

## Urban impacts on Dorset heaths

### A review of authoritative planning and related decisions

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**Urban impacts on Dorset heaths  
A review of authoritative planning and related decisions**

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# 1. Introduction

English Nature commissioned the Dorset Environmental Records Centre (DERC) to undertake a research project into aspects of the effects of urban development on Dorset heathlands. DERC sub-contracted parts of the commission to specialists. This element of the overall project was sub-contracted to David Tyldesley and Associates. It comprises a review of authoritative decisions on planning applications and appeals, local plan proposals and court judgments.

The agreed brief described the aims of this part of the project as follows. To undertake an appraisal of recommendations made and decisions taken by Inspectors and the Secretary of State relating to planning applications and appeals, and Inspectors' recommendations in respect of development plan public inquiries, and of judgments in the courts. The analysis is to consider indirect urban effects on heathlands in the context of the application of the Conservation (Natural Habitats &c) Regulations 1994 (abbreviated to HR94 below), with particular reference to regulations 3(4), 44 and 48 of the HR94 and local plans. The study is to also consider interest features of international nature conservation interest where they occur and may be affected outside the designated site.

## 2. Method and structure of report

The study comprised desk based research. The following sources were used to identify relevant cases:

- a) local authority web-sites in Berkshire, Dorset, Hampshire, Surrey and East and West Sussex;
- b) the decisions library of the Planning Inspectorate (PINS), Bristol;
- c) casework records of English Nature especially the Dorset and Hampshire area teams;
- d) the empirical knowledge and experience of the researchers.

Almost all cases were sourced via [c] and [d] above. The PINS library was very helpful but the case search system was insufficiently programmed to narrow the identification of decisions to those relating to housing or similar urban development potentially affecting heathland. Print-outs of appeal decisions in parts of Dorset, Hampshire and Sussex from 1992 to date were tested, but relevant cases could only be identified by cross referencing the National Grid Reference (NGR) to the location of international sites.

A number of local authority web sites had quite detailed lists of planning applications (especially current ones), but most were relatively recent and few had lists of appeals. Again, identifying those that related to urban pressures on heathland was not possible without a disproportionate effort of cross referencing locations, beyond the limited resources of the project.

It must, therefore, be concluded that whilst this report probably refers to many of the key cases, there is a likelihood that other decisions may be relevant and would potentially affect the analysis.

To assist in the analysis of the decisions a table was constructed that enabled each aspect of each decision to be compared with others. Appendix A to this report lists the cases that were analysed and also makes reference to other cases considered, but excluded from analysis, for the reasons given. Appendix B contains the tables used in analysis. Each case was given a sequential case reference number, 1-30, in date order so that the database may be extended in the future.

Although the original brief requested that the analysis compared the decisions with European Commission (EC) advice, this would have required a time input well beyond the resource available to this part of the project. Consequently, the analysis of the decisions that follows should be regarded as a commentary on the nature of the decisions and not an analysis of their compliance with the law or local national or international policy. It should also be noted that this report does not comment on the merits of the decisions.

Relevant case decision letters and extracts of reports and judgments are attached as Appendix C. Throughout this report references are used thus (2/16) meaning case 2 para 16. Where a case includes more than one document, the following abbreviations are used - SoSL 'Secretary of State decision letter; IR' Inspector's Report.

There are nine maps at the back of this report, the first is a key map, the rest provide a location for each of the 30 sites analysed.

### **3. Summary of cases**

3.1 In total the cases considered were as follows:

- C eight appeals against refusal of planning permission determined by an Inspector (cases 1, 2, 6, 16, 24, 26, 29 and 30) including appeals against enforcement notices, which require determination of the deemed application for planning permission implicit in the appeal;
- C eight appeals against refusal of planning permission determined by the Secretary of State (SoS) on the recommendation of an Inspector (cases 3-5, 7, 15, 25, 27 and 28);
- C thirteen recommendations of an Inspector relating to the consideration of objections to Local Plans (cases 8-11, 13-14 and 17-23);
- C one judgment in the High Court.

The geographic location of the developments may be summarised as follows:

Hart District Hampshire	12 cases
Purbeck District Dorset	7 cases
East Dorset District	6 cases
Surrey Heath District	2 cases
East Hampshire District	1 case
Newbury District Berkshire	1 case
West Dorset District	1 case

The cases were decided over a 17 year period from January 1988 to August 2004.



The range of proposed developments that were the subject of the decisions analysed were as follows:

- a) single dwellings including agricultural dwellings;
- b) residential caravan/mobile home;
- c) demolition of a dwelling and replacement with 4 and 12 dwellings respectively;
- d) residential developments of between 6 and 600 dwellings;
- e) new settlements of 1,100 and 1,350 dwellings respectively and related employment and service development;
- f) livery stables and related horse riding development.

Of the 30 cases, 24 proposals were refused permission or recommended not to be allocated, wholly or partly on the grounds of potential or actual adverse effects on the international nature conservation interests of the relevant site.

In two cases affecting the same site (cases 2 and 3), permission was refused on non-nature conservation grounds and pre-dated the international designation, so the Inspectors applied the normal planning test of whether there was demonstrable harm to interests of acknowledged importance and whether the proposal was in accordance with the development plan (see further paragraph 5.1 below). They concluded the harm to nature conservation was insufficient to justify refusal (2/16). The tests under regulation 48 HR94 did not then apply, and it should also be noted that cases 2 and 3 were considered on three subsequent occasions, (in cases 7 and 11, and the High Court judgment, case 12), where proposed development was refused permission on each occasion owing to its effects on the pSPA.

One case was permitted in 2004 (case 25) following representations from English Nature that the proposal would not have a significant effect on the international site.

Case 13 resulted in an Inspector recommendation that a proposed housing allocation of 0.6ha be added to the Surrey Heath Local Plan on the basis that it was premature to conclude that the Council would be unable to ascertain that the development would not adversely affect the integrity of the site.

Case 28 was refused permission on appeal by the SoS for other planning reasons after both the Inspector and the SoS concluded that refusal was not justified on nature conservation grounds.

Case 15 resulted in the SoS granting permission for an unauthorised residential caravan, for a three year period, to enable its relocation, having concluded that a temporary permission would not be an adverse effect on the integrity of the site, although a permanent permission would be.

## **4. The issues**

The designated sites affected include Special Protection Areas (SPA) classified under the EC Birds Directive (79/409/EEC); potential SPAs; candidate Special Areas of Conservation (cSACs) designated under the EC Habitats Directive (92/43/EEC); and Ramsar sites which

are listed under the Ramsar Convention on Wetlands of International Importance Especially for Waterfowl Habitat (1972 as amended). Two cases refer to sites before they were proposed for international designation.

All of the relevant sites are also Sites of Special Scientific Interest (SSSI) notified by English Nature under the provisions of section 28 of the Wildlife and Countryside Act 1981, as amended. However, there may be interest features of a designated site that are of national importance and cited in the SSSI notifications, which are not of international importance. This report is confined to the consideration of internationally important wildlife and habitats.

In summary, the principal interest features considered in the various decisions are as follows:

SPAs	Annex 1 breeding birds the nightjar <i>Caprimulgus europaeus</i> , woodlark <i>Lullula arborea</i> and Dartford warbler <i>Sylvia undata</i> .
cSAC	wet and dry heath habitats including European dry heath, North Atlantic wet heath with <i>Erica tetralix</i> , Temperate Atlantic wet heath with <i>Erica ciliaris</i> and <i>Erica tetralix</i> , and their plant and animal communities particularly the sand lizard <i>Lacerta agilis</i> , slow worm <i>Anguis fragilis</i> and smooth snake <i>Coronella austriaca</i> .
Ramsar Sites	the wet heath plant communities.

For EC interest features off-site nightjar and greater horseshoe bat.

In summary, the principal impacts addressed in the decisions were as follows:

- a) increased incidence of fires including those started maliciously (fire-raising), accidentally by children camping or playing, or consequent to burning stolen cars that were dumped on the heath;
- b) disturbance of breeding birds by people including riders and dogs;
- c) predation of birds and reptiles by domestic pets;
- d) habitat change in designated sites caused by the introduction of non-native plants, laying utilities (eg pipes and cables), fly-tipping and rubbish dumping, erosion, trampling and nutrient enrichment resulting from legitimate recreational activity, especially dog walking, but also unauthorised recreation which may include cycling and motor cycling and driving cars onto the heath;
- e) habitat change off-site, particularly loss of foraging areas for breeding birds;
- f) deposition of nitrogen on heathland habitats caused by keeping poultry associated with and dependent upon a proposed agricultural dwelling;
- g) potential changes in hydrology of heathland caused by development;
- h) fragmentation and isolation of heathland ecosystems; and

- i) effects of disturbance and increased lighting on bats outside internationally designated sites.

Examples of decision makers succinctly summarising the issues are found at 2/15-16; 17/6.466; 22/6.683; 24/9; and 29/13. For example in case 29, The Barn, Three Legged Cross:

‘The conflict between dwellings and heathland sites arises from certain types of human activity and behaviour. By way of example, children playing on nearby heathland can cause disturbance and thereby damage nature conservation interests. Damage to habitat can be caused if fires are lit or mountain bikes or motor bikes are used. The keeping of pets can cause considerable damage, especially predatory animals such as cats that can deplete heathland animals including rare reptiles and birds. Dogs can cause disturbance and damage to nesting sites. Dog walking itself causes disturbance and cats and dogs cause soil enrichment through the leaving of faeces and urination. The irresponsible dumping of waste is also a damaging consequence of human activity.’ (29/13).

In case 2 it was expressed as follows:

‘The appeal site would abut the SSSI at one point. The concern stems from the inevitable pressures generated by the 100 or so residents of the development as indicated by problems which have arisen in the area since 1975 when Yateley had begun to grow rapidly. These include loss of habitat to pipelines and drainage, wear and tear on vegetation from motor cycle scrambling, horse riding, walkers, anglers, summer heath fires, wildlife disturbance, by dogs and cats, fly tipping, provision of recreational facilities, the cumulative effect of which has diminished the interests of the nature conservation sites. The council's conclusions are that, since acute problems already exist, the proposal may exacerbate the situation beyond what is commensurate with the small increase in population and beyond a point where ameliorative measures can successfully retrieve the situation and that the proposal would be contrary to the policies mentioned to circular 27/87, and to the government's commitment to conservation as a member of the Council of Europe.’

## **5. Application of the habitats regulations generally**

Tracing the cases back to 1988 demonstrates the profound influence of the coming into force of the HR94, on 30 October 1994. Prior to 1991, planning applications essentially had to be determined on the merits of each case; the applicant was entitled to a consent unless the planning authority could show ‘demonstrable harm to an interest of acknowledged importance’. That was the basis of the decision in cases 1 (Hazeley Heath) and 2 (Fox Farm, Yateley), in 1988 and 1989 respectively. By case 3, (1993) the Planning and Compensation Act 1991 had introduced section 54A into the Town and Country Planning Act 1990 (now replaced by sub-section 38(6) of the Planning and Compulsory Purchase Act 2004). These provisions require planning applications and appeals to be determined ‘in accordance with the development plan unless material considerations indicated otherwise’. Generally it is still for the planning authority to show harm, in order to refuse a permission, but this would normally be related to a proposal's inconsistency with a development plan policy.

Case 3, also related to Fox Farm Yateley. It was determined prior to the HR94 but the Thames Basin Heaths was known to be a possible SPA and a draft of *Planning Policy Guidance Note No 9: Nature Conservation* (PPG9) had been published at the time the Inspector held the Inquiry. She acknowledged the importance of the heathland and the potential threat to the heathland nature conservation interests. This could arise from the indirect effects of the 42 dwellings proposed close to the heath and also from the opening up of the airfield by the construction of a new access road. She concluded that in respect of the new dwellings "while I believe that new residents would contribute to increased use of the airfield, bearing in mind the present level of use, I cannot draw the firm conclusion that the potential for additional harm to be caused to the nature conservation interest within the potential SPA and present SSSIs as a direct result of the development and occupation of 42 dwellings would be an overriding consideration." However, in respect of the effects of the access she concluded "Taking into account also my conclusions on the longer term development pressures that might be imposed on that land and the conclusions I have drawn about the longer term impact on the character and appearance of the main body of the airfield to the south, I can see the potential for most serious harm being caused in the longer term to the nature conservation interest of the area as a whole; this would result both directly from increased usage and also indirectly because of the fragmentation of heathland at the heart of the potential SPA."

Overall she found that although the "site has the potential to provide housing in an attractive setting that could relate well to Yateley without causing unacceptable harm to its character or the nature conservation interest of its surroundings, as presently understood" nevertheless, "the Council's aim of securing the protection of the countryside on the airfield is worthy of support, especially when that countryside is recognised as a threatened habitat and is currently being assessed for designation as an SPA on account of the presence of Annex 1 birds for which conservation measures to protect their habitat are provided for in Article 4 to Directive 79/409." Thus we see a dismissal of the appeal on wider planning grounds but an increasing acknowledgement of the potential influence of the pSPA.

The landmark decision was that of case 4 (Hill Farm, Cobbett's Lane, Yateley) in 1995. The Inquiry was conducted by Dr. C. Gossop, a qualified ecologist and planner. He noted that the HR94 had recently come into effect and applied their requirements guided by PPG9 which, by then was in its final published form. The SoS agreed with the Inspector's conclusions and dismissed the appeal, summarising the conclusions on the nature conservation issues as follows "the Secretary of State has considered the effect of the development on the three species of birds listed under Annex 1 of the EC Birds Directive: the nightjar, the woodlark and the Dartford warbler. He has also considered the effect of development on the heathland habitat. He agrees with the Inspector that, while the size of a bird population in any one area will be influenced by a variety of factors, the available evidence points to a link between the population density of the Annex 1 species and the extent of recreational activity. He considers that the new residents would add significantly to the recreational pressure within the northern block of heathland adjacent to Heathlands Cemetery and that this would pose a threat to the Annex 1 birds and diminish their chances of successfully rearing young. He does not consider that the proposed public open space would attract people away from the Common in sufficient numbers that the pressure would be relieved. On this issue, therefore, he agrees with the Inspector's conclusions in paragraphs 12.31 - 12.50 of his report and with his overall conclusions, having regard to PPG9, that the development would have a significant impact on the proposed SPA and would have an adverse effect on its integrity." (4/SoSL.8).

Thus, the potential for harm was not clearly demonstrable, but the Inspector and the SoS effectively applied the precautionary approach embodied in regulation 48 HR94, a very different approach to that normally applied under section 54A, and now section 38(6). This marked the distinct shift of the basis of the decision from the conventional compliance with the development plan and demonstrating harm, to the application of the precautionary principle embodied in regulation 48 HR94.

