

# WEST NORTHAMPTONSHIRE COUNCIL CABINET

**9 NOVEMBER 2021**

## CABINET MEMBER WITH RESPONSIBILITY FOR PLANNING, BUILT ENVIRONMENT AND RURAL AFFAIRS: COUNCILLOR REBECCA BREESE

<b>Report Title</b>	<b>Upper Nene Valley Gravel Pits Special Protection Area:</b> <ul style="list-style-type: none"> <li>Supplementary Planning Document; and</li> <li>Mitigation Strategy</li> </ul>	
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### List of Appendices

- Appendix A** – Upper Nene Valley Gravel Pits Special Protection Area (SPA) Supplementary Planning Document (SPD)
- Appendix B** – Draft West Northamptonshire Upper Nene Valley Gravel Pits SPA SPD – Addendum to the SPA SPD: Mitigation Strategy

## **1. Purpose of Report**

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- 1.1. The purpose of this report is to seek adoption of the Upper Nene Valley Gravel Pits SPA Supplementary Planning Document (referred to throughout this report as 'SPD'). Cabinet is also requested to endorse taking the draft mitigation strategy for the West Northamptonshire Upper Nene Valley Gravel Pits (UNVGP) Special Protection Area (referred to throughout this report as 'SPA') out to consultation for six weeks in November/December 2021.

## **2. Executive Summary**

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- 2.1. Local planning authorities have a duty as competent authorities under the Conservation of Habitats and Species Regulations 2017 (as amended) (known as the Habitats Regulations) to ensure that planning application decisions comply with the Habitats Regulations.
- 2.2. Special Protection Areas (SPAs) are protected in UK law by the Habitats Regulations and development proposals must not give rise to adverse effects on the integrity of SPAs. If they are likely to, measures must be secured to avoid or mitigate this impact, otherwise the competent authority is obliged to refuse permission in the absence of satisfying exacting derogation tests.
- 2.3. The UNVGP SPA was designated in 2011 by the Habitats Regulations due to its number and type of bird species present, including golden plover and lapwing<sup>1</sup>.
- 2.4. The former Northampton Borough Council adopted the existing SPD on 13 September 2017. The former South Northamptonshire Council was also bound by the Habitats Regulations in relation to the SPA; it consulted on the draft SPD but did not adopt it. Therefore, Cabinet is recommended to adopt the SPD for West Northamptonshire so that the mitigation strategy can be appended to it. Once adopted both the SPD and mitigation strategy, together, can be used to guide and mitigate development within West Northamptonshire that would otherwise adversely impact on the SPA.
- 2.5. A draft mitigation strategy has been prepared for Unit 1 of the SPA which is situated in West Northamptonshire. The mitigation strategy sets out details of measures required to mitigate recreational pressure resulting from residential development allocated within the submitted Northampton Local Plan Part 2 (LPP2) and any windfall development in West Northamptonshire. The mitigation strategy outlines contributions required by all net additional dwellings within 3km of Unit 1 the SPA to pay for measures to ensure protection of the SPA.

## **3. Recommendations**

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- 3.1 It is recommended that Cabinet:
- a) Adopt the UNVGP SPA SPD for the West Northamptonshire Council area; and
  - b) Endorse the UNVGP SPA SPD – Addendum to the SPA SPD: Mitigation Strategy for consultation.

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<sup>1</sup> Full details of bird species can be found here: <https://www.northampton.gov.uk/downloads/file/10814/20150801-spa-spd>

## 4. Reason for Recommendations

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- 4.1 The above recommendations are proposed so that, as the competent authority, West Northamptonshire Council, can protect Unit 1 of the SPA from adverse impact from recreational pressure resulting from proposed and windfall housing growth within 3km of Unit 1 the SPA. Protection of the SPA and its qualifying features will not only meet the requirements of the Habitats Regulations but also help protect the SPA now and in the future so that protected bird species can remain present, and it can be enjoyed by residents and visitors. Adoption of the SPD and endorsement of the consultation for the mitigation strategy would align with the council's Green and Clean, Environment and Wellbeing priority within its Corporate Plan.

