

Committee: Policy, Resources and Economic Development Committee	Date: 9 September 2020
Subject: Essex Coast Recreational Disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD)	Wards Affected: Ingatestone, Fryerning and Mountnessing
Report of: Phil Drane, Director of Planning and Economy	Public
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Summary

The Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD) focuses on the mitigation that is necessary to protect the wildlife of the Essex Coast from increased visitor pressure associated with new residential development in-combination with other plans and projects, and how this mitigation will be funded. The SPD forms technical planning guidance. The Essex Coast RAMS SPD is provided in Appendix A.

The Essex Coast RAMS SPD accompanies the strategic approach to mitigation. The overall Strategic Document is provided in Appendix B. It provides a mechanism for local planning authorities to comply with their responsibilities to protect habitats and species in accordance with the UK Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations'). It sets out a tariff to be charged for new residential development within the affected area that would contribute to the mitigation measures on the Essex coastline. The overall cost for the mitigation package is estimated to be £8.9 million up to 2038. The SPD formalises the arrangements for securing the developer contribution of £125.58 per dwelling.

The Essex Coast RAMS SPD has been brought to Planning and Licensing Committee at different stages of its preparation (12 March 2019 and 18 December 2019). Public consultation took place in early 2020. Following this, a consultation report was produced and minor changes made to the final SPD as a result. The consultation report is provided in Appendix C.

This work has been undertaken through a partnership approach between the 12 Essex authorities affected and Natural England in an advisory role. A letter from Natural England to endorse the approach is provided in Appendix D. Each of the Essex authorities affected are taking the Essex Coast RAMS SPD through their decision-making processes for adoption. A partnership agreement between the Essex authorities for the management and administration of the RAMS tasks and funds is being prepared. A draft version of the partners agreement is provided in Appendix E.

An overall zone of influence from the Essex coastline has been determined following surveying and other evidence. This is made up of a number of zones from specific points on the coast. This zone results in the Essex authorities involved in the work. The zone of influence extends to a small part of the north-eastern corner of Brentwood Borough, including part of Ingatestone village. A map showing the extent of the zone of influence within the borough is provided in Appendix F.

Recommendations

Members are asked to:

R1. Approve the Essex Coast RAMS SPD for adoption (Appendix A);

R2. Delegate powers to the Director of Planning and Economy to make minor changes to the Essex Coast RAMS SPD if required, in consultation with the Leader of the Council, Chair of Planning and Licensing Committee, and the Chief Executive; and

R3. Authorise that the Director of Planning and Economy put a process in place to implement, collect, monitor, and pay the tariff to the accountable body of the partnership (Appendix E).

Main Report

Introduction and Background

- 1.** The Essex Coast Recreational disturbance Avoidance Mitigation Strategy (RAMS) Supplementary Planning Document (SPD) (Appendix A) focuses on the mitigation that is necessary to protect the birds of the Essex coast and their habitats from the increased visitor pressure associated with new residential development in-combination with other plans and projects, and how this mitigation will be funded.
- 2.** The need for a long term, strategic approach was identified by Natural England, the Government's advisor for the natural environment in England, to ensure compliance with the Habitat Regulations. Other RAMS have been successfully implemented throughout different areas of the country, for example in the Solent, Thames Basin Heaths and North Kent.

3. Essex authorities (11 local planning authorities and Essex County Council) have been working together with the assistance of Essex Place Services and Natural England in an advisory role. The local planning authorities are:
 - a) Basildon Borough Council;
 - b) Braintree District Council;
 - c) Brentwood Borough Council;
 - d) Castle Point Borough Council;
 - e) Chelmsford City Council;
 - f) Maldon District Council;
 - g) Rochford District Council;
 - h) Southend Borough Council;
 - i) Tendring District Council;
 - j) Thurrock Borough Council; and
 - k) Uttlesford District Council.
4. The Essex Coast RAMS SPD accompanies the strategic approach to mitigation set out in the RAMS Habitats Regulations Assessment Strategy Document 2018-2038 (Appendix B). The RAMS provides a mechanism for local planning authorities to comply with their responsibilities to protect habitats and species in accordance with the UK Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations'). Joint working offers the opportunity to protect the birds habitat sites around the Essex Coast in a coordinated manner.
5. The RAMS SPD distils the Strategy Document for use by local planning authorities, applicants and the public. It provides the following information:
 - a) A summary of the RAMS;
 - b) The scope of the RAMS;
 - c) The legal basis for the RAMS;
 - d) The level of developer contributions being sought for strategic mitigation; and
 - e) How and when applicants should make contributions.