Another case marking the influence of the HR94 is case 6, (Silver Fox Farm, Yateley). This related to a dwelling that had burnt down in the 1980's. Permission to renew dwellings in such circumstances was routine, and policies in most development plans provided for such eventualities, even in open countryside. Permission had been given in 1987 and renewed in 1991, but by 1997 the dwelling had still not been rebuilt. On this occasion permission to rebuild was refused and the appeal dismissed by the Inspector, on 25/11/98, who noted that there had been material changes in circumstances since the last renewal in 1991, namely: the continued re-vegetation of the site; the adoption of more stringent policies in the Structure and Local Plans protecting nature conservation sites; and the introduction of the HR94 and PPG9. The Inspector wrote: "what has changed, and changed quite dramatically, is both national and international attitudes to nature conservation policy". The Inspector concluded that the normal presumption in favour of renewal of burnt dwellings no longer prevailed, the one dwelling would be likely significantly to affect the pSPA, so the appeal was dismissed. The proposed replacement was again rejected following an objection to its omission as a proposal in the Hart District Council Local Plan (case 10), and it is worth noting particularly the Inspector's comments at 10/6.8.584.

## **6. Application of the HR94 in the context of a local plan**

Four cases demonstrate how Inspectors have considered the influence and application of the HR94 when dealing with objections to development plans. These are cases 13 and 14, the Surrey Heath Local Plan; and 17 and 22, the Purbeck Local Plan, Dorset.

In case 13 (Whitehill Farm, Camberley, Surrey Heath Local Plan) the Inspector noted that "The footnote to paragraph A15 of PPG9 indicates that the Regulations do not strictly apply to the allocation of land in a development plan. However, I accept the Council's view that it would be unreasonable and unhelpful to allocate land for development in the Local Plan, in the knowledge that development would be unlikely to proceed because of the requirements of Regulation 48." (13/2.205) However, in respect of the particular case, he concluded that "It follows that, even if the Council were satisfied that an "appropriate assessment" would be necessary in respect of the proposed development, that need not necessarily result in planning permission being refused. In assessing whether the scheme would adversely affect the integrity of the European site, the Council would have to have regard to the manner in which the development was to be carried out; and to any conditions or restrictions subject to which permission might be granted. In the absence of a detailed proposal, I think it would be premature to conclude that the Council would be unable to ascertain that the development would "not adversely affect the integrity of the European site." (13/2.213)

However, in respect of case 14, Birch Close and Horseshoe Crescent, Camberley, the same Inspector reported that "There seems to me to be a high risk that the Council would be precluded from granting planning permission for conventional housing on either of the objection sites, by virtue of Regulation 48 of the Habitats Regulations 1994. In these

circumstances, I consider that it would be wrong to allocate either of these sites for residential development ...." (14/2.52)

The Inspector in the Purbeck Local Plan encountered the relationship between the development plan and the HR94 in respect of several sites (cases 17 - 23). He approached it as described in the following quotations that refer to the Holton Heath new settlement.

"It is generally accepted that the application of this Regulation is not required at Local Plan stage because Local Plan land allocations are not presently regarded by Government as 'plans or projects' in terms of the 'Habitats Regulations' (see PPG9/A15/footnote 1). Nevertheless it is necessary for me to have some regard to the Regulations as it would be harmful to the planning process to recommend the allocations in policies SS1-18 while knowing that subsequent planning applications would not have good prospects of complying with Regulations 48 and 49. Moreover, the Regulations are to some extent reflected in Local Plan policy CA1 and Structure Plan Environment Policy A, and there is a need to consider whether the allocations at Holton Heath are consistent with these policies." (17/6.514)

"My overall conclusion on the nature conservation issue is therefore that the retention of the Holton Heath proposals in the Local Plan would be a highly risky strategy in terms of their ability to survive the scrutiny and testing required by the 'Habitats Regulations'. It would cause harm to nature conservation interests and would not be consistent with either the Plan's own conservation policies or with similar policies in the Structure Plan." (17/6.538)

"Some uncertainty in the Local Plan process is of course inevitable, and on this matter the Council has referred me to the challenge to the former by-pass proposal in the North East Purbeck Local Plan (Retail Developments Limited and Carter Commercial Developments Limited v Purbeck District Council (1994)). There is nothing wrong in law with accepting some uncertainty. However, in the case before me, and on the planning merits, the overall probability of the proposal succeeding is in my estimation so low that I cannot recommend its inclusion in the Local Plan." (17/6.652)

The test applied in this case seems to be whether the proposal the subject of the objection would have "good prospects" of surviving the tests of regulations 48 - 49 HR94. This tends to be endorsed in the Inspector's rejection of other sites in the Local Plan, and in respect of case 22 (Stoborough Green) he concludes "In view of the general duty to have regard to the requirements of the 'Habitats Directive' (in Regulation 3(4)), I accept the need to take account of foreseeable implications at this stage. .... I am not confident that the Council would be able to ascertain the absence of an adverse effect." (22/6.865). He concluded that controlling the number of dwellings and changing the layout and access would have an extremely marginal effect, and reducing the number of dwellings would undermine the justification for the allocation. "It is also argued that the chances of an adverse effect could be reduced by management action on the Heath, but it is doubtful that this could be relied upon owing to the resource constraints and the need to take other factors into account." (22.6.866).

"Quite apart from any potential conflict with Local Plan policy CA1, there is therefore a risk that the granting of planning permission would be prevented by the application of the 'Habitats Regulations'. The risk may be small but I would not regard it as negligible, or as too small to count against the allocation. It should be borne in mind that it is an objective of the plan-led system to achieve greater certainty. Government guidance .... states that

proposals should only be included in development plans where they are firm, with a reasonable degree of certainty of proceeding within the plan period." (22/6.867) He recommended that the site should not be included in the plan.

Draft ODPM / Defra Circular *Biodiversity and Geological Conservation: statutory obligations and their impact in the planning system* was published in September 2004, after all of the case studies examined in this report had been determined. Part IF, Paragraphs 51 - 52 set out the current views of the Government on the application of the HR94 in respect of local plans.

“Development plans are not subject to assessment under regulations 48, 49 or 53 of the Habitats Regulations 1994 because they are not considered to be plans or projects within the meaning of regulation 48. European sites will be covered by the SEA Directive 2001/42/EC (on the assessment of the effects of certain plans and programmes on the environment) and this will require the assessment of proposals in development plans affecting such sites. In any event, planning authorities have a general duty under regulation 3(4) of the Habitats Regulations to have regard to the requirements of the Habitats Directive in exercising their functions, including their plan-making functions under the Town and Country Planning Act 1990.”

Whilst it may not be possible to carry out an assessment at development plan stage that would be as detailed as that required under regulation 48 for a specific project, for which consent is sought, local planning authorities should nevertheless adopt the precautionary principle and should undertake sufficient assessment of any proposal in a development plan likely significantly to affect a European, proposed European or listed Ramsar site. If a proposal for a particular type of development on a particular location would be likely to adversely affect the integrity of a such a site, or the effects of the proposal on such a site are uncertain, planning authorities should not allocate the site for that type of development unless:

- a) they are satisfied that any subsequent or current planning application for that proposal would be likely to pass the tests for derogations in regulation 49; and
- b) there is a reasonable prospect that compensatory measures that may be required by regulation 53 can be secured such as to protect the coherence of the Natura 2000 network and meet the requirements of the Ramsar Convention where relevant.”

## **7. Whether the proposal is directly connected with or necessary to nature conservation management**

It seems to be generally assumed that any residential or similar proposal does not meet the requirement of regulation 48(1), in terms of whether the proposal is “directly connected with or necessary to the management of the site”, and most decision makers do not even mention their conclusions on this particular criterion. The only two occasions where this was considered explicitly were in cases 7 (Fox Farm, Yateley) and 13, (Whitehill Farm, Camberley). In case 7 the SoS’s letter says “The Secretary of State’s policy is that, for the purposes of considering development proposals affecting them, potential SPAs should be treated in the same way as classified SPAs ..... He is satisfied that the proposed development is not directly connected with or necessary for site management for nature conservation of the p/SPA.” (7/SoSL.7)

At Whitehill Farm, the question had presumably been raised by the objector. Here the Inspector concluded: "I am not persuaded that the erection of houses on the former allotment site as proposed could properly be regarded as being directly connected with, or necessary to, the management of the pSPA. The development is not being promoted by any agency that has a responsibility either for the management of the pSPA, or for the protection of wildlife and its habitat. I do not doubt that the pSPA could be better managed in the interests of nature conservation. And I accept that some of the suggested mitigation measures could have a beneficial ecological effect. However, it does not seem to me that the proper management of the pSPA depends on new housing being built at Whitehill Farm." (13/2.206)

## **8. Onus on the applicant to provide sufficient information**

In the case of the appeal in respect of a dwelling at Redmans View, Verwood (case 27), the appellant had complained of the difficulty in meeting the requirements of the assessment. The Inspector concluded that "I understand the difficulties faced by the appellant on trying to obtain advice, in layman's terms, from the Council and English Nature, as to what additional information was required in order to enable the Council to carry out an appropriate assessment. However, I believe that the Council and English Nature went as far as they reasonably could in drawing the appellant's attention to relevant published advice. Further, I believe that the appellant has had a reasonable opportunity to submit the additional information requested, if necessary, after seeking independent advice from an ecological expert."

## **9. Proposals likely to have a significant effect on the site interest features and conclusions on effect on integrity**

Proposals determined to be likely to have a significant effect on the site interest features may be summarised as shown in Table 1 below:

**Table 1.** Cases likely to have a significant effect on the heaths and the conclusions as to effects on integrity

<b>Case</b>	<b>Description</b>	<b>Adverse effect on integrity</b>
4	100 dwellings close to the pSPA boundary	Yes, public open space offered would not adequately reduce recreational pressure
6 and 10	one dwelling close to the pSPA but with an access within the pSPA	Yes
7 and 11	42 dwellings close to the pSPA and an emergency access within the pSPA	Yes, clearly distinguishing between potential and actual threats to integrity
9	25 - 30 dwellings 150 metres from the pSPA	By implication yes, site not allocated
14	46 dwellings on two sites close to the pSPA	By implication yes, sites not allocated



Case	Description	Adverse effect on integrity
15	Loss of small area of habitat to caravans for a temporary period	Temporary loss of habitat but with restoration after three years would not be an adverse effect on integrity but a permanent loss of habitat would have been
17	New settlement of 1,350 dwellings with associated employment and service developments all outside the designated sites	Yes, Inspector concluded would probably fail tests of site integrity
18	3.8ha residential development close to heathland sites	Yes, explicitly concluded at 18/6.260, site not allocated
21	Residential development of 600 dwellings, approx 1km from heathland sites, but .....	Site recommended for allocation although it is unclear as to whether site was considered acceptable as no adverse effect on integrity or because no likely significant effect
22	About 25 dwellings close to an access to a heathland site	By implication yes, site not allocated, note also the rejection of measures asserted in the Plan to be compensatory measures because they were regarded by the Inspector as mitigation measures, designed to offset the adverse effects on integrity of the site (22/6.868)
24	Demolish one dwelling adjacent to the heath and replace with four	No assessment of effect on integrity because Inspector refused permission on policy grounds
27	One dwelling which, on its own, was not considered likely to have a significant effect on the site, but in combination with others it would be likely to have such an effect	Yes, "would cause some harm to the nature conservation interests of Dewlands Common and that such harm would not be fully overcome by the mitigation proposals submitted." It would conflict with development plan and "be contrary to the advice of the Bern Convention Standing Committee. I firmly conclude that the proposed development would jeopardise the nature conservation interests of Dewlands Common." Inspectors report 27/IR.66 - 77 SoS agreed 27/SoSL.13
29	One agricultural dwelling and a poultry farm	Yes, combination of effects of one more dwelling and the deposition of air-borne nitrogen from the poultry farm would be an adverse effect on integrity
30	One additional dwelling, as with case 27 above, likely to have a significant effect in combination	Yes, "I conclude that the appellants have not adequately demonstrated that this proposal would not have an adverse effect on the SSSI. I share both the Council's and English Nature's concern that incrementally and cumulatively it would harm the SSSI for the reasons explained." Inspectors decision, 29/10.

In determining the question as to likelihood of significant effect, the following matters were considered not to offset any adverse effect on the sites:

- a) the general increase in the population of the three Annex 1 bird species (4/IR.12.49);
- b) that habitats had been extended and improved by management recently (4/IR.12.38);

- c) that the heathland habitats could be improved by management (14/2.49); and
- d) that the population of the nearby settlement was declining and this would offset the additional residents occupying the proposed housing (4/IR.12.45).

In case 4, it was considered that the additional public open space offered by the appellants would not materially reduce the likelihood of the new residents resorting to the heath for recreation. "The proposed housing area would be particularly close to the Common which would be an obvious source of recreation for the new residents. Even if there were to be no direct access, as is claimed by the Appellant (2.37), I believe that the development would add considerably to the number of local residents entering the Common by the route which leads to Heathlands Cemetery. Clearly, there would be other visitors to this area, especially those parking at Wyndham's Pool. However, I believe that the new residents, who, because of their ease of access, might be particularly frequent visitors to the Common, would add significantly to recreational pressure within the northern block of heathland. In my view, this would pose an added threat to any Annex 1 birds that had become established in this area, diminishing their chances of successfully rearing young." (4/IR.12.40).

"My conclusion on the first test is that the additional use of the Common, particularly in the northern section of MS2, would be such as to have a significant impact upon the proposed SPA. This would arise primarily from its likely effect upon the breeding success of Annex 1 birds. For the reasons given in the previous paragraph, I do not think that the proposed open space, the subject of a draft Section 106 agreement (2.46), would so lessen the impact of the proposed housing as to render this insignificant." (4/IR.12.43).

Also, the better enforcement of by-laws and improved management was rejected as a way of making more development acceptable "It was argued by the Appellant that the County Council could do more to enforce its bylaws, which enable steps to be taken to prevent disturbance to birds, or at least to give them publicity. It seems to me, however, that while most people will act responsibly provided they have the necessary information, a small proportion can still be expected to behave in ways which will prejudice wildlife, where one thoughtless action may lead to the abandonment of a nest. There will be a temptation for some to stray off established paths and for dog owners to let their animals off their leashes, an act which in itself is not contrary to the present bylaws. In my view, such acts are likely to lead to the accidental destruction of nests and to breeding failure .... Furthermore, with more people living close by, there may be some increased risk of fires, an obvious threat to ground nesting birds." (4/IR.12.41).