## 5. Report Background

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### Regulations and Planning Policy

- 5.1 The SPA is split into nine Units with Unit 1 (Clifford Hills Gravel Pits) situated within the boundary of West Northamptonshire. Units 2 to 9 are situated in North Northamptonshire where a mitigation strategy is already in place (adopted in 2016) to protect units 2 to 9 from recreational impact resulting from housing growth.
- 5.2 The SPA was designated in April 2011 under the Conservation of Habitats and Species Regulations 2017 (as amended) due to the number and types of bird species present. Development proposals must not give rise to adverse effects on the integrity of the SPA, either alone or in combination with other plans and project, and if they are likely to, measures must be secured to avoid or mitigate this impact, otherwise the competent authority is obliged to refuse permission in the absence of satisfying exacting derogation tests (the work cannot go ahead or the plan cannot be adopted unless it can pass 3 legal tests and be granted an exception, known as 'derogation'<sup>2</sup>).
- 5.3 The UNVGPs are also designated as a Ramsar site (a wetland of international importance named after the Ramsar Convention signed in the city of Ramsar, Iran) which is afforded the same protection as a European Site as a matter of Government policy<sup>3</sup>. The SPA and Ramsar site boundaries are identical; the qualifying features are only slightly different (see the UNVGP SPD for full details).
- 5.4 West Northamptonshire Joint Core Strategy 2011 to 2029 (Local Plan Part 1) Policy BN4 sets out that new development will need to demonstrate through the development management process that there will be no significant adverse effects upon the integrity of the SPA and Ramsar Site. If Habitats Regulations are not met and impacts not mitigated, then development must not be permitted.
- 5.5 Both the South Northamptonshire Local Plan Part 2 (LPP2) and the emerging Northampton LPP2 have been informed by Habitats Regulations Assessments (HRA). The Northampton HRA concludes that: "In line with the findings of the visitor access study above and the 3km consultation zone defined by the SPD for all applications involving a net gain in residential units,

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<sup>2</sup> <https://www.gov.uk/guidance/habitats-regulations-assessments-protecting-a-european-site>

<sup>3</sup> NPPF - <https://www.gov.uk/government/publications/national-planning-policy-framework--2>

it is judged that all residential development within 3km of Upper Nene Valley Gravel Pits SPA and Ramsar site would be likely to contribute to an in-combination recreational disturbance effect on the European site". The South Northamptonshire HRA concludes that: "significant effects of the Local Plan Part 2 on the Upper Nene Valley Gravel Pits SPA and Ramsar site are likely".

- 5.6 Consequently, both the adopted South Northamptonshire LPP2 (adopted July 2020) and the emerging Northampton LPP2 contain policies related to the SPA. Policy NE1 of the adopted South Northamptonshire LPP2 commits to adopting a mitigation strategy within 12 months of adoption of the South Northamptonshire LPP2.
- 5.7 The Submitted Northampton LPP2 is currently going through the process of examination and contains a policy relating specifically to the SPA (policy 30). It is proposed, via a main modification to policy 30, to adopt a mitigation strategy by the time the Northampton LPP2 is adopted.
- 5.8 Consultation in late 2021 would enable adoption of the mitigation strategy by April 2022 to ensure it is in place by the time the Northampton LPP2 is adopted.

#### Residential Impact on the UNVGP SPA

- 5.9 A study of visitor and recreational impact on the SPA was undertaken by Footprint Ecology in 2014<sup>4</sup>. The study demonstrated that the number of dog walkers visiting the area is high and that further development will increase pressure across the SPA including at Unit 1 in West Northamptonshire.
- 5.10 Through visitor surveys the study identified that most visitors lived within 3km of the SPA and that any residential growth within this distance would further cause adverse impact on the SPA and that mitigation is required to protect the SPA. The study recommended that mitigation measures in the form of access management such as interpretation panels and fencing as well as directing visitors to less sensitive areas would alleviate the recreational pressure on the SPA from population growth as a result of new housing.
- 5.11 The mitigation strategy uses the data from the Footprint Ecology study to understand the residential impact from LPP2 growth on Unit 1 of the SPA. It identifies mitigation measures that would be appropriate for Unit 1, calculates the cost of these measures over the lifetime of the LPP2 plan periods and sets out a cost per dwelling contribution.

#### Mitigation Measures to be delivered over the South Northamptonshire and Northampton plan periods to 2029

- 5.12 The mitigation measures identified in the Mitigation Strategy are contained within appendix 6 and include the following:
  - **Suitable Alternative Natural Greenspace (SANG)** to be provided in association with The Green, Great Houghton, which is a proposed allocation in the Northampton LPP2

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<sup>4</sup> Footprint Ecology: Visitor Access Study of the Upper Nene Valley Gravel Pits SPA - <https://www.footprint-ecology.co.uk/work/reports-and-publications>

- **Interpretation panels and access management** to provide residents and visitors with information about the sensitivity of the SPA and of nearby alternative walking/dog walking routes. Strategic fencing is also expected to be placed at appropriate locations around Unit 1
- **Improvements to identified existing greenspaces** to encourage visitors with dogs to use these less-sensitive areas
- **Wardens** to help mitigate visitor impacts on Unit 1 of the SPA. Their role will be to help educate visitors on the importance of the SPA and the reasons why visitors and dogs must stay on-lead and to access paths. It is expected that wardens will also participate in year-round engagement activities alongside partners who are working to protect the SPA

5.13 The mitigation strategy also allows for ongoing monitoring of the measures to ensure they are suitable and to see if further measures are required.