Issue, Options and Analysis of Options

6. The Essex coastline is one of importance for birds and their habitat. A large proportion of the coastline is covered by international, European and national wildlife designations. A key purpose of these designations is to protect breeding and non-breeding birds and coastal habitat. Most of the Essex coastline is designated under the Habitats Regulations as part of the European Natura 2000 network, including Special Protection Areas (SPA), Special Areas of Conservation (SAC) and Ramsar sites, which are also known as Habitat Sites.

- 7.** The 10 Habitat Sites included within the RAMS SPD are:
- a) Essex Estuaries SAC;
 - b) Stour and Orwell Estuaries SPA and Ramsar;
 - c) Hamford Water SPA and Ramsar;
 - d) Colne Estuary SPA and Ramsar;
 - e) Blackwater Estuary SPA and Ramsar;
 - f) Dengie SPA and Ramsar;
 - g) Crouch and Roach Estuaries SPA and Ramsar;
 - h) Foulness Estuary SPA and Ramsar;
 - i) Benfleet and Southend Marshes SPA and Ramsar; and
 - j) Outer Thames Estuary and Marshes SPA and Ramsar.
- 8.** The Essex coastline provides opportunities for a range of recreational activities including dog walking, hiking, cycling and sailing. Research undertaken to inform the RAMS shows that housing growth is likely to increase the number of people visiting these sensitive coastal areas. This could create the potential for impacts from increased recreational disturbance to the birds and their habitats unless adequately managed.
- 9.** The RAMS and mechanisms to deliver the project have been endorsed by Natural England (Appendix D). To comply with the Habitat Regulations in advance of any formal planning guidance, the local planning authority partners are already collecting RAMS contributions for development within the zone of influence, which will be spent on the mitigation measures package detailed in the Strategy Document (Appendix C).
- 10.** Through the provision of a per dwelling traffic, the RAMS enables proportional mitigation measures and development proposals of all scales to contribute to necessary mitigation. The measures within the RAMS are to be fully funded by developer contributions.
- 11.** Visitor surveys were carried out at key locations within each of the habitat sites to determine the overall zone of influence. This is made up of a number of zones from various points along the Essex coastline.
- 12.** Although only Tendring District, Colchester Borough, Chelmsford City, Maldon District, Rochford District, Southend-on-Sea Borough, Castle Point Borough, and Thurrock Borough physically lie on the coast, research has shown that residents from Basildon Borough, Brentwood Borough, Uttlesford District, and Braintree District are also likely to travel to the coast for recreational use.
- 13.** Within the zone of influence it is considered that residential development is likely to have an impact on the coast and as a result developer contributions for the delivery of avoidance and mitigation measures are justified.
- 14.** The overall zone of influence is mapped in Figure 1 (below), showing its extent over Essex. In terms of its coverage in Brentwood Borough, this relates to a

small area in the north-eastern corner of the borough, including part of Ingatestone village. The specific zone affecting Brentwood Borough is from the Blackwater area of the coast. A more detailed map of the affected part of the borough within the zone of influence is provided in Appendix F.