"In reaching this conclusion, I have taken into account 2 further factors. The first is the offer by the Appellant to fund increased management on the Common (2.46). However, I am persuaded by the Council's view that heathland restoration is proceeding at an optimum rate (3.44). I believe that the necessary felling of trees is likely to be most acceptable to the public if it proceeds gradually, given the time that it will inevitably take for heather and other heathland plants to become established on cleared areas. Also, I am doubtful whether there are any specific measures, including those listed in the Management Strategy [Doc.7(6)], whose funding by the Appellant would reduce or eliminate the pressures likely to be created by the proposed development." (4/IR.12.44).

"The second arises from the argument that Yateley is falling in its population and that the 250 or so new residents will not offset this decline (2.41). However, this fails to take into account the fact that these new residents, unlike the majority of the Yateley population, would be

within easy walking distance of the Common and therefore far more likely to visit it on a frequent basis.” (4/IR.12.45).

In case 29, The Barn at Three Legged Cross, the Inspector considered the advantages of having an agricultural dwelling very close to the heath. “Accordingly, while there are possible harmful consequences arising from a further human presence close to the Common, the impact could be limited and needs to be balanced against any possible advantages.” (29/14). Thus, would possibly improving supervision of the heath and increasing the deterrence of anti-social behaviour that may cause damage to the nature conservation interests, offset or eliminate likely significant adverse effects of another dwelling close to the heath? He also took account of the fact that an agricultural dwelling case was much less likely to be repeated frequently. In the event he concluded that it would only diminish the likelihood of an adverse effect, it would not eliminate it.

It has been accepted that some of the individual effects on the site interests can be exacerbated when experienced in combination with each other. This is not the same as the ‘in combination’ effects discussed below, but the increased effects of a single project because one effect can combine with another to produce an effect greater than the sum of the components. For example, in case 17 (Holton Heath) the Inspector concluded:

“Because some of the effects (including some not described above) would act **in combination** their impact would be augmented. For example, the increased ecological isolation of Black Hill and the increased risk of a serious heathland fire would together pose a greater long term threat to the conservation status of sand lizards on Black Hill and their ability to maintain their natural range within the cSAC.” (17/6.517).

The same Inspector, in considering the objection to the omission of the site at Stoborough Green, found that there was a "large measure of agreement on the nature of harmful effects that could result from an increased population of residents, together with their dogs and cats, in close proximity to a heathland site of this kind. Most notably effects include increased fire risk and disturbance of ground nesting birds, including nightjars, by people and their dogs; and the predatory activity of cats on these birds and also on sand lizards. .... the impact of this activity is magnified by various related indirect effects and by some factors such as predation and disturbance, acting in combination." (22/6.863).

## **10. Proposals determined not to be likely to have a significant effect on the site interest features**

Proposals determined **not** to be likely to have a significant effect on the site interest features may be summarised as follows:

Case 13, 6 - 10 dwellings close to the pSPA:

"While it is possible that the proposed development could result in a bird in the pSPA being killed as a result of fire or predation by a domestic pet, I share the view, expressed by English Nature, that such an outcome would be improbable. Part of the difficulty in this case seems to have arisen from English Nature's misinterpretation of the word "likely" in Regulation 48(1)(a). As normally used, that word implies probability rather than mere possibility. In my view, taken alone, the proposed residential development would not be likely to have a

significant effect on the pSPA." (13/2.209) See also the further extract of para 2.210 in section 11 below.

Case 25, demolish one dwelling and replace with 12 flats:

Originally, both the Council and English Nature thought that the proposal would jeopardise the nature conservation interest of Dewlands Common, which is part of an SPA and cSAC. However, the Inspector reported that "These fears have now been assuaged by the Section 106 Agreement. This would preclude occupiers of the proposed flats from keeping or owning predatory animals that might cause harm to the nature conservation interests of the Common, and would restrict occupation of the flats by persons aged under 50. As a result, neither English Nature nor the District Council now consider that the proposed development would be likely to have a significant effect on the European site." ..... No other source suggested there would be a significant effect, so the Inspector concluded that no such effect was likely, and the SoS agreed. (25/SoSL.8; 25/IR.34 - 35).

In case 28, gypsy caravans were not considered likely to have a significant effect on the site. The Inspector reported that "The representative from English Nature conceded in cross examination that on the basis of ... use of the land since their arrival in 2002 there would be no impact upon the heath. I concur. ... the appellants do not exercise their dogs on the heath and would willingly accept a planning condition to this end. ... There is no evidence of malicious fires. ... I entirely accept that the development in itself, if made personal to ... as gypsies, would have no adverse effects upon the heath." (28/IR.69)

## **11. Considering the effects of projects ‘in combination’**

Decision makers have approached the ‘in combination’ test in different ways. In some cases, they have focused on the potential of a grant of permission in one case to set a precedent that would make other cases more difficult to refuse, thereby increasing the effects of the projects on the heaths. Cases 16, 24, 27 and 30 are examples where this cumulative effect of one consent setting a precedent has been considered.

In the Bramble Cottage equestrian development appeal, (case 16) the Inspector commented that "approval of the appeal scheme would make it more difficult for the Council to refuse other schemes for similar development. Cumulatively they would erode further the fragile habitat of the proposed SPA." (16/33).

In case 24, the demolition of one dwelling and replacement with four at Stonecrop, Broadstone, the Inspector cited the judgment in *Dibben Construction Ltd v SoS Environment and the Borough of Test Valley* (a general planning case not specifically related to the HR94) and concluded "if permission is granted in breach of policy then other applications equally devoid of justification will follow and will be difficult to resist. Cumulatively additional people and the demonstrable pressures they generate, would erode the fragile habitat of the SSSI/cSAC/SPA/ Ramsar site" (24/13).

In the appeal at 16 Redmans Way, Verwood, (case 27) the Inspector concluded that on its own the proposed dwelling would not be likely to have a significant effect on the heath and that quantifying the harm likely to arise is difficult. However, the Council and English Nature had provided "sufficient evidence to demonstrate that urban development can have several adverse effects on the habitats and protected species in question. Conversely the

appellant has not shown that the proposed development would cause no harm ..." (27/IR.67). The Inspector agreed that the appeal site had unique characteristics unlikely to be repeated on any other site within 400 metres of the heath. However, in planning terms he considered "that uniqueness is too strict a test on which to argue that this case would not set a precedent." (27/IR.68). He concluded that other residential proposals, on backland and redevelopment of existing properties, could occur in the future and that "the Council and English Nature have identified sufficient potential opportunities to indicate that there is a real possibility of similar cases being repeated." (27/IR.69). The 'Stonecrop' appeal (case 24) was considered to be "just the sort of residential intensification that, if repeated, could lead to cumulative harm to nature conservation interests." (27/IR.70). He concluded the development would be a precedent for similar intensifications, which would be more difficult to resist "cumulative result would be more harm to the nature conservation interests of Dewlands Common" (27/IR.76)

Similarly, in case 30, 158 Springdale Road, Corfe Mullen, the Inspector concluded: "Part of the concern of both English Nature and the Council is that each additional dwelling close to such a site has the potential for cumulative harmful impacts..... Whilst the effects from one dwelling may be small, I accept the argument that, incrementally, damage to such a sensitive area may be substantial and significant. In my opinion, some residential curtilages along this road appear to have the potential for either redevelopment or similar development to that proposed here. I note there are already other proposals before the Council. I am also aware that the Council deals with proposals for some 100 dwellings per year close to designated sites. To my mind there are considerable dangers in permitting the development the subject of this appeal, not only due to the individual harm occupiers and their pets may cause to the SSSI but also because incrementally and cumulatively with other dwellings it could have even more damaging impacts." (30/7).

By contrast, the precedent argument was not adopted in case 26, Candlewick Cottage, Wimborne as may be seen from the following extract: "I am required to have regard to other relevant plans and projects. In my view that would include concurrent proposals but not the uncertain potential for a precedent to be created. There are, therefore, no such plans or projects, other than the other appeals I am deciding. These can be substantially regarded as independent projects to be decided on their own merits.' (26/66). The other appeals referred to were all on the same site and being determined at the same time.

In other cases, the decision maker has looked at other projects actually proposed in some form and considered whether the effects of those projects would combine to increase the effects of the project under consideration. For example, in case 7, Fox Farm, Yateley, the second Inspector reported "I agree that the proposal is significant due to its location, notwithstanding that no other proposals in the area which might affect the pSPA were promoted. However, I find the suggestion that regard should be had to other proposals in or adjacent to the other parts of the Thames Basin Heaths pSPA in other counties to be too *wide-ranging* and thus inappropriate." 7/IR12.8). In this case the SoS concluded "no other residential or other proposals which might affect the p/SPA were identified either in the EIA statement or at the Inquiry or re-opened Inquiry. Nevertheless he considers that the proposal will have a significant effect due to its size and location adjacent to the Thames Basin Heaths p/SPA creating additional pressures on the habitats within the p/SPA" (7/SoSL.7).

In case 13, (objection to the omission of Whitehill Farm in the Surrey Heath Local Plan) the Inspector concluded that "Nor do I think that the proposed development would be likely to

have a significant effect on the pSPA when considered in combination with other plans or projects elsewhere ..... the only other residential development sites within 200m of the pSPA boundary in Surrey Heath are those at Navara Nursery and "Dyckmore" (13/2.210) He found there was no evidence to suggest that the proposed development at Whitehill Farm would compound the effect of either of those schemes on nature conservation. "I am not convinced that the development of housing sites in other districts would add significantly to the effect of the 6 to 10 dwellings proposed at Whitehill Farm. In any event, none of the remote sites alluded to by the Council has planning permission, or appears as a firm proposal in an adopted development plan." (13/2.210).

This would appear to indicate that, proposals in other planning authority areas were considered unlikely to be relevant, and that an allocation in an adopted Local Plan would have been regarded as a candidate for the in combination test, even if no planning permission had been granted. However, in another case in the Surrey Heath Local Plan report (case 14) the Inspector concludes somewhat differently, that "There is plainly pressure for residential development on a number of sites adjacent to the pSPA, both in Surrey Heath and in other local authority areas. If the Birch Close and Horsehoe Crescent sites were allocated for housing, it might be difficult for the relevant authorities to resist similar proposals elsewhere. The cumulative impact on the integrity of the pSPA could be considerable." (14/2.50)

The Inspector considering the Holton Heath allocation in the Purbeck Local Plan (case 17) noted the arguments as to how components of a project may need to be combined. " 'In combination' effects might also be seen as the aggregated effects from different projects or different parts of the same project in different areas. In this sense the Council suggests that the effects relating to the B3075 improvements should not be considered together with the effects of the housing proposal since the former do not affect the SSSI adjacent to the allocation site. .... However, I infer that Regulation 48 requires consideration of such effects on a **European site**: it does not require that they affect the same constituent SSSI before their combined impact is considered. In this case the road and housing proposals would both affect each of the above European and Ramsar sites, with the probable exception of the Dorset Heaths (Purbeck and Wareham) and Studland Dunes cSAC. To this extent I consider that it would be necessary to weigh the effects of the road and housing proposals in combination, although I would add that this issue does not make a critical difference to my overall conclusion." (17/6.518).

In case 28, the appeal against the unauthorised developments north of the Wayfarer's Club at West Moors, the Inspector reported that the Council submitted a schedule of applications for over 100 dwellings per year, within 400m of the heath, of which 40 had been granted, together with two or three stables per annum, six mineral extraction schemes, six abstraction licences and 10 water quality consents. However, he concluded "In relation to the 'in combination' factor the pressures on the Heath are apparent from the schedule ... Given my conclusion, however, that the development itself would have no adverse effects on the European site it must follow that there can be no significant 'in combination' effect." (28/IR.70). This is taken to mean that if a project has no effects on the site interest features, it cannot make more likely or more significant the effects of any other projects.

Finally, in respect of in combination effects, the Inspector in case 29, the Barn at Three Legged Cross, concluded that "part of the argument against residential development is that it would be part of a cumulative effect as each additional dwelling close to the European site has the potential to give rise to a further harmful impact. Although this may be slight in any

particular instance, each new dwelling represents a further step in a damaging process. Accordingly, even though the potential for damage can be limited for any particular dwelling (eg a condition preventing the keeping of predatory animals), in this case there still remains an incremental and damaging effect from human activity that poses an increased threat to the integrity of the European Site.” (29/15).

“I accept the logic of this argument and although limiting residential development for such reasons would place a severe restriction on residential development close to this European site, this seems to be necessary if obligations towards the protection of the European site are to be met. However, notwithstanding this, the individual merits of this particular case need to be assessed and in my view it is relevant that the argument for this dwelling is based on an agricultural case, which is not likely to be repeated too often, unlike more general residential schemes. This fact speaks in favour of the scheme, but I cannot regard it as more than a further diminution of risk. As the ultimate test, given in Section 48(5) of the Habitat Regs. is that a plan shall only be agreed to after having ascertained that it will not adversely affect the integrity of a European site, I cannot agree that this very demanding test would be met here.” (29/16). “Accordingly, there is insufficient reason to find that there would not be an incremental adverse effect on the integrity of the European site, arising from the presence of this additional dwelling.” (29/17).

## **12. Application of and reference to the precautionary principle embodied in Regulation 48**

The most important interpretation of the precautionary principle in regulation 48 HR94 is in the judgment in case 12, ADT Auctions. Here the judgment states "The approach required by paragraph (5) [of reg 48] is relevant both when the decision maker is satisfied the proposed development will adversely affect the site's integrity and when he is undecided whether it will or not. This approach reflects the importance attached to safeguarding the integrity of an SPA." (12.55).

It was applied in this way and further explained by the Inspector in determining the allocation of the Holton Heath new settlement in the Purbeck Local Plan (case 17) as follows. “However, bearing in mind the need for a scheme to be realistic and viable I conclude that it is substantially more probable than not that a competent authority would be unable to ascertain that a detailed proposal would not adversely affect the integrity of a European/Ramsar site.” (17/6.521). “ ..... I should perhaps add that I do not mean to imply by my conclusion that for a planning proposal to be acceptable a competent authority would need to be satisfied that there was less than a 50% chance that it would adversely affect the integrity of a European site. In my view that would be conspicuously at odds with the wording of Regulation 48(5) and the precautionary principle that it embodies. My view on this does not always appear to have been shared by the Council ..... The Council has referred me to the judgement in WWF-UK Ltd. and Another v Secretary of State for Scotland [1999] EnvLR, but it seems to me that this goes no further than to reject the view that Regulation 48(5) requires an ‘absolute guarantee’ that the integrity of a site will not be adversely affected. Clearly a risk assessment is needed, but to me the wording of the Regulation suggests that a 50% threshold would be too high.” (17/6.522)

Again, in case 22, at Stoborough Green, the same Inspector approaches the principle and further enlarges on his interpretation as follows: “but the main point at issue was the degree to

which the additional activity on the Heath would actually cause harm. ... very little detailed evidence about the existing levels of activity and any harm being caused, .... activity generated by adjacent caravan site particularly uncertain .. amount attributable to proposed allocation also uncertain,' and "in this respect I share the view that it is sensible to take a precautionary view" ... likely to be times when number of pets kept by future occupiers ... considerably exceed expected average so justifiable to take 'worst case scenario' (22/6.864).