#### Contributions to Strategic Access Management and Monitoring (SAMM)

5.14 Any new residential development within 3km of Unit 1 of the SPA will have a recreational impact and therefore must be mitigated. The draft mitigation strategy sets out that each net additional dwelling will be required to make a SAMM contribution of £428.58 to pay for measures. This will be index linked to the Retail Price Index (RPI) rounded to the nearest whole pound, with a base date of 2021. This will be reviewed annually on 6 April.

5.15 Making this contribution will remove the need for developments to mitigate against recreational pressure individually, undertake project level appropriate assessment and speed up the process of approval from the council and Natural England. This would in turn, speed up the determination of these applications.

5.16 Some housing schemes, when accounting for their scale or relationship to Unit 1 of the SPA may need to provide bespoke mitigation measures in addition to or instead of making the financial contribution to ensure effective avoidance/mitigation of impacts on the SPA. Where a development will create ten or more net additional dwellings it is advised that early dialogue with Natural England take place. Natural England will then advise the Local Planning Authority if mitigation may be dealt with through a fixed SAMM contribution of £428.58 per dwelling (index linked with a base date of 2021) and/or bespoke mitigation.

5.17 It should also be noted that the draft mitigation strategy requires the SAMM contribution from net residential development that is created through permitted development rights, reserved matters, Section 73 and certificate of lawfulness applications (as well as outline and full).

5.18 The draft mitigation strategy sets out how the SAMM contribution is to be paid. It is proposed that payment can either be made via a section 106<sup>5</sup> obligations agreement or via an 'up front' contribution at the validation stage of an application via a section 111<sup>6</sup> payment. Templates are provided in appendices 4 and 5 of the draft mitigation strategy to show how this will be achieved.

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<sup>5</sup> Section 106 of the Town and Country Planning Act 1990

<sup>6</sup> Section 111 of the Local Government Act 1972

## Adoption of the Upper Nene Valley Gravel Pits Special Protection Area Supplementary Planning Document by West Northamptonshire Council

- 5.19 The SPD supplements policies within the West Northamptonshire Joint Core Strategy. It provides details on the SPA relating to its designation and when Natural England need to be involved in planning decisions that could impact the SPA.
- 5.20 To enable the mitigation strategy to be appended to the SPD, the SPD needs to be adopted by West Northamptonshire Council.
- 5.21 The SPD was adopted by the former Northampton Borough Council in 2017 and is therefore a material consideration used for decision making in the Northampton area.
- 5.22 The South Northamptonshire area has an adopted South Northamptonshire LPP2 which contains local policies that aid decision making in parts of the 3km area around Unit 1 of the SPA. As such it is also bound by the Habitats Regulations and is required to protect the SPA.
- 5.23 Because the SPD was not adopted by South Northamptonshire Council, it is not a material consideration to be taken into account when planning applications are considered in the former South Northamptonshire area. For the mitigation strategy to be a material consideration for all relevant parts of West Northamptonshire, it is necessary for Cabinet to adopt it.

### *Conclusion*

- 5.24 To meet the requirements of the Habitats Regulations and protect Unit 1 of the Upper Nene Valley Gravel Pits SPA, West Northamptonshire Council needs to fully adopt the SPD and have a mitigation strategy in place. This would mitigate impacts of new development on Unit 1 of the SPA in terms of recreational pressure and conserve the habitats of the species for which the SPA is designated. Failure to protect Unit 1 of the SPA would be in breach of the council's responsibilities as competent authority.
- 5.25 Accordingly, to ensure that it becomes a material consideration across the former Northampton and South Northamptonshire areas, it will be necessary for the SPD, for which the mitigation strategy will be an addendum to, be formally adopted by the council.
- 5.26 Alongside this, it is proposed that the attached draft mitigation strategy be put out to public consultation.

## **6. Issues and Choices**

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- 6.1 By adopting the SPD and endorsing consultation on the mitigation strategy, this will enable the council to carry out its function as competent authority under the Conservation of Habitats and Species Regulations 2017 (as amended).
- 6.2 If the council decides not to endorse the consultation on the mitigation strategy and adoption of the SPD, the council would not be able to mitigate against the impacts of residential growth

within 3km of Unit 1 of the SPA. The effect of this would be that the council would have to refuse planning permission for residential development that would cause adverse impacts on the SPA.