Figure 1: Essex Coast RAMS Overall Zone of Influence Map



15. The overall cost for the mitigation package is estimated to be £8.9 million up to 2038. The mitigation package is summarised on Table 8.2 (pages 58-63) of the Strategy Document 2018-2038 (Appendix B). It includes a mix of measures considered necessary to avoid or minimise likely disturbance at key locations with easy public access, including:
 - a) Staff resources, such as Rangers;
 - b) Communication with the public;
 - c) Dog related mitigation;
 - d) Habitat creation; and
 - e) Monitoring.
16. The RAMS will provide a flexible and responsive approach, allowing it to respond to unforeseen issues. Close engagement will continue with Natural England who will be able to advise if recreational disturbance is increasing at particular habitat sites and specific locations. Thus, enabling these locations to be targeted by the rangers to have an immediate impact. Updated visitor surveys, which are included in the mitigation package, will enable the zone of influence to be reviewed and expanded if it is shown that visitors are travelling

further than previously found. There is scope to adjust the tariff if it is shown that contributions are not covering the identified measures, if the zone of influence is made smaller or to respond to changes in housing numbers across Essex.

17. The RAMS will be monitored and reviewed on a regular basis by the Officers involved in the RAMS Steering Group, which reports to the Essex Planning Officers Association (EPOA). Brentwood Borough Council is represented at EPOA by the Director of Planning and Economy. The RAMS will be deemed successful if the level of bird and habitat disturbance is not increased despite an increase in population and the number of visitors to the coastal sites for recreation. The baseline has been identified in the Strategy Document (Appendix B) and will be used to assess effectiveness.
18. The RAMS SPD sets out the guidance to deliver the RAMS and to be followed in the determination of planning applications. It formalises the arrangements for securing the developer contribution of £125.58 per dwelling. This amount is adjustable by inflation each year, in line with the retail price index.
19. The RAMS SPD outlines key information taken from the Strategy Document including:
 - a) Summary of the RAMS;
 - b) Scope of the RAMS;
 - c) The level of developer contribution and tariff being sought for strategic mitigation;
 - d) About the mitigation and RAMS toolkit;
 - e) How and when applicants should make contributions;
 - f) Alternative to paying the RAMS tariff; and
 - g) Approach to monitoring.
20. An Accountable Body of the partnership is in place to administer the RAMS, which is currently Chelmsford City Council. A process for sharing this burden is to be agreed. A Partnership Agreement is in the process of being drafted, which will outline all the costs each authority is responsible for and terms and conditions required if a partner decides they no longer wish to be part of the Essex Coast RAMS. A draft version of the agreement is provided in Appendix E. Amendments to the agreement are currently being discussed before it is finalised. This includes improving the clarity of definitions and roles of the accountable body. As Brentwood Borough falls within a small portion of the zone of influence, the costs are to be proportionality calculated.
21. The purpose of the partnership agreement will be to:
 - a) Specify the organisation of work between the partners when carrying out the RAMS project (including rights and obligations);
 - b) Carry out the RAMS project in accordance an agreed delivery flowchart and mitigation strategy to produce project deliverables; and
 - c) Establish and adhere to a governance structure in place to ensure the project is delivered.

Reasons for Recommendation

- 22.** Local planning authorities have the duty, by virtue of being defined as 'competent authorities' under the Habitats Regulations, to ensure that planning decisions do not adversely affect the integrity of habitat sites. The Council is not obligated to prepare or adopt an SPD; however, a decision not to do so would not remove the Council's duties under the Habitat Regulations and would not remove the need to implement the RAMS, or another appropriate strategy, to avoid or mitigate the impacts of new housing on the integrity of habitat sites.
- 23.** Failure to avoid or mitigate the impacts of recreational disturbance arising from new housing in the determination of planning applications would leave decisions vulnerable to legal challenge. The RAMS Strategy Document and accompanying RAMS SPD are intended to ensure the Council's obligations under the Habitats Regulations are effectively discharged. Therefore, the recommendation is that the Council approve the RAMS SPD for adoption to form part of planning policy and inform the decision-making process for residential development in the small part of the borough within the zone of influence (part of Ingatestone, Fryerning and Mountnessing Ward, see Appendix F).
- 24.** Each partner local authority needs to take the RAMS SPD to their relevant committee for approval to adopt. As such, some changes may be needed to the document as requested by partners through those democratic decision-making processes. Therefore, it is recommended that delegated power be given to the Director of Planning and Economy to make minor changes to the SPD if required prior to it being formally adopted by all partners, in consultation with the Leader of the Council, the Chair of Planning and Licensing Committee and the Chief Executive.
- 25.** Processes will need to put in place to implement, collect, monitor and pay the tariff charged to the relevant residential development and then transferred from the Council to the accountable body of the partnership to administer the fund. As the partner authorities continue to work together to administer the RAMS it is recommended that the Director of Planning and Economy be given delegated powers to enable the Council to play its part in administering funds collected. Although the area of the borough affected is small and therefore funds to be collected in Brentwood Borough are projected to be low in comparison with other authorities in the partnership, a consistent process needs to be in place across the wider area. This includes finalising the Essex Coast RAMS Partnership Agreement, which requires further legal input.