In the appeal at 16 Redmans Way, Verwood, (case 27) the Inspector reported that the Council and English Nature provided "sufficient evidence to demonstrate that urban development can have several adverse effects on the habitats and protected species in question. Conversely the appellant has not shown that the proposed development would cause no harm ..." (27/IR.67).

The Inspector referred to the principle in the Hart District Local Plan report, in recommending on a number of cases. For example, at case 8, Bramshill Plantation, "I considered that at this stage a precautionary approach should be taken to safeguarding, in particular, the habitats of the protected bird species on the site as a whole and at this stage saw this as a further reason to consider development inappropriate." (8/6.8.21). In case 9 (Hill Farm, Cobbett's Lane, Yateley) he concluded "While there was in my view a need to identify some more land for development in the Plan period, I accept that Yateley should not be the first place to look while the present imbalance of jobs remains. That being so, I saw no necessity to see housing need as outweighing the local landscape considerations to justify an extension of the urban area into the countryside at this point, breaching a strong and well established urban edge and damaging what was an attractive and largely rural corner. The nature conservation considerations remained important in relation to this land and the precautionary principle applied, that development should not be permitted where there was a discernible risk that development could have a significant effect on the proposed SPA." (9/6.8.673).

However, he also drew on the UK Biodiversity Action Plan as well as the HR94, for example, in case 10 at 10/6.584 and case 11 "The precautionary principle advocated by the Biodiversity UK Action Plan was a good one and seemed to have been applied in that case .... it appeared a reasonable principle to apply in this case also." (11/6.8.575).

However, it is not always necessary to explicitly invoke the principle when determining cases likely to affect the international nature conservation interests. In case 7, the final decision in respect of Fox Farm, the second Inspector and SoS referred to the precautionary principle but indicated that it was unnecessary to invoke it (even though it is embodied in regulation 48) where it can be ascertained that a proposal would have an adverse effect on the site. The point was expressed as follows: "At both Inquiries reference was made by the parties to the need to consider whether the precautionary principle is relevant in determining this appeal. The Secretary of State does not consider it necessary to reach a view in this case on whether he is required or able to take decisions based on the precautionary principle in determining an appeal such as the present. The Secretary of State's policy, which he has applied in the present case, is that for the purpose of considering development proposals a proposed SPA should be treated in the same way as a classified SPA (PPG9, paragraph 13). It follows that the Secretary of State will not grant permission in a case such as the present unless he is satisfied that the development "will not adversely affect the integrity of the" proposed SPA (applying the test in regulation 48(5) of the Conservation (Natural Habitats etc.) Regulations 1994. For the reasons set out above at paragraphs 7 to 14, the Secretary of State is not so satisfied. The Secretary of State has not needed to invoke the precautionary principle to



reach that conclusion: he considers, for the reasons set out, that there is a real risk that the integrity of the proposed SPA will be adversely affected, and cannot therefore be satisfied that the development "will not adversely affect the integrity of the" proposed SPA". (7/SoSL.22)

"The Secretary of State has had regard, in reaching this decision, to the judgement of Lord Nimmo-Smith sitting in the Outer House of the Court of Session in WWF-UK Ltd v SS Scotland that regulation 48 does not require an absolute guarantee that the integrity of a European site will not be adversely affected. In determining the present appeal the Secretary of State has not made such a guarantee a condition for granting permission. Rather because, for the reasons set out above, he sees a real risk that the development will adversely affect the integrity of the site, he cannot be satisfied that the development will not adversely affect the integrity of the site." (7/SoSL.23).

### **13. Potential mitigation - agreements and conditions**

Regulation 48(6) HR94 requires a decision maker, when considering whether it can be ascertained that a project will not adversely affect the integrity of the site, to have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions that could be imposed. An example of this particular step being cited explicitly is case 7, Fox Farm, Yateley where the SoS decision later states: "The Secretary of State has considered whether the adverse effects can be avoided by conditions. In this he has considered the advice of English Nature in accordance with PPG9. He agrees with English Nature that the likely impact cannot be reduced by mitigation or overcome by planning conditions to the level at which the impact is rendered insignificant (IR2:10.8)..... He has also considered the question of whether there are alternative solutions in the form of alternative sites for the development. .... the Secretary of State considers that while there is a shortfall in the 5-year housing land supply there are other development sites which will contribute to the housing supply as the Council has indicated (IR2:7.2, 7.8)." (7/SoSL.15)

It is not part of this study to consider the potential effectiveness of mitigation measures, but the decisions cast some useful light on what decision makers have considered to be acceptable and unacceptable. In case 25, the replacement of one dwelling with 12 flats at 50 Dewlands Way, English Nature, the Council and the Inspector all accepted that "the Section 106 Agreement .... would preclude occupiers of the proposed flats from keeping or owning predatory animals that might cause harm to the nature conservation interests of the Common, and would restrict occupation of the flats by persons aged under 50. As a result, neither English Nature nor the District Council now consider that the proposed development would be likely to have a significant effect on the European site." .... (25/IR.35).

The Inspector in case 27, however, considered that a potential section 106 obligation restricting the age limit of occupiers and the keeping of cats and dogs in respect of a single detached three bedroomed house, "which could well be suited to family use, would be unreasonable and difficult to enforce." (27/IR.73). Referring to case 7 above, the SoS's letter indicates that "In addition, the second Inspector was not convinced that the proposed section 106 agreement offered by the appellants to prohibit pets for the new dwellings would be totally enforceable (IR2:12.13). The Secretary of State agrees." (7/SoSL.10 and 15)

In case 4, Hill Farm, Cobbett's Lane, Yateley, the Inspector and the SoS agreed that the offer of additional open space would not materially reduce the likelihood of the new residents

resorting to the heath for recreation. The Secretary of State “does not consider that the proposed public open space would attract people away from the Common in sufficient numbers that the pressure would be relieved. On this issue, therefore, he agrees with the Inspector's conclusions in paragraphs 12.31 - 12.50 of his report and with his overall conclusions, having regard to PPG9, that the development would have a significant impact on the proposed SPA and would have an adverse effect on its integrity.” (4/SoSL.8).

In considering the objection to the omission of Whitehill Farm from the Surrey Heath Local Plan, case 13, the Inspector reported as follows: “I have considered the package of mitigation measures proposed by the objectors. In my view, a restrictive covenant prohibiting residents of the proposed housing from keeping cats and dogs would probably be effective in the vast majority of cases. However, I recognise that, in the event of a breach, enforcement could give rise to difficulties. Physical barriers, such as animal proof fences, electronic cat deterrents and wet ditches, would seem to me to provide the most effective means of preventing domestic pets from straying from the proposed housing area into the pSPA. The prospective developer could clearly be asked to establish a fund to provide for the permanent maintenance of these barriers. I am less certain that a prospective developer should be required to fund off-site ecological improvement.” (13/2.214).

In case 1, at Hazeley Heath, in 1988, the Inspector considered the use of conditions to restrict horse riding on the heath, “The Nature Conservancy Council (NCC) regard Hazeley Heath as a scarce and important habitat. The NCC object to your proposal since in their experience horse riding on heathland sites causes gross erosion to both trackways and heather, as well as increasing the levels of disturbance particularly to heathland birds such as nightjars. I attach considerable weight to this objection. I find therefore that, with the marked increase in horse riding over Hazeley Heath which would be likely as a result of your proposal for more facilities for horses at Wedgewood Farm, significant harm to nature conservation interests on Hazeley Heath SSSI would be probable, in particular damage to soil and vegetation. I have considered whether this objection could be overcome by the imposition of a condition to prevent riding on Hazeley Heath, but I have concluded that the location of the appeal site would make this impractical and in any event such a condition would be unenforceable” (1/6).

In case 16, Bramble Cottage, Hartley Witney, the Inspector concluded that “I can think of no condition that would meet the policy of Circular 11/95 on conditions to compel riders to restrict themselves to any specified area. Such a condition would be unreasonable and would require an intolerable degree of supervision such as to make it enforceable.” (16/31).

In case 22, Stoborough Green, the Inspector concluded “It is also argued that the chances of an adverse effect could be reduced by management action on the Heath, but it is doubtful that this could be relied upon owing to the resource constraints and the need to take other factors into account.” (22.6.866).

## 14. Cases where an appropriate assessment was not undertaken

There were two cases where the Inspector decided it was not necessary to undertake an appropriate assessment because she had determined that the appeal should be dismissed on either nature conservation policy grounds and / or other grounds. The cases were 16, Bramble Cottage, Hartley Witney and 24, Stonecrop, Broadstone. In the former case the Inspector stated "This is not necessary in this instance however, because I have decided not to give permission for the scheme for the other reasons that I set out earlier in the decision notice, concerning the main issues." (16/34). The main issues included highway safety, character and appearance of the area and the status of Bramble Cottage as well as nature conservation interests. In the latter case she did not undertake an appropriate assessment because having concluded a significant adverse effect she had already decided to refuse permission as contrary to policy and on precedence grounds, so further application of regulation 48 was unnecessary as she was not granting any consent. It can be argued that the requirements of regulation 48(1) were met because no permission was being granted and the obligation was to undertake an assessment before the grant of permission.

Alternatively, it could be argued that the duty to carry out an appropriate assessment for projects likely to have a significant effect on an international site's interests is a requirement of the Directive, which states "Any plan or project not directly connected with or necessary to the management of the site but likely to have significant effects thereon, either individually or in combination with other plans or projects, **shall be subject to appropriate assessment** of its implications for the site in view of the site's conservation objectives." (the emphasis is added). The preceding words in the Regulations "Before deciding whether to undertake or to give any consent ... " do not appear.

## 15. European interest features off-site

There are two principal aspects arising from the cases. Firstly the loss of foraging areas for nightjars that breed on the SPA but feed over a much wider area, including areas that may be subject to development proposals themselves (cases 9 and 22); and secondly the effects on a roost of greater horseshoe bats that was known to be in a building outside the designated areas but which would have been affected by the Holton Heath proposal (case 17).

In case 9, Hill Farm Cobbett's Lane, the Local Plan Inspector reported that "The RSPB made the point that in seeking to protect habitats, regard should be had to the feeding ranges as well as the nesting sites of the Annex 1 birds, which in the case of the nightjar in particular could extend over adjacent land, including the objection site." (9/6.871) however, no explicit conclusion was drawn by the Inspector on the point.

In the case of Stoborough Green (case 22), the point was again considered by a Local Plan Inspector "I accept that the allocation site, with its hedgerows and wooded margins, is generally attractive to wildlife. It is not evident that it is of any special interest in this respect, although I note its foraging potential for Nightjars from the nearby heathland. The site's wildlife interest no doubt enhances the amenity and natural beauty of the locality but I cannot conclude that it is so important as to itself preclude the proposed housing allocation." (22/6.860).

In the Holton Heath case, the disturbance of or adverse effect on the habitats of the bats was considered to require a licence under regulation 44 HR94 and, therefore, the tests of that regulation needed to be considered at some stage. Having considered (at 17/6.489-492) the effects on the bat roost, the Inspector concluded that “In view of the general requirement of Regulation 3(4), it would be essential for the local planning authority to satisfy itself, before granting planning permission, that the detailed scheme at Holton Heath would pass all three of these tests. It follows that I should have some regard to the prospects of a licence being granted: otherwise there would be a danger that the Local Plan would lack the degree of certainty and predictability upon which the operation of the plan-led system depends. Given the size of the Holton Heath allocation, the implications are too serious to be left to be sorted out, as an afterthought, at a later stage” (17/6.527).

“Whether or not the interpretation of the phrase ‘imperative reasons of overriding public interest’ should be identical to that indicated in the context of Regulation 49 is a matter of law. However, the Council accepts that the tests are difficult to satisfy, and I conclude that there is a real and substantial risk that they would not be satisfied. The Council understands that licences have been granted for development purposes elsewhere, but I have no evidence upon which to base a more relaxed view on this matter.” (17/6.528).

