opportunity to provide for on-site mitigation measures for recreational pressures on the Essex Coast that would otherwise arise from the development.
- 2.39 There may well be instances, such as that offered by Chelmsford Garden Village, where bespoke mitigation proposals will not just result in effective mitigation of potential impacts on the Essex coast SPAs, SACs and Ramsar sites, but may also deliver other benefits. It should also not be overlooked that many residents within the ZoI may not have opportunity to travel to the coast for recreation. For developments some distance from the coast but still in the ZoI, mitigation in the form of more localised suitable alternative natural greenspace has considerable benefit in meeting the need for such residents in particular.
- 2.40 It may of course be the case that the RAMS strategy is still required to be implemented in order to mitigate the in-combination effects of other developments, in addition to bespoke mitigation delivered as part of a specific development. However, in the circumstances where bespoke mitigation measures are proposed, and having regard to the CIL Regulations, it would clearly be inappropriate to demand a contribution to RAMS from such developments.
- 2.41 Local Planning Authorities should also not impose any unnecessary requirements upon applications seeking to propose bespoke mitigation. In particular, we do not see how it can *always* be necessary for those proposing alternative, bespoke mitigation to conduct their own visitor surveys, as paragraph 5.2 of the RAMS SPD seems to imply. There *may* be occasions when this is necessary, but there may also be circumstances where existing visitor survey data can be used to support alternative, bespoke mitigation.

2.42 We therefore consider that the RAMS SPD should take a far less negative stance in respect of alternatives to simply making a financial contribution, and it would benefit from providing further guidance and/or flexibility to those wishing to implement alternatives. Furthermore, by addressing such alternatives, this will help ensure that it is consistent with emerging Local Plan policies which, as already discussed, acknowledge there may be situations where it would be inappropriate to require financial contributions to RAMS.

#### **Principle of Mitigating Impact of an Activity Being Actively Encouraged**

2.43 The RAMS and RAMS SPD make clear that the potential harm to the SPAs, SACs, and Ramsar sites is the result of projected increased population within the Zol, the consequent increased number of visitors to protected areas, and the resultant additional recreational disturbance.

2.44 At the same time, we are mindful there are a number of organisations who actively encourage people to visit such protected areas. These even include at least one Local Authority that is listed at paragraph 3.1 of the RAMS SPD as partners to the RAMS. As a result of the RAMS SPD, it could be argued that such authorities will, in effect, be collecting contributions to mitigate the impact of an activity they are actively encouraging.

2.45 We do, of course, recognise there are social and economic benefits associated with people visiting the coast. Yet the inherent contradictory approach described above may need further consideration and challenging to reconcile. However, we suggest that the RAMS should explore engagement with organisations which encourage visitors to protected areas (such as the RSPB) to determine the appropriateness of their current approach to advertising areas of the coast as visitor destinations. There is a concern, as a matter of principle, that seeking contributions from developers to mitigate the impact of activity being actively promoted by others is questionable.

#### **Mitigation Costs**

2.46 We appreciate that the RAMS SPD has sought to provide some detail as to how the total cost for RAMS mitigation has been determined, and this is welcomed. However, there are still a number of elements where it is unclear how the costs for specific items

have been derived. In addition, there are items proposed to be funded where the justification is unclear.

- 2.47 For example, in terms of how costs have been calculated, it is unclear what assumptions have been made in respect of overheads on top of salary costs for the staff identified as being needed. We suggest that, in the interests of transparency, this should be clearly set out.
- 2.48 Separately, it is unclear how figures of £120,000 per year for both 'set up Water Ranger' and, in addition, 'additional River Ranger' have been calculated and have resulted in two separate total costs to borne by developers, each of £2,029,342.
- 2.49 In terms of the justification for some of the items, we consider the role of the 'delivery officer' (total cost to developers of £1,027,825) to be somewhat vague. It is not clear why this role is essential to ensure appropriate mitigation, or how the cost of resourcing this role has been determined. In addition, it is not explained why this role cannot / should not be undertaken through existing resources at Essex County Council, Local Planning Authority, or other stakeholder body in the protection of SPAs, SACs and / or Ramsar sites. There may well be adequate justification, but we suggest it is important for the RAMS SPD to set this out.
- 2.50 Additionally, we suggest that the RAMS SPD needs to carefully consider whether it is indeed actually the case that all items proposed to be funded through developer contributions are necessary to make development acceptable in planning terms. We consider items such as jet skis for use by 'water rangers' and the branding of uniforms are examples of those which would benefit from further explanation in this regard.



### **3 Conclusion**

- 3.1 We welcome the efforts of Essex County Council, the county's Local Planning Authorities, and other stakeholders to seek to address the issue of potential recreational disturbance on Essex coast's SPAs, SACs, and Ramsar sites through a strategic and joined-up approach.
- 3.2 However, we do have concerns with the approach proposed by the RAMS SPD.
- 3.3 In particular, the RAMS SPD appears to have come to the conclusion that the full cost of the mitigation measures should be borne by developers. This is despite the need for mitigation being primarily a result of general population increase in the County, as opposed to development "per se".
- 3.4 It is important, and indeed a requirement of the CIL Regulations, that the RAMS SPD does not seek contributions that are to address an existing situation, or one which would arise irrespective of development.
- 3.5 If it is accepted that it is appropriate for developer contributions to be sought to fund the RAMS, it will be necessary to differentiate between 'new' residents anticipated to be located within the Zol as a result of development, and those that are already living in the Zol. We also consider it is important to note that the total number of dwellings currently planned in Essex authorities' Local Plans will not meet current population projections. As such if a per-dwelling contribution is to be required, it should be calculated assuming a far greater total housing provision within the Zol.
- 3.6 Demands for developer contributions to fund the mitigation in full are particularly problematic when other organisations are actively encouraging the very activity which the RAMS has identified as leading to the need for mitigation (namely, visitors to the protected areas).
- 3.7 Separately, we consider the RAMS SPD takes an unduly negative stance on potential alternative forms of mitigation. If a strategic growth area is able to successfully demonstrate that its proposed, bespoke mitigation in any particular case is effective, then this should be considered as an acceptable alternative to paying the RAMS contribution in full or part. It would be contrary to the CIL Regulations to demand a

contribution from development where effective bespoke mitigation is already incorporated into such proposals. Furthermore, we consider the RAMS SPD should recognise not only opportunities for on-site mitigation, but that additional benefits can come forward with certain site specific schemes which can present on their own, more localised, mitigation measures.

- 3.8 To conclude, we support the principle of a strategic, collaborative approach by all of the relevant authorities and the intention to provide for a contribution based initiative for dealing with RAMS mitigation. However, we consider it important that the concerns identified in this representation be taken into account in proceeding with SPD, particularly those comments relating to the need for flexibility on strategic allocations for development such as Chelmsford Garden Village.