Consultation

- 26.** The RAMS SPD was subject to a joint public consultation between 10 January and 21 February 2020. The need for consultation is set out in the Council's Local Development Scheme and this was undertaken in accordance with the relevant local planning authority Statements of Community Involvement.

27. 110 residents across the relevant local planning authority areas responded to the consultation. Two responses were received from residents in Brentwood Borough. Comments on a wide range of themes were received, relating to the SPD, the Strategy Document, and the format of the consultation. A Consultation Report, entitled 'You Said, We Did' (Appendix C), sets out the details of the consultation process, the comments received, and how the comments were addressed within the RAMS SPD. The main issues raised during the consultation included:

- a) Confusion about the purpose and aims of the RAMS;
- b) Scope and detail of mitigation measures;
- c) Concern regarding the effectiveness of the RAMS approach;
- d) Query whether the right key stakeholders have been involved in the RAMS;
- e) Questioning the status of protected wildlife sites following the UK's withdrawal from the European Union;
- f) Concern that RAMS will enable inappropriate development to be allowed;
- g) Suggestions that money should be spent on other projects;
- h) Concern with the calculation and definition of the zones of influence;
- i) Arguments that the tariff is set too high, or alternatively too low;
- j) Questions over the adequacy of the proposed budget and staff to deliver project across such a wide area;
- k) Concerns about monitoring (both in relation to the tariff and zones of influence);
- l) Suggestion that other land uses (other than residential) should come within the scope of the tariff;
- m) Perceived conflict of RAMS purpose (protecting against recreational disturbance) and aims with the England Coastal Path project (increasing public access to the coast);
- n) Concerns that RAMS will impact on existing and future strategies and aspirations for tourists and residents to access and enjoy the coast, for economic growth and health and wellbeing; and
- o) Suggestions that alternatives to paying into the RAMS should either not be allowed, or that alternative approaches should be more clearly set out.

28. The comments received have resulted in a number of minor changes to the RAMS SPD. However, the Strategy Document (Appendix B) remains unchanged. The main revisions made to the RAMS SPD include:

- a) A glossary and list of acronyms and a description of what they mean can be found at the beginning of the SPD;
- b) A clearer description of how overheads and other costs have been identified within the RAMS mitigation package;
- c) The first paragraph of the SPD was amended to state 'birds and their habitats' rather than 'wildlife' to make it clearer from the outset as to what type of wildlife the RAMS and the SPD is primarily seeking to protect;