**Appendix A**  
**Table of cases**

<b>Case ref</b>	<b>Date</b>	<b>Case name</b>	<b>Type / decided by</b>	<b>Development</b>	<b>Reference</b>
1	4 Jan 1988	Wedgewood Farm, Hazeley Heath	Appeal, Inspector	24 loose boxes and store	APP/N1730/A/87/074235
2	29 Sept 1989	Fox Farm, Monteagle Lane, Yateley	Appeal, Inspector	42 dwellings	APP/N1730/A/89/116944
3	28 July 1993	Fox Farm, Monteagle Lane, Yateley	Appeal, SoS	42 dwellings	APP/N1730/A/93/217847
4	13 April 1995	Cobbett's Lane, Yateley	Appeal, SoS	100 dwellings	APP/N1730/A/94/239274
5	1 Sept 1997	Valentine Park Ltd, Aldermaston	Appeal, SoS	Residential	APP/G03130/A/96/267934
6	25 Nov 1998	Silver Fox Farm, Yateley	Appeal, Inspector	1 replacement dwelling	APP/N1730/A/97/283398, 298623
7	15 Sept 1999	Fox Farm, Monteagle Lane, Yateley	Appeal, SoS	42 dwellings	APP/N1730/A/95/258813
8	October 1999	Hart Local Plan Public Inquiry, Bramshill Plantation	Inspector's report	1100 dwellings employment & services	OMIT/XX/05
9	October 1999	Hart Local Plan Public Inquiry, Cobbett's Lane, Yateley	Inspector's report	25 - 30 dwellings	OMIT/YA/01
10	October 1999	Hart Local Plan Public Inquiry, Silver Fox Farm, Yateley	Inspector's report	Single dwelling	OMIT/YA/02
11	October 1999	Hart Local Plan Public Inquiry, Fox Farm, Yateley	Inspector's report	42 dwellings	OMIT/YA/XX
12	7 Mar 2000	Judgment ADT Auctions v SoSETR & Hart DC Fox Farm Yateley	High Court judgment	42 dwellings	CO/4040/99
13	June 2001	Surrey Heath Local Plan Public Inquiry, Whitehill Farm, Camberley	Inspector's report	6 - 10 dwellings	Obj 345
14	June	Surrey Heath Local	Inspector's	c.50 dwellings	Obj 30, 436, 653 et al

Case ref	Date	Case name	Type / decided by	Development	Reference
	2001	Plan Public Inquiry, Birch Close and Horseshoe Crescent, Camberley	report		
15	14 Aug 2001	Oakhanger Stream, Shortheath Common Bordon	Appeal, SoS	Residential and touring caravans	APP/M1710/A/01/1060030
16	4 Oct 2001	Bramble Cottage, Hartley Witney	Appeal, Inspector	Half livery building	APP/N1730/A/01/1064748
17	2 July 2002	Purbeck Local Plan Public Inquiry, Holton Heath,	Inspector's report	New settlement 1,350 dwellings	Multiple objection references
18	2 July 2002	Purbeck Local Plan Public Inquiry, Sandford adj Woodlands	Inspector's report	Residential 3.8ha	321/01
19	2 July 2002	Purbeck Local Plan Public Inquiry, Sandford old clay works	Inspector's report	Residential	454/01
20	2 July 2002	Purbeck Local Plan Public Inquiry, Sandford north of school	Inspector's report	Residential 39.5ha	538/01
21	2 July 2002	Purbeck Local Plan Public Inquiry, Redbridge Pit, Crossways, Dorset	Inspector's report	600 dwellings	462/03, 606/01
22	2 July 2002	Purbeck Local Plan Public Inquiry, Stoborough Green	Inspector's report	c.25 dwellings	Uncertain
23	2 July 2002	Purbeck Local Plan Public Inquiry, Stoborough West of Corfe Rd	Inspector's report	Housing employment, village centre etc	600/01, 601/01, 601/02C
24	5 Jan 2004	Stonecrop, Corfe Lodge Road, Broadstone	Appeal, Inspector	Demolish 1 dwelling replace with 4 dw	APP/U1240/A/03/1127107
25	9 Jan 2004	50 Dewlands Way, Verwood	Appeal, SoS	Demolish 1 dwelling replace with 12 flats	APP/U1240/A/03/1108797

<b>Case ref</b>	<b>Date</b>	<b>Case name</b>	<b>Type / decided by</b>	<b>Development</b>	<b>Reference</b>
26	10 Mar 2004	Candlewick Cottage, Clayford	Appeal, Inspector	Enforcement, livery stable	APP/U1240/C/03/1125892
27	11 Mar 2004	16 Redmans View, Verwood	Appeal, SoS	Single dwelling	APP/U1240/A/03/1118351
28	16 Mar 2004	Wayfarers Club, Newmans Lane, West Moors	Appeals, SoS	Mobile home, van body, timber structures	APP/U1240/A/03/1121954
29	13 April 2004	The Barn, Three Legged Cross, Wimborne	Appeal, Inspector	Agricultural dwelling	APP/U1240/A/03/1122256
30	6 Aug 2004	158 Springdale Road, Corfe Mullen, Wimborne	Appeal, Inspector	Single dwelling	APP/U1240/A/04/1140319



## **Other cases considered but not included**

***Retail Developments Limited and Carter Commercial Developments Limited - v - Purbeck District Council*** judgment of Mr Malcolm Spence QC Deputy Judge, 14 October 1994, unreported High Court Queens Bench Division case CO/1289/94. The case turned in part on the likelihood of the Northport / Sandford Bypass being constructed across the (then) Holton Heath and Sandford Heath pSPA and Blackhill SSSI, after it had been allocated in the adopted North East Purbeck Local Plan. It is not included because the deputy judge determined the legal issues without commenting on any of the matters that form the subject of this report.

***Vickers Bridging***, this was an interesting case recorded in the English Nature Dorset office in June 1999, relating to a very small loss of heathland that was determined by the Ministry of Defence to be an adverse effect on integrity but it was not related to housing and there is insufficient documentation available.

***improvements to the B3075***, Purbeck District Council, July 2002, associated with the Holton Heath new settlement but omitted here because road proposals specifically excluded from this project by the brief.

***Northern Gateway Access Road Enfield***, important decision on 30 July 2002, relating to effects of air pollution from traffic on heathland habitats, but not included as it was not a residential development and road proposals specifically excluded from this project by the brief.

***West Sussex Structure Plan*** Report of the Panel of the Examination in Public, February 2003, and notably the recommendation to modify the strategic locations for major development by omitting reference to proposed development south-west of Chichester City. It is not included because the decision, although useful and important in itself, does not appear to relate partly or wholly to heathland habitats.

***Surrey Structure Plan*** the decision of the Surrey County Council Executive 24 June 2003, to amend the locational strategy of the Surrey Structure Plan to delete reference to a new community in north-west Guildford that could potentially affect the Thames Basin Heaths pSPA. It is not included because the decision, although useful and important in itself, was taken by the County Council and not by a Minister, an Inspector or EIP Panel.

***East Hampshire District Local Plan***, October 2003, an undecided case, involving objections by the RSPB into the allocation of sites in the deposit draft local plan, heard at a Local Plan Public Inquiry on 28 October 2003, but the Inspector's Report is unpublished. This case does meet the project criteria but the Inspector's report remained unpublished at the end of the project.



# **Appendix B**

## **Analysis tables**



<b>Case</b>	<b>1. Wedgewood Farm Hazeley Heath</b>	<b>2. Fox Farm, Yateley</b>
<b>Location</b>	Wedgewood Farm, Hazeley Heath, Hartley Witney, Hants ( <b>Map 2</b> )	Off Monteagle Lane, Yateley, Hants ( <b>Map 2</b> )
<b>Proposal</b>	24 loose boxes and store	Residential 42 houses on 5.68ha
<b>Date</b>	4 January 1988	29 September 1989
<b>Competent authority</b>	Hart DC then Inspector C Briggs on appeal	Hart DC then Inspector S G Bruton on appeal
<b>Site(s) affected</b>	Hazeley Heath SSSI (no international designation at the time)	Thames Basin Heaths pSPA but not designated at the time
<b>Key n c issues</b>	"The Nature Conservancy Council (NCC) regard Hazeley Heath as a scarce and important habitat. The NCC object ... in their experience horse riding on heathland sites causes gross erosion to both trackways and heather, as well as increasing the levels of disturbance particularly to heathland birds such as nightjars. I attach considerable weight to this objection."	"The appeal site would abut the SSSI .... concern stems from the inevitable pressures generated by the 100 or so residents of the development as indicated by problems which have arisen in the area since 1975 when Yateley had begun to grow rapidly. These include loss of habitat to pipelines and drainage, wear and tear on vegetation from motor cycle scrambling, horse riding, walkers, anglers, summer heath fires, wildlife disturbance, by dogs and cats, fly tipping, provision of recreational facilities, the cumulative effect of which has diminished the interests of the nature conservation sites."
<b>LSE</b>	N/A	"council's conclusions are that, since acute problems already exist, the proposal may exacerbate the situation beyond what is commensurate with the small increase in population and beyond a point where ameliorative measures can successfully retrieve the situation."
<b>Projects</b>	N/A	N/A
<b>AA</b>	N/A	N/A
<b>AEOI</b>	N/A	N/A

<b>Case</b>	<b>1. Wedgewood Farm Hazeley Heath</b>	<b>2. Fox Farm, Yateley</b>
<b>Decision inc conditions if relevant</b>	"I find therefore that, with the marked increase in horse riding over Hazeley Heath which would be likely as a result of your proposal for more facilities for horses at Wedgewood Farm, significant harm to nature conservation interests on Hazeley Heath SSSI would be probable, in particular damage to soil and vegetation. I have considered whether this objection could be overcome by the imposition of a condition to prevent riding on Hazeley Heath, but I have concluded that the location of the appeal site would make this impractical and in any event such a condition would be unenforceable."	"boundary of the SSSI is about 70m from the main part of the appeal site, ..... core of the SSSI is much further away. .... balance to be drawn between protecting SSSIs ..... and permitting access for educational and recreational purposes. problems of control over such a large area to which there is generally unhindered access ..... much of the land ..... is common land to which people are positively attracted by publicity; would .... fence the appeal site .... only few people might wish to visit the SSSI; no proof that it is nearby residents who create the problems, particularly as there is a Sunday Market on the airfield .... visited by up to 20,000 people in one day; main consequences of the proposal would be that the few prospective residents, ..... could reasonably and lawfully visit the areas ..... , and ..... would be scope for a condition to restrict unauthorised vehicular access which would reduce tipping and disturbance. .... against this background, .... insufficient evidence that demonstrable harm would be caused to nature conservation interests ..... to result in material conflict with the policies .... or to constitute a sound reason for refusing permission."
<b>Key references</b>	Inspector's decision letter especially paras 4, 6 and 7	Inspector's decision letter especially paras 3, 15 - 16 and 25 see also cases 3, 7, 11 and 12.

<b>Case</b>	<b>3. Fox Farm, Yateley</b>	<b>4. Cobbett's Lane, Yateley</b>
<b>Location</b>	Off Monteagle Lane, Yateley, Hants ( <b>Map 2</b> )	Hill Farm, Cobbett's Lane, Yateley ( <b>Map 2</b> )
<b>Proposal</b>	Residential 42 houses on 5.68ha	Residential 100 houses
<b>Date of decision</b>	28 July 1993	13 April 1995
<b>Competent authority</b>	Hart DC then SoS on recommendation of Inspector Mrs N Ball	Hart DC then SoS on recommendation of Inspector Dr C Gossop
<b>Site(s) affected</b>	Thames Basin Heaths a poss SPA but no boundaries and no HR94, and only a draft of PPG9	Thames Basin Heaths pSPA
<b>Key n c issues</b>	Loss of heathland habitat to access road, recreational pressure, fly-tipping, fires, predation of birds. "The Council and others are much more concerned about the implications of the construction of the access road and the potential effect in terms of people pressure of the scheme as a whole on important heathland habitats in the vicinity."	Increased recreational pressure on birds in pSPA including dog-walking and deterioration of habitat via recreational pressure and tipping

<b>Case</b>	<b>3. Fox Farm, Yateley</b>	<b>4. Cobbett's Lane, Yateley</b>
<b>LSE</b>	N/A	SoS decision letter "considered the effect of the development on the three species of birds listed under Annex 1 of the EC Birds Directive: the nightjar, the woodlark and the Dartford warbler. He has also considered the effect of development on the heathland habitat. He agrees with the Inspector that, while the size of a bird population in any one area will be influenced by a variety of factors, the available evidence points to a link between the population density of the Annex 1 species and the extent of recreational activity. He considers that the new residents would add significantly to the recreational pressure within the northern block of heathland adjacent to Heathlands Cemetery and that this would pose a threat to the Annex 1 birds and diminish their chances of successfully rearing young.
<b>Projects combined</b>	N/A	None
<b>AA inc how looked at COs</b>	N/A	"SSSI supports a significant proportion of the overall SPA population of each of the 3 Annex 1 species, .... clear that the habitats of this SSSI, in respect of the support they provide for the Annex 1 birds, fulfill an especially important role within the SPA as a whole. ... were the recently attained suitability of the northern heathland block - achieved by management action - to be diminished as a result of the present proposal, this would constitute an adverse effect upon the integrity of the proposed SPA. I do not consider that the fact that the UK populations of all 3 species are increasing materially affects this conclusion ..."

<b>Case</b>	<b>3. Fox Farm, Yateley</b>	<b>4. Cobbett's Lane, Yateley</b>
<b>Conclusion on AEOI</b>	"... new residents would contribute to increased use of the airfield, bearing in mind the present level of use, I cannot draw the firm conclusion that the potential for additional harm to be caused to the nature conservation interest within the potential SPA and present SSSIs as a direct result of the development and occupation of 42 dwellings would be an overriding consideration." "... I can see the potential for most serious harm being caused in the longer term to the nature conservation interest of the area as a whole; this would result both directly from increased usage and also indirectly because of the fragmentation of heathland at the heart of the potential SPA."	SoS "does not consider that the proposed public open space would attract people away from the Common in sufficient numbers that the pressure would be relieved. On this issue, therefore, he agrees with the Inspector's conclusions .... having regard to PPG9, that the development would have a significant impact on the proposed SPA and would have an adverse effect on its integrity."
<b>Decision in conditions if relevant</b>	"Council's aim of securing the protection of the countryside on the airfield is worthy of support, especially when that countryside is recognised as a threatened habitat and is currently being assessed for designation as an SPA on account of the presence of Annex 1 birds for which conservation measures to protect their habitat are provided for in Article 4 to Directive 79/409." but "In qualitative terms, I believe that the Fox Farm site has the potential to provide housing in an attractive setting that could relate well to Yateley without causing unacceptable harm to its character or the nature conservation interest of its surroundings, as presently understood." Permission refused with SoS letter indicating n c grounds were deemed insufficient for refusal. Tests limited to planning policy and demonstrable harm	Appeal dismissed
<b>Key references</b>	SoS decision letter at para 3, Inspector's report at paras 14.65 - 76, see also cases 2, 7, 11 and 12	SoS decision letter paras 8 - 11 Inspector's report paras 12.31 - 53 see also case 9 below

<b>Case</b>	<b>5. Valentine Park Ltd Aldermaston</b>	<b>6. Silver Fox Farm, Yateley</b>
<b>Location</b>	Valentine Wood, Reading Road, Aldermaston ( <b>Map 3</b> )	Silver Fox Farm Monteagle Lane, Yateley ( <b>Map 2</b> )
<b>Proposed developm't</b>	Residential development	Renew permission for replacement of burnt down dwelling previously granted in 1987 and 1991
<b>Date of decision</b>	1 Sept 1997	Appeal 25 Nov 1998
<b>Competent authority</b>	Newbury DC Berks then SoS DETR (via GOSE) recovered appeal from Inspector TJ Morgan who reported	Hart DC Hants then appeal determined by Inspector J Greenfield.