- 6.3 By not endorsing the consultation on the mitigation strategy, this will have direct implications for the adoption of the Northampton Local Plan Part 2 (LPP2). It is a requirement of Natural England and the Habitats Regulations that development does not adversely impact the SPA and the mitigation strategy needs to be in place before the adoption of the Northampton LPP2 to allow for development contained within it to be mitigated. Likewise, by not adopting the SPD for West Northamptonshire, this would be contrary to the commitment to protect the SPA within the South Northamptonshire LPP2.
- 6.4 As such it would be appropriate to adopt the SPD for West Northamptonshire and approve the consultation on the draft mitigation strategy to allow residential growth that can be mitigated through SAMM contributions and/or bespoke measures.
- 6.5 By adopting the SPD and approving consultation on the draft mitigation strategy, this would align with the Corporate Plan's priority of achieving a green and clean West Northamptonshire.

## **7. Implications (including financial implications)**

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### **7.1 Resources and Financial**

- The draft mitigation strategy sets out a SAMM contribution to be paid by each new dwelling that is created within 3km of Unit 1 of the SPA. This contribution has been reached through identifying the costs of mitigation measures, including both revenue and capital costs. The measures set out in the draft mitigation strategy will be funded by developers and will not be a burden on the public purse.
- The mechanism for payment of the SAMM contribution will be through either:
  - A planning obligation under Section 106 of the Town and Country Planning Act 1990;  
OR
  - A contribution through Section 111 of the Local Government Act 1972
- There will be revenue costs associated with resourcing staff. This will need to be considered within any applicable restructure so that the administering, collection and distribution of funds and the implementation of measures is taken account of. Currently it is envisaged that these measures would form part of a role(s). Assumed oncosts, travel and equipment costs have been included in calculations.
- There will be capital costs associated with the mitigation measures, including installation of interpretation panels, potential fencing and possible works to nearby green spaces.
- There are no costs associated with adopting the SPD or with the proposed consultation on the Mitigation Strategy.

### **7.2 Legal**

- The SPD has been produced in accordance with the requirements of the Town & Country Planning (Local Planning) (England) Regulations 2012.
- The adopted SPD will be a material consideration in determining planning applications.
- Adoption of the SPD across the West Northamptonshire area will ensure cohesive and robust decision making and support policies in the relevant local plans.
- The council has a specific duty, as competent authority, under the Conservation of Habitats and Species Regulations 2017 (as amended) to mitigate the impact of residential development to avoid significant impact on the SPA. The compensatory measures included in the Mitigation Strategy would allow the council to protect Unit 1 of the SPA to the end of the Northampton and South Northamptonshire Local Plan Part 2 periods.
- The mitigation strategy will provide clear guidance to applicants ensuring the planning application process and decision making is transparent and open and complies with the Local Planning Authority's duty as competent authority under the Conservation of Habitats and Species Regulations 2017.

### 7.3 Risk

- The risk of not adopting the SPD for West Northamptonshire would be that the requirements in Policy NE1 of the South Northamptonshire Local Plan Part 2 could not be carried out. The SPD needs to be adopted prior to the mitigation strategy being adopted so that it can be appended to the SPD.
- Not endorsing the draft mitigation strategy for consultation would prevent its eventual adoption and the ability to collect SAMM contributions to mitigate recreational pressure resulting from residential development. If no mitigation strategy is in place, residential proposals within 3km of Unit 1 of the UNVGP SPA would need to be refused. As a result of this, the Northampton Local Plan Part 2 would be found unsound as proposed allocations and/or windfall planning applications within 3km of Unit 1 would need to be refused. Likewise, any windfall residential applications within the former South Northamptonshire area would also need to be refused if they were located within 3km of Unit 1 of the SPA.
- The consequence of refusing planning applications would lead to the council being unable to meet its housing requirements. If the council cannot meet its housing targets contained within its local plans, then it would be harder to refuse more speculative planning applications.
- Failure to implement a mitigation strategy would put the SPA at risk from further recreational pressure.

### 7.4 Consultation

- Informal engagement in preparing the draft mitigation strategy has taken place with statutory and other bodies including:



- Natural England
  - The Bedfordshire, Cambridgeshire and Northamptonshire Wildlife Trust
  - A steering group consisting of local tenant farmers, parish councils and ornithological specialists.
- It is requested that Cabinet agrees to public consultation on the draft mitigation strategy to garner comments which will be taken into account