- d) More recognition of the South East Marine Plan and the East Inshore and East Offshore Marine Plans, which when adopted, will become part of the Statutory Development Plan for the relevant Councils;
- e) An amendment to include reference to fishing / bait digging to paragraph 2.2;
- f) Reference to the 'Outer Thames Estuary SPA' rather than the 'Thames Estuary SPA';
- g) Previous maps replaced with higher resolution images;
- h) Additional clarification within paragraph 3.7 making the SPD more explicit regarding proposals for single dwellings being subject to the RAMS tariff;
- i) More explanation of requirements of development proposals in regard to statutory HRA procedures and on-site mitigation, and that the specific effects the RAMS will mitigate in accordance with Regulation 122 of the CIL Regulations;
- j) More justification for the inclusion of C2 Residential Institutions and C2A Secure Residential Institutions as being liable for tariff payments.
- k) Inclusion of the National Planning Policy Framework (NPPF) within the 'useful links' section;
- l) Clarification that non-residential proposals are exempt from the tariff;
- m) Amendments to the map in appendix 2 of the Essex Coast RAMS SPD SEA/HRA Screening Report to reflect the Outer Thames SPA designation;
- n) Clarification on the requirements for project-level Habitat Regulations Assessment (HRA) and Appropriate Assessment (AA) of development proposals which will explore the hierarchy of avoidance and mitigation, and that the SPD is relevant to 'in-combination' recreational effects only;
- o) Clear explanation that the intention of the Essex Coast RAMS mitigation is to enable the conclusion of no adverse effect on the integrity of the international designated sites;
- p) Removal, from the relevant map in the SPD and RAMS Strategy, all areas of Suffolk from the Zone of Influence;
- q) Clearer explanation of the relationship between the effects of a population increase resulting from net new dwelling increases; and
- r) Reference included to other statutory mitigation requirements (such as Suitable Alternative Nature Greenspace (SANGS)), and explanation of how they might represent an exemption to the tariff.

References to Corporate Plan

- 29.** The Essex Coast RAMS SPD is an important addition to the Council's emerging Local Development Plan, particularly on environment mitigation and costs related to the Infrastructure Delivery Plan. Adoption of the Local Development Plan is a key objective in the Council's Corporate Plan "Brentwood 2025". Whilst the investment in the Essex Coast is outside Brentwood Borough, the Council supports objectives to protect the environment, which can continue to be enjoyed by borough residents as well as the wider benefits to Essex.

Implications

Financial Implications

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30. The tariff has been calculated in line with expected growth in housing for the zone, which has been evidenced through the strategy and endorsed by Natural England. The tariff will be regularly monitored and reviewed. The Council's main resource implications will be staff time for administering the collection of payment contributions, which are expected to be minimal and covered by existing budget provision.

Legal Implications

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31. The RAMS SPD reduces the risk of legal challenge by ensuring that all applications that pay the tariff comply with the Habitat Regulations. Under Regulation 67 of the Conservation of Habitats and Species Regulations 2017, the Council must have regard to guidance issued by other authorities in this case in matters affecting European sites or European offshore marine sites, thus any SPD issued in this respect will be a material consideration in coming to a planning determination. Regulation 70 makes the consideration of any assessment in a determination a prerequisite in a determination. Any charge for mitigation of an impact to a designated site emanating from a development may therefore be charged as an obligation under section 106 Town and Country Planning Act 1990.
32. A partnership agreement has been drafted as set out in Appendix E. Further legal input is required before this is agreed. Recommendation R3 provides for the Director of Planning and Economy to put in place the arrangements of the agreement as they relate to the Council, which will be undertaken in partnership with the Director of Law and Governance (Monitoring Officer).

Economic Implications

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33. There are no economic implications beyond the proposed tariff for residential development in a specific area of the borough, as set out in the report. This tariff, along with other development contributions, will be a consideration in the viability of any relevant development proposal. However, the tariff is not considered to be significant enough alone to discourage development.

Other Implications (where significant) – i.e. Health and Safety, Asset Management, Equality and Diversity, Risk Management, Section 17 – Crime & Disorder, Sustainability, ICT.

34. None.

Background Papers

- Essex Coast RAMS SPD report, Item 3 Planning and Licensing Committee, 12 March 2019
- Essex Coast RAMS SPD progress report, Item 288 Planning and Licensing Committee, 18 December 2019

Appendices to this report

- Appendix A: Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS) Supplementary Planning Document (SPD), May 2020
- Appendix B: Essex Coast RAMS Habitats Regulations Assessment Strategy Document 2018-2038, January 2019
- Appendix C: Essex Coast RAMS SPD 'You Said, We Did' Consultation Report, April 2020
- Appendix D: Essex Coast RAMS Letter of Endorsement from Natural England, July 2020
- Appendix E: Essex Coast RAMS Draft Partnership Agreement, August 2020
- Appendix F: Map of the Essex Coast RAMS Zone of Influence as it relates to Brentwood Borough (part of Ingatestone and Fryerning)