<b>Case</b>	<b>5. Valentine Park Ltd Aldermaston</b>	<b>6. Silver Fox Farm, Yateley</b>
<b>Site(s) affected</b>	Thames Basin Heaths pSPA	Thames Basin Heaths pSPA
<b>Key n c issues</b>	Increased recreational pressure disturbing birds "it is likelihood of harm to habitats and species arising from the proposal that is the issue that has to be addressed."	Landtake from heathland outside pSPA for access track which would also increase recreational pressure on birds in pSPA inc dog-walking and deterioration of habitat via recreational pressure tipping and joy riding leading to fire
<b>LSE</b>	Implied but not explicit	Implied but not explicit "would result in a significant threat to nature conservation interests"
<b>Projects combined</b>	None	None
<b>AA inc how looked at COs</b>	Not explicitly assessed against Reg 48	Not explicitly assessed against Reg 48 but applied PPG9
<b>Conclusion on AEOI</b>	Not explicitly assessed against Reg 48	Not explicitly assessed against Reg 48 but concluded that conditions could not be attached that would "protect the integrity of the pSPA"
<b>Decision inc conditions if relevant</b>	Appeal dismissed, nature conservation seen as a disbenefit adding to others that justified refusal of permission.	Material changes in circumstances since last renewal in 1991 were continued re-vegetation of site, adoption of SP and LP with new nc policies, and introduction of the Habitats Regulations and PPG9. "what has changed, and changed quite dramatically, is both national and international attitudes to nature conservation policy". Presumption in favour of renewal of burnt dwellings no longer prevailed after time lapse 12 years. Appeal dismissed.
<b>Key references</b>	Inspector's report paras 16.18-16.25	Inspector's decision letter paras 12 - 23 See also case 10 below

<b>Case</b>	<b>7. Fox Farm Yateley</b>	<b>8. Hart Local Plan PI Bramshill</b>
<b>Location</b>	Off Monteagle Lane, Yateley, Hants ( <b>Map 2</b> )	Bramshill Plantation, Off Ford Lane, Bramshill ( <b>Map 2</b> )
<b>Proposed developm't</b>	Residential 42 houses on 5.68ha	300ha site for new settlement, 1100 dwellings employment and service development
<b>Date of decision</b>	First of the 2 PIs referred to here held June - July 1996, SoS notice requiring EIS to be submitted 7 Jan 1997, EIS submitted 17 Dec 1997, 2 PI held Sept 1998, SoS dismissed appeal 15 Sept 1999	Inspector's Report released October 1999
<b>Competent authority</b>	Hart DC then 1st Inspector DP Machin then 2 Inspector T Cookson reporting to the SoS ETR	Hart DC advised by Inspector G E Roffey
<b>Site(s) affected</b>	Thames Basin Heaths pSPA	Thames Basin Heaths pSPA

Case	7. Fox Farm Yateley	8. Hart Local Plan PI Bramshill
<b>Key n c issues</b>	Increased recreational pressure on birds in pSPA including dog-walking and deterioration of habitat via recreational pressure, invasion of non-native plants, tipping and laying utilities and emergency access, fire	"The site had been considered for the development of a new settlement over a number of years. It was one of the proposals put to the EIP Panel considering HCSPR 1996. While it was not accepted, and the nature conservation objections appeared to me to be becoming stronger with the emergence of the proposed SPA, so far, neither had it been rejected out of hand."
<b>LSE</b>	1st Insp - not significant, evidence not persuasive see para 15.27 of report; 2 Insp - yes "the proposal is significant due to its location" (close to the pSPA)	Not specifically addressed but see below
<b>Projects combined</b>	SoS letter - "He notes that no other residential or other proposals which might affect the p/SPA were identified either in the EIA statement or at the Inquiry or re-opened Inquiry. Nevertheless he considers that the proposal will have a significant effect due to its size and location adjacent to the Thames Basin Heaths p/SPA creating additional pressures on the habitats within the p/SPA. "2nd Inspector's report " .... I agree that the proposal is significant due to its location, notwithstanding that no other proposals in the area which might affect the pSPA were promoted. However, I find the suggestion that regard should be had to other proposals in or adjacent to the other parts of the Thames Basin Heaths pSPA in other counties to be too wide-ranging and thus inappropriate."	None

<b>Case</b>	<b>7. Fox Farm Yateley</b>	<b>8. Hart Local Plan PI Bramshill</b>
<b>AA inc how looked at COs</b>	<p>1st Insp not applicable as Inspector considered no LSE</p> <p>2nd Insp "The prime objective here is the preservation and conservation of the habitats of the Annex 1 birds which are found on the site. As such this objective relates to the integrity of the site, that is, the coherence of its ecological structure and function across the whole area, which in turn enables the site to sustain the habitats and thus the population levels of the birds. It is important to assess whether or not the development would result in additional domestic and recreational pressures on the nearby heathland. Habitat and heathland quality and availability is extremely important to the well-being of the Annex 1 birds. Human activity can easily affect their habitats, yet there is a difference between activities such as walking and cycling along footpaths, picnicking, and controlled dog-walking, and anti-social behaviour such as joy-riding in cars, fire-raising, and the dumping of rubbish and vehicles. However, the most inoffensive of these activities could diminish the quality of the habitats by sheer volume."</p>	Not specifically addressed but see below
<b>Conclusion on AEIOI</b>	<p>1st Insp N/A</p> <p>2nd Insp "in nature conservation terms there are too many factors associated with the proposed development which would pose a real or potential threat to the integrity of the Annex 1 bird habitats on the pSPA" these were recreational pressure (para 12.13), tipping and fires (12.14-16) joy-riders and loss to emergency access (12.17-18). SoS agreed construction of emergency access a "real threat to the integrity of the p/SPA" and increased numbers of people and misuse of the new access "a potential threat" so could not ascertain no AEIOI</p>	"I considered that at this stage a precautionary approach should be taken to safeguarding, in particular, the habitats of the protected bird species on the site as a whole and at this stage saw this as a further reason to consider development inappropriate."
<b>Decision including conditions if relevant</b>	1st Insp recommended appeal be allowed; 2nd Insp recommended it be dismissed and permission be refused. SoS dismissed appeal and refused permission	Inspector recommended site should not be added to the LP, LPA agreed
<b>Key references</b>	SoS decision letter paras 2, 7 - 15, 22 - 23; 1st Inspector's report paras 10.14, 15.27-31; 2nd Inspector's report paras 12.7 - 12.19	Inspector's Report paras 6.8.7 - 6.8.25 especially 6.8.21 and 25

<b>Case</b>	<b>9. Hart Local Plan Cobbett's Lane</b>	<b>10. Hart Local Plan Silver Fox Farm</b>
<b>Location</b>	Hill Farm, Cobbett's Lane, Yateley ( <b>Map 2</b> )	Silver Fox Farm Monteagle Lane, Yateley ( <b>Map 2</b> )
<b>Proposed development</b>	Allocate site for 25 - 30 houses, 1.2ha	Allocate site for replacement of burnt down dwelling previously granted permission in 1987 and 1991 but refused in 1998 see case 6 above
<b>Date</b>	Inspector's Report released October 1999	Inspector's Report released October 1999
<b>Competent authority</b>	Hart DC advised by LP Inspector GE Roffey	Hart DC advised by LP Inspector GE Roffey
<b>Site(s)</b>	Thames Basin Heaths pSPA	Thames Basin Heaths pSPA
<b>Key n c issues</b>	Compared proposal with that under case 4 above, down from 100 to 25- 30 dwellings, a little more distant, still within 150m of pSPA boundary, "likely that if there was no direct effect, there would be indirect effects from an increase in the numbers attracted to the Common for recreation or to exercise their dogs. The number of domestic cats close to the Common would inevitably rise, although there was doubt that they would range as far as the Common". ..... objection site itself could be foraging area for nightjar	"Impact on habitat from dwelling and its access, from habitation and its disturbances, domestic pets and the strong possibility that the improved access track would be used to give greater general access to the heathland"
<b>LSE</b>	"a need to identify some more land for development in the Plan period, .... Yateley should not be the first place to look while the present imbalance of jobs remains. .... no necessity to see housing need as outweighing the local landscape considerations to justify an extension of the urban area into the countryside at this point, breaching a strong and well established urban edge and damaging what was an attractive and largely rural corner. The nature conservation considerations remained important in relation to this land and the precautionary principle applied, that development should not be permitted where there was a discernible risk that development could have a significant effect on the proposed SPA."	"This I saw to be a strong reason for resisting development that would impinge upon the heath." "The threat to the nature conservation interests, in addition to the support for the objectives of the Plan to protect the countryside" ... required the site be not allocated
<b>Projects combined</b>	None	None
<b>AA inc how looked at COs</b>	N/A	N/A
<b>Conclusion on AEOI</b>	N/A	N/A
<b>Decision</b>	Objection to omission of site rejected	Objection to omission of site rejected
<b>Key references</b>	LP PI Insp report paras 6.8.660 - 6.8.673 see also case 4 above	LP PI Insp report paras 6.8.578 - 6.8.585 see also case 6 above

<b>Case</b>	<b>11. Hart DC Local Plan, Fox Farm</b>	<b>12. ADT Auctions Ltd High Court decision</b>
<b>Location</b>	Off Monteagle Lane, Yateley, Hants <b>(Map 2)</b>	Off Monteagle Lane, Yateley, Hants <b>(Map 2)</b>
<b>Proposed development</b>	Residential 42 houses on 5.68ha	Residential 42 houses on 5.68ha
<b>Date of decision</b>	Inspector's Report released October 1999	7 March 2000
<b>Competent authority</b>	Hart DC advised by LP Inspector GE Roffey	Hon Mr Justice Jowitt High Court Queens Bench Case No CO/4040/99 ADT Auctions v SoS ETR and Hart DC
<b>Site(s) affected</b>	Thames Basin Heaths pSPA	Thames Basin Heaths pSPA
<b>Key issues</b>	Was referred to the Inspector's report in case 4 above. "Inspector in that case did express concern at the effects residential development outside the SSSIs could have by imposing additional pressures, for example by dog walking and other recreational use and the introduction of domestic cats."	See case 7 above
<b>LSE</b>	"The precautionary principle advocated by the Biodiversity UK Action Plan was a good one and seemed to have been applied in that case .... it appeared a reasonable principle to apply in this case also."	N/A
<b>Projects combined</b>	None	N/A
<b>AA in how looked at COs</b>	N/A	N/A
<b>Conclusion on AEOI</b>	N/A	Court held that reg 48(5) AEOI should be read in light of 48(1) as "requiring something which has a significant effect on a European site's integrity" - a significant adverse effect. "The approach required by paragraph (5) [of reg 48] is relevant both when the decision maker is satisfied the proposed development will adversely affect the site's integrity and when he is undecided whether it will or not. This approach reflects the importance attached to safeguarding the integrity of an SPA."
<b>Decision</b>	Should not be allocated in plan if appeal rejected	Upheld the SoS decision to require EIS, hold 2nd PI, accept recommendations of 2nd Inspector in favour of first and to dismiss appeal for reasons given
<b>Key references</b>	6.8.562 to 6.8.577 see also cases 2, 3, 7 above and 12 below	Paras 1 - 16, 19 - 22, and 49 - 60 of judgment see also cases 2, 3, 7 and 11 above

<b>Case</b>	<b>13. Surrey Heath Local Plan, Whitehill Farm, Camberley</b>	<b>14. Surrey Heath Local Plan, Birch Close and Horseshoe Crescent Camberley</b>
<b>Location</b>	Whitehill Farm, Kings Road Camberley <b>(Map 2)</b>	Birch Close and Horseshoe Crescent, Camberley <b>(Map 4)</b>
<b>Proposed development</b>	Jan 1996, pre-deposit draft included Whitehill Farm within settlement area of Camberley, allocated it for development with 90 dwellings. English Nature objected so in deposit draft LP, Whitehill Farm had been excluded from settlement area.... objectors ... sought inclusion of sub-station and some 0.6 ha of land, within settlement area and allocation of part of former allotment garden for 6 to 10 dwellings as enabling development, funding a new nature reserve of about 3.4 ha. Outline permission granted 1998 for recreation development of site with ecological management.	The two sites were allocated in the draft plan but removed on advice of English Nature, triggering the objection to their omission
<b>Date</b>	Inspector's Report published June 2001	Inspector's Report published June 2001
<b>C authority</b>	Surrey Heath DC advised by Inspector	Surrey Heath DC advised by Inspector
<b>Site(s)</b>	Thames Basin Heaths pSPA	Thames Basin Heaths pSPA
<b>Key n c issues</b>	"The Council and English Nature were opposed to the proposed residential development .... main concerns were that there would be an increased risk of fire; and an increased risk of predation and disturbance to protected bird species by domestic pets."	Cats para 2.47, dogs and fire para 2.48 see LSE below

Case	13. Surrey Heath Local Plan, Whitehill Farm, Camberley	14. Surrey Heath Local Plan, Birch Close and Horseshoe Crescent Camberley
<b>LSE</b>	<p>Fire see 2.207, cats see 2.208</p> <p>"While it is possible that the proposed development could result in a bird in the pSPA being killed as a result of fire or predation by a domestic pet, I share the view, expressed by English Nature, that such an outcome would be improbable. Part of the difficulty in this case seems to have arisen from English Nature's misinterpretation of the word "likely" in Regulation 48(1)(a). As normally used, that word implies probability rather than mere possibility. In my view, taken alone, the proposed residential development would not be likely to have a significant effect on the pSPA."</p>	<p>"In my view, conventional housing built on either of the objection sites would be likely to have a significant effect on the pSPA, which lies immediately adjacent. The occupiers of some of the proposed dwellings would almost certainly wish to keep pet cats. There is evidence that nationally about 35% of households have at least one cat. On that basis, ... developments could reasonably be expected to result in 16 or so additional cats living adjacent to the pSPA. Some of these animals would almost certainly enter the pSPA on hunting expeditions. There is evidence to suggest that, on average, a cat might kill 30 to 40 birds and other animals in a year. On that basis, 16 cats might kill over 600 other creatures every year. Birds nesting on the ground or in low scrub, close to the proposed housing, would be especially vulnerable to attack. They could well include woodlarks, nightjars, and Dartford warblers.</p> <p>Dogs kept by the occupants of the proposed dwellings might also pose a threat to these protected birds. I have also noted the possibility that additional people living immediately adjacent to the pSPA could give rise to an increased risk of fires, which could have catastrophic ecological effects."</p>
<b>Projects combined</b>	<p>"Nor do I think that the proposed development would be likely to have a significant effect on the pSPA when considered in combination with other plans or projects elsewhere..... only other residential development sites within 200m of the pSPA boundary in Surrey Heath are those at Navara Nursery and "Dyckmore"..... no evidence to suggest that the proposed development at Whitehill Farm would compound the effect of either of those schemes on nature conservation. I am not convinced that the development of housing sites in other districts would add significantly to the effect of the 6 to 10 dwellings proposed at Whitehill Farm. In any event, none of the remote sites alluded to by the Council has planning permission, or appears as a firm proposal in an adopted development plan."</p>	<p>There is plainly pressure for residential development on a number of sites adjacent to the pSPA, both in Surrey Heath and in other local authority areas. If the Birch Close and Horseshoe Crescent sites were allocated for housing, it might be difficult for the relevant authorities to resist similar proposals elsewhere. The cumulative impact on the integrity of the pSPA could be considerable.</p>
<b>AA</b>	N/A	N/A

<b>Case</b>	<b>13. Surrey Heath Local Plan, Whitehill Farm, Camberley</b>	<b>14. Surrey Heath Local Plan, Birch Close and Horseshoe Crescent Camberley</b>
<b>Conclusion on AEOI</b>	Detailed mitigation measures not appropriate in a LP. If AEOI could not be determined then application would need to be refused but that need not be the case.	The objection sites are adjacent to extensive residential areas. I recognise that existing residents are likely to keep numerous cats and dogs, and that the pSPA is already the scene of uncontrolled fires from time to time. Furthermore, equestrians and off-road motorcyclists are known to use parts of the pSPA. Their activities may also damage the habitat. I do not doubt that the pSPA would benefit from better management. However, none of these factors tells in favour of planning for development that would be likely to result in further damage being done to the ecology of this sensitive area.
<b>Decision</b>	Recommended allocation in later part of plan period to allow time for a mitigation package, LPA agreed	There are clearly alternative sites on which affordable housing can be provided during the Local Plan period. Recommended sites were not reinstated. LPA agreed.
<b>Key references</b>	Inspector's report paras 2.175 - 218, especially 2.178-179 and 183 - 217	Inspector's report paras 2.44 - 2.54

<b>Case</b>	<b>15. Shortheath Common, Bordon</b>	<b>16. Bramble Cottage, Hartley Wintney</b>
<b>Location</b>	Adj Oakhanger Stream, Shortheath Common, Bordon Hants ( <b>Map 5</b> )	Bramble Cottage, Hulfords Lane, Hartley Wintney ( <b>Map 2</b> )
<b>Proposed development</b>	1 residential and 1 gypsy touring caravan on common land	Equestrian building for half-livery, and sand-school area retrospective application
<b>Date of decision</b>	14 August 2001	4 October 2001
<b>Competent authority</b>	East Hants DC then SoS ETR on recommendations of Inspector BG Meardon	Hart DC then Inspector G Grindley on appeal
<b>Site(s) affected</b>	Shortheath Common cSAC	Thames Basin Heaths pSPA
<b>Key n c issues</b>	Site within SSSI/cSAC but all vegetation lost, land raised and surfaced	Damage to vegetation and erosion of paths
<b>LSE</b>	By implication but not explicitly see below	"I take the view that the proposed development would have a significant effect .... establishment of an equestrian facility .... would inevitably lead to some additional activity by horses off-site. ... already a considerable amount of horse riding activity in the immediate locality. The scheme would add a further 15 horses into the equation and some might well be ridden on Hazeley Heath and there can be no guarantee that they would not."



<b>Case</b>	<b>15. Shortheath Common, Bordon</b>	<b>16. Bramble Cottage, Hartley Wintney</b>
<b>Projects combined</b>	None	"approval of the appeal scheme would make it more difficult for the Council to refuse other schemes for similar development. Cumulatively they would erode further the fragile habitat of the proposed SPA."
<b>AA inc how looked at COs</b>	"encroachment into SSSI, involving a loss of land within it, which impacts upon the integrity of this long designated area and would prevent restoration of habitat in a management scheme for the whole Common in line with the objectives endorsed by the Government"	"This is not necessary in this instance however, because I have decided not to give permission for the scheme for the other reasons that I set out earlier ...."
<b>Conclusion on AEOI</b>	If permanent loss would be AEOI, but temporary loss capable of restoration	N/A
<b>Decision including conditions if relevant</b>	Insp recommended and SoS granted 3 year temporary permission to allow ownership disputes and relocation to be settled owing to special personal circumstances of appellant	Appeal dismissed
<b>Key references</b>	GOSE decision letter and Inspector's report paras 50 and 59 - 66	Inspector's decision letter paras 5, 6, 25 - 35

<b>Case</b>	<b>17. Purbeck Local Plan PI Holton Heath New Settlement</b>	<b>18. Purbeck Local Plan PI Sandford adj Woodlands</b>
<b>Location</b>	Holton Heath, Purbeck, Dorset ( <b>Map 6</b> )	Adjacent to the Woodlands, Sandford ( <b>Map 6</b> )
<b>Proposed developm't</b>	New settlement for 1350 dwellings	3.8ha residential development
<b>Date of decision</b>	Inspector's report published 2 July 2002	Inspector's report published 2 July 2002
<b>Competent authority</b>	Purbeck DC advised by LP Inspector G Cundale	Purbeck DC advised by LP Inspector G Cundale
<b>Site(s) affected</b>	Dorset Heaths cSAC, Dorset Heaths (Purbeck and Wareham) and Studland Dunes cSAC, Dorset Heathlands SPA, Dorset Heathlands Ramsar Site	Dorset Heaths cSAC, Dorset Heathlands SPA, Dorset Heathlands Ramsar Site
<b>Key n c issues</b>	See para 6.516 of report where issues for each international site are clearly identified.	Urban pressure on heathlands generally, no specific issues cited
<b>LSE</b>	See para 6.515 and "6.517 Because some of the effects (including some not described above) would act <b>in combination</b> their impact would be augmented. For example, the increased ecological isolation of Black Hill and the increased risk of a serious heathland fire would together pose a greater long term threat to the conservation status of Sand Lizards on Black Hill and their ability to maintain their natural range within the cSAC.	

Case	17. Purbeck Local Plan PI Holton Heath New Settlement	18. Purbeck Local Plan PI Sandford adj Woodlands
<b>Projects combined</b>	"6.518 'In combination' effects might also be seen as the aggregated effects from different projects or different parts of the same project in different areas. In this sense the Council suggests that the effects relating to the B3075 improvements should not be considered together with the effects of the housing proposal since the former do not affect the SSSI adjacent to the allocation site. (Doc. AD/LPA /456/464/8:7.53). However, I infer that Regulation 48 requires consideration of such effects on a European site: it does not require that they affect the same constituent SSSI before their combined impact is considered. In this case the road and housing proposals would both affect each of the above European and Ramsar sites, with the probable exception of the Dorset Heaths (Purbeck and Wareham) and Studland Dunes cSAC. To this extent I consider that it would be necessary to weigh the effects of the road and housing proposals in combination, although I would add that this issue does not make a critical difference to my overall conclusion."	
<b>AA inc how looked at COs</b>	See para 6.516 each site taken separately and 6.519	
<b>Conclusion on AEOI</b>	"6.521 However, bearing in mind the need for a scheme to be realistic and viable I conclude that it is substantially more probable than not that a competent authority would be unable to ascertain that a detailed proposal would not adversely affect the integrity of a European/Ramsar site." See also paras 6.522 and 523	English Nature argued AEOI, Inspector concluded "the view is well founded"

<b>Case</b>	<b>17. Purbeck Local Plan PI Holton Heath New Settlement</b>	<b>18. Purbeck Local Plan PI Sandford adj Woodlands</b>
<b>Decision including conditions if relevant</b>	See paras 6.538 - 6.652 especially: "6.538 My overall conclusion on the nature conservation issue is therefore that the retention of the Holton Heath proposals in the Local Plan would be a highly risky strategy in terms of their ability to survive the scrutiny and testing required by the 'Habitats Regulations'. It would cause harm to nature conservation interests and would not be consistent with either the Plan's own conservation policies or with similar policies in the Structure Plan." "6.652 Some uncertainty in the Local Plan process is of course inevitable, ..... There is nothing wrong in law with accepting some uncertainty. However, in the case before me, and on the planning merits, the overall probability of the proposal succeeding is in my estimation so low that I cannot recommend its inclusion in the Local Plan." LPA agreed.	In light of HR94 considerable doubts over the prospects of development being acceptable here. Site should not be allocated for housing. LPA agreed
<b>Key references</b>	Inspector's report at paras 6.435 at page 266 to 6.702 at page 316, and Annex to chapter 6 at pages 390 - 395 especially 6.514, 517 - 518, 521 - 522, 527 - 528 and 538	Inspector's report at paras 6.256, 257, 260 - 261

<b>Case</b>	<b>19. Purbeck Local Plan PI Sandford Old Clay Works</b>	<b>20. Purbeck Local Plan PI Sandford N of school</b>
<b>Location</b>	Old Clay workings site near Sandford (Map 6)	Land north of the Sandford Middle School, Sandford (Map 6)
<b>Proposed development</b>	Residential development	Residential development
<b>Date of decision</b>	Inspector's report published 2 July 2002	Inspector's report published 2 July 2002
<b>Competent authority</b>	Purbeck DC advised by LP Inspector G Cundale	Purbeck DC advised by LP Inspector G Cundale
<b>Site(s) affected</b>	Dorset Heaths cSAC, Dorset Heathlands SPA, Dorset Heathlands Ramsar Site	Dorset Heaths cSAC, Dorset Heathlands SPA, Dorset Heathlands Ramsar Site
<b>Key n c issues</b>	Urban pressure on heathlands generally, no specific issues cited	Urban pressure on heathlands generally, no specific issues cited
<b>LSE</b>	N/A	Significant additional urban pressures on the nature reserve would probably result from the suggested development
<b>Projects combined</b>	N/A	N/A
<b>AA inc how looked at COs</b>	N/A	N/A

<b>Case</b>	<b>19. Purbeck Local Plan PI Sandford Old Clay Works</b>	<b>20. Purbeck Local Plan PI Sandford N of school</b>
<b>Conclusion on AEOI</b>	N/A	N/A
<b>Decision including conditions if relevant</b>	There must be considerable doubt whether the proposals could survive the application of the HR94. Inspector recommended site should not be allocated, LPA agreed	Doubtful that development would be compatible with nature conservation policies, Inspector recommended site should not be allocated, LPA agreed
<b>Key references</b>	Inspector's report at paras 6.258 and 263 - 264	Inspector's report at paras 6.259 and 265 - 266

<b>Case</b>	<b>21. Purbeck Local Plan PI Redbridge Pit</b>	<b>22. Purbeck Local Plan PI Stoborough Green</b>
<b>Location</b>	Redbridge Pit, Crossways / Moreton Station ( <b>Map 7</b> )	Land at Stoborough Green, Purbeck ( <b>Map 6</b> )
<b>Proposed development</b>	Comprehensive mixed use development about 600 houses	Housing development approx 25 houses?
<b>Date of decision</b>	Inspector's report published 2 July 2002	Inspector's report published 2 July 2002
<b>Competent authority</b>	Purbeck DC advised by LP Inspector G Cundale	Purbeck DC advised by LP Inspector G Cundale
<b>Site(s) affected</b>	Dorset Heaths cSAC, Dorset Heathlands SPA, Dorset Heathlands Ramsar Site	Dorset Heaths cSAC, Dorset Heathlands SPA, Dorset Heathlands Ramsar Site
<b>Key n c issues</b>	Direct harm to undesignated wildlife value of site, urbanisation of setting of heathland sites generally	Direct harm to undesignated wildlife value of site, increased access by people and pets to nearby SPA / cSAC / Ramsar " large measure of agreement on the nature of harmful effects that could result from an increased population of residents, together with their dogs and cats, in close proximity to a heathland site of this kind. Most notably effects include increased fire risk and disturbance of ground nesting birds, including Nightjars, by people and their dogs; and the predatory activity of cats on these birds and also on Sand Lizards. .... the impact of this activity is magnified by various related indirect effects and by some factors such as predation and disturbance, acting in combination."

<b>Case</b>	<b>21. Purbeck Local Plan PI Redbridge Pit</b>	<b>22. Purbeck Local Plan PI Stoborough Green</b>
<b>LSE</b>	"The nearest site of international importance for nature conservation is some distance away and I would see very much less risk of harm to nature conservation in comparison to Holton Heath."	Intrinsic interest inc possible foraging area for nightjar not sufficient to reject allocation. Criticised plan for not referring to international status of the SSSI. "The nature and proximity of the Heath and its access mean that it would be an obvious place for occupiers of the proposed housing to resort to leisure purposes and for exercising dogs. ... likely number of dwellings .. would probably make a detectable difference to the amount of activity on the Heath as well as the cat population within hunting range of sensitive parts of the Heath.
<b>Projects combined</b>	N/A	N/A
<b>AA inc how looked at COs</b>	N/A	N/A but main point at issue was the degree to which the additional activity on the Heath would actually cause harm. ... very little detailed evidence about the existing levels of activity and any harm being caused, .... activity generated by adjacent caravan site particularly uncertain .. amount attributable to proposed allocation also uncertain, and "in this respect I share the view that it is sensible to take a precautionary view" ... likely to be times when number of pets kept by future occupiers ... considerably exceed expected average so justifiable to take 'worse case scenario'
<b>Conclusion on AEOI</b>	N/A but "as for indirect effects the Council accepts that the proposal cannot be ruled out on the grounds of its location in relation to heathlands of international importance ... Despite substantial size of the proposal and the reservations of English Nature and the CC NEM, I judge that the objection site is sufficiently distant to avoid problems on this count." "It is not evident to me that there would be a serious impact , and from what I have seen I would not expect the Habitats Regulations to present an unacceptable risk of failure. I also note the CC NEM's view that in this case the matter should be dealt with at development control stage in the light of further studies and details of mitigation measures."	N/A In view of general duty ..... Regulation 3(4) need to take account of foreseeable implications at this stage. I am not confident that the Council would be able to ascertain the absence of an adverse effect. ... changing layout and access would have extremely marginal effect, reducing number of dwellings undermined the justification for the allocation. "It is also argued that the chances of an adverse effect could be reduced by management action on the Heath, but it is doubtful that this could be relied upon owing to the resource constraints and the need to take other factors into account."

<b>Case</b>	<b>21. Purbeck Local Plan PI Redbridge Pit</b>	<b>22. Purbeck Local Plan PI Stoborough Green</b>
<b>Decision including conditions if relevant</b>	"In short, I conclude that the objection proposal should not be rejected on the grounds of its impact on landscape and nature conservation." Recommended Local Plan be modified to include the allocation, but Purbeck DC declined to accept the recommendation.	"the housing allocation would lead to some additional harm to nature conservation on the Heath, but that, with the evidence before me, the level of harm is impossible to determine". "There is a risk that the proposed development would fall foul of the Habitats Regulations" no good reason to allocate, small, many objections to it. Inspector recommended the site be not allocated
<b>Key references</b>	Inspector's report paras 6.79 - 125 esp 6.118 - 122	Inspector's report paras 6.817 - 876 esp 6.860 - 869

<b>Case</b>	<b>23. Purbeck Local Plan PI Stoborough</b>	<b>24. Stonecrop, Broadstone</b>
<b>Location</b>	Land west of Corfe Road Stoborough (Map 6)	Stonecrop, Corfe Lodge Road, Broadstone, Dorset (Map 9)
<b>Proposed development</b>	Housing employment, village centre open space	Demolish dwelling replace with 4 dwellings
<b>Date of decision</b>	2 July 2002	5 Jan 2004
<b>Competent authority</b>	Purbeck District Council advised by Local Plan Inspector G Cundale	East Dorset DC then Inspector Gyllian Grindley on appeal
<b>Site(s) affected</b>	Dorset Heathlands SPA and Ramsar	Upton Heath SPA, cSAC & Ramsar
<b>Key issues</b>	Introduction of new urban pressures on adjacent heathland SSSI / SPA / Ramsar	Single determining issue was effect on the heath. Inspector referred to English Nature evidence as compelling that "a greater human population in the immediate vicinity of the heathland results in degradation of the habitat, through changed hydrology, erosion, enrichment of soils, fires, predation by pets, trampling by foot and vehicles and vandalism."
<b>LSE</b>	"With a large residential element this would be likely to lead to significantly increased activity and greater potential for disturbance, on the nearby heathland."	"I take the view that the development would result in significant harm to the SSSI/cSAC/SPA/ Ramsar site"
<b>Projects combined</b>	N/A	Inspector cited judgment in <i>Dibben Construction Ltd v SoS Environment and the Borough of Test Valley</i> and concluded "if permission is granted in breach of policy then other applications equally devoid of justification will follow and will be difficult to resist. Cumulatively additional people and the demonstrable pressures they generate, would erode the fragile habitat of the SSSI/ cSAC/SPA/ Ramsar site

Case	23. Purbeck Local Plan PI Stoborough	24. Stonecrop, Broadstone
AA inc how looked at COs	N/A	Inspector did not undertake an AA because having concluded a significant adverse effect she had already decided to refuse permission as contrary to policy and on precedence grounds, so further application of reg 48 unnecessary as she was not granting any consent.
Conclusion on AEOI	N/A	See above
Decision	Inspector recommended the site be not allocated	Appeal dismissed
Key references	Inspector's report paras 6.270 - 297 esp 6.286	Entire decision letter as this was only issue

Case	25. 50 Dewlands Way, Verwood	26. Candlewick Cottage, Clayford, Wimborne
Location	50 Dewlands Way, Verwood, Dorset (Map 8)	Candlewick Cottage, Clayford, Wimborne Dorset (Map 8)
Proposed developm't	Demolition of 1 dwelling and replace with 12 flats	Complex enforcement case revolving round unauthorised livery stables
Date of decision	9 January 2004	10 March 2004
Competent authority	East Dorset DC then 1st SoS on recommendation of Inspector M Hurley on appeal	East Dorest DC then Inspector D Baldock on appeal
Site(s) affected	Dorset Heathlands SPA and Ramsar site Dorset Heaths cSAC	Dorset Heathlands SPA and Ramsar site Dorset Heaths cSAC
Key n c issues	Effects of predatory pets and children on heathland	Increased horse riding on Holt Heath increasing disturbance and other harmful effects unspecified in the decision letter
LSE	Initially East Dorset DC and English Nature concluded LSE, application refused on various grounds. After signing of S.106 obligation English Nature advised, Insp accepted and 1st SoS concluded no LSE on the site	"There is also the prospect of a significant effect as defined in Regulation 48 of the Habitats Regulations"
Projects combined	None even though LSE alone had been concluded	"I am required to have regard to other relevant plans and projects. In my view that would include concurrent proposals but not the uncertain potential for a precedent to be created. There are, therefore, no such plans or projects, other than the other appeals I am deciding. These can be substantially regarded as independent projects to be decided on their own merits."
AA inc how looked at COs	N/A	Although Inspector states AA is "summarised in my foregoing reasoning" it is difficult to identify which parts of the reasoning are referred to.

<b>Case</b>	<b>25. 50 Dewlands Way, Verwood</b>	<b>26. Candlewick Cottage, Clayford, Wimborne</b>
<b>Conclusion on AEOI</b>	N/A	See below and para 73 "stabled livery business .... would be likely to conflict with those policies of the development plan intended to safeguard the adjoining protected areas."
<b>Decision including conditions if relevant</b>	Appeal allowed, permission granted, condition (8) requiring bat survey and S.106 obligation that no pets would be kept and no persons under 50 would occupy the flats.	"Bearing in mind that conditions could not satisfactorily prevent detriment from a more intensive use, I conclude that planning permission should not be granted..."
<b>Key references</b>	Decision letter para 3 and Insp report para 32 - 35 and 47.	Insp decision letter paras 61 - 66 and 73

<b>Case</b>	<b>27. 16 Redmans View Verwood</b>	<b>28. Wayfarers Club, West Moors</b>
<b>Location</b>	16 Redmans View Verwood Dorset ( <b>Map 8</b> )	Land north of Wayfarers Club, Newmans Lane, West Moors, Dorset ( <b>Map 8</b> )
<b>Proposed development</b>	1 dwelling	Mobile home, van body, timber structures and portable toilet
<b>Date of decision</b>	11 March 2004	16 March 2004
<b>Competent authority</b>	East Dorset DC then 1st SoS on recommendation of Inspector R Merelie on appeal	East Dorset DC then 1st SoS on recommendation of Inspector R Priestley on appeal
<b>Site(s) affected</b>	Dorset Heathlands SPA and Ramsar site Dorset Heaths cSAC	Dorset Heathlands SPA and Ramsar site, Dorset Heaths cSAC
<b>Key n c issues</b>		The full range of urbanisation effects was argued at the PI see para 46 of Insp report
<b>LSE</b>	"... on its own the proposed development would be unlikely to cause significant harm to nature conservation interests ... quantifying precisely the harm likely to arise is difficult."	"The representative from English Nature conceded in cross examination that on the basis of ... use of the land since their arrival in 2002 there would be no impact upon the heath. I concur. ... the appellants do not exercise their dogs on the heath and would willingly accept a planning condition to this end. ... There is no evidence of malicious fires. ... I entirely accept that the development in itself, if made personal to ... as gypsies, would have no adverse effects upon the heath."



<b>Case</b>	<b>27. 16 Redmans View Verwood</b>	<b>28. Wayfarers Club, West Moors</b>
<b>Projects combined</b>	<p>Council and English Nature provided "sufficient evidence to demonstrate that urban development can have several adverse effects on the habitats and protected species in question. Conversely the appellant has not shown that the proposed development would cause no harm ..."</p> <p>See paras 68 - 71, Inspector considered unique characteristics of appeal site, other sites in 400m consultation zone, scope for intensification, potential opportunities for a precedence to be created. Para 76 concludes precedent for similar intensifications, more difficult to resist "cumulative result would be more harm to the nature conservation interests of Dewlands Common"</p>	<p>EDDC submitted a schedule of over 100 dwellings per year within 400m of the Heath, of which 40 had been granted, 2 or 3 stables pa plus 6 mineral extraction schemes, 6 abstraction licences and 10 water quality consents</p> <p>Inspector concluded "In relation to the 'in combination' factor the pressures on the Heath are apparent from the schedule ... Given my conclusion, however, that the development itself would have no adverse effects on the European site it must follow that there can be no significant 'in combination' effect."</p>
<b>AA inc how looked at COs</b>	"would cause some harm to the nature conservation interests of Dewlands Common and that such harm would not be fully overcome by the mitigation proposals submitted.."	"An appropriate assessment under Regulation 48(1) is in this instance therefore unnecessary."
<b>Conclusion on AEOI</b>	Conflict with development plan and "be contrary to the advice of the Bern Convention Standing Committee. Insp report para 84 "I firmly conclude that the proposed development would jeopardise the nature conservation interests of Dewlands Common." SoS agreed para 13 of letter	N/A
<b>Decision including conditions if relevant</b>	Appeal dismissed, permission refused	<p>Inspector's report "there is no sound reason to withhold planning permission on nature conservation grounds. There is no close comparison between this case and the appeal at Silver Fox Farm, Yateley, where there was found to be a direct loss of heathland associated with the formation of the site access."</p> <p>In respect of the key issues the appeal was dismissed and permission refused in accordance with Inspector's recommendations</p>
<b>Key references</b>	Insp report paras 66 - 77 and 84	SoS decision letter para 29 and 31; Insp report paras 44 - 50 and 68 - 70

<b>Case</b>	<b>29. The Barn, Three Legged Cross</b>	<b>30. 158 Springdale Road, Corfe Mullen, Wimborne</b>
<b>Location</b>	The Barn, Earles Road, Three Legged Cross, Wimborne, Dorset ( <b>Map 8</b> )	158 Springdale Road, Corfe Mullen, Wimborne ( <b>Map 9</b> )
<b>Proposal</b>	Temporary agricultural worker's dwelling	Single dwelling on land to rear of existing dwelling
<b>Date</b>	13 April 2004	6 August 2004
<b>Competent authority</b>	East Dorset DC then Inspector C Frost on appeal	East Dorset DC then Inspector C Lane on appeal
<b>Site(s)</b>	Dorset Heaths cSAC, Dorset Heathlands SPA, Dorset Heathlands Ramsar Site	Dorset Heaths cSAC, Dorset Heathlands SPA, Dorset Heathlands Ramsar Site
<b>Key n c issues</b>	<p>"The conflict between dwellings and heathland sites arises from certain types of human activity and behaviour. By way of example, children playing on nearby heathland can cause disturbance and thereby damage nature conservation interests. Damage to habitat can be caused if fires are lit or mountain bikes or motor bikes are used. The keeping of pets can cause considerable damage, especially predatory animals such as cats that can deplete heathland animals including rare reptiles and birds. Dogs can cause disturbance and damage to nesting sites. Dog walking itself causes disturbance and cats and dogs cause soil enrichment through the leaving of faeces and urination. The irresponsible dumping of waste is also a damaging consequence of human activity."</p>	<p>"These impacts stem from additional pressures from the occupants of the dwellings and also from their pets."</p>
<b>LSE</b>	<p>"Accordingly, while there are possible harmful consequences arising from a further human presence close to the Common, the impact could be limited and needs to be balanced against any possible advantages."</p>	<p>"I accept the argument that, incrementally, damage to such a sensitive area may be substantial and significant."</p>

<b>Case</b>	<b>29. The Barn, Three Legged Cross</b>	<b>30. 158 Springdale Road, Corfe Mullen, Wimborne</b>
<b>Projects combined</b>	<p>“Part of the argument against residential development is that it would be part of a cumulative effect as each additional dwelling close to the European site has the potential to give rise to a further harmful impact. Although this may be slight in any particular instance, each new dwelling represents a further step in a damaging process. Accordingly, even though the potential for damage can be limited for any particular dwelling (eg a condition preventing the keeping of predatory animals), in this case there still remains an incremental and damaging effect from human activity that poses an increased threat to the integrity of the European Site. I accept the logic of this argument and although limiting residential development for such reasons would place a severe restriction on residential development close to this European site, this seems to be necessary if obligations towards the protection of the European Site are to be met. However, notwithstanding this, the individual merits this particular case need to be assessed and in my view it is relevant that the argument for this dwelling is based on an agricultural case, which is not likely to be repeated too often, unlike more general residential schemes. This fact speaks in favour of the scheme, but I cannot regard it as more than a further diminution of risk. Accordingly, there is insufficient reason to find that there would not be an incremental adverse effect on the integrity of the European site, arising from the presence of this additional dwelling.”</p>	<p>"Part of the concern of both English Nature and the Council is that each additional dwelling close to such a site has the potential for cumulative harmful impacts. These impacts stem from additional pressures from the occupants of the dwellings and also from their pets. Whilst the effects from one dwelling may be small, I accept the argument that, incrementally, damage to such a sensitive area may be substantial and significant. In my opinion, some residential curtilages along this road appear to have the potential for either redevelopment or similar development to that proposed here. I note there are already other proposals before the Council. I am also aware that the Council deals with proposals for some 100 dwellings per year close to designated sites. To my mind there are considerable dangers in permitting the development the subject of this appeal, not only due to the individual harm occupiers and their pets may cause to the SSSI but also because incrementally and cumulatively with other dwellings it could have even more damaging impacts."</p>
<b>AA inc how looked at COs</b>	<p>As the ultimate test, given in Section 48(5) of the Habitat Regs. is that a plan shall only be agreed to after having ascertained that it will not adversely affect the integrity of a European site, I cannot agree that this very demanding test would be met here.</p>	<p>"I have noted other appeal decisions sent to me but have considered this proposal on its individual merits."  "The appellant quotes precedent due to nearby development. The fact that other development has been permitted, whilst material, is not a consideration that carries much weight to my mind, taking into account the significant nature conservation issues involved."</p>

<b>Case</b>	<b>29. The Barn, Three Legged Cross</b>	<b>30. 158 Springdale Road, Corfe Mullen, Wimborne</b>
<b>Conclusion on AEOI</b>	“While the poultry enterprise that would be enabled by the dwelling would not be particularly large, it would be very close to a European site. Parts of this protected site would receive sufficient additional ammonia to cause damage, additional to that caused by background levels, even though this damage may not become immediately apparent. On this basis I can only conclude that the integrity of the European site would be damaged and accordingly there is no basis to find that there would be no adverse effect on the integrity of the European site.”	" I conclude that the appellants have not adequately demonstrated that this proposal would not have an adverse effect on the SSSI. I share both the Council's and English Nature's concern that incrementally and cumulatively it would harm the SSSI for the reasons explained."
<b>Decision</b>	Appeal dismissed permission refused	Appeal dismissed permission refused
<b>Key references</b>	Inspector's report paras 3, 9, 13 - 26.	Inspector's letter paras 2, 7 - 9, 15.



# ENGLISH NATURE

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Top left: Using a home-made moth trap.

Peter Wakely/English Nature 17,396

Middle left: Co<sub>2</sub> experiment at Roudsea Wood and Mosses NNR, Lancashire.

Peter Wakely/English Nature 21,792

Bottom left: Radio tracking a hare on Pawlett Hams, Somerset.

Paul Glendell/English Nature 23,020

Main: Identifying moths caught in a moth trap at Ham Wall NNR, Somerset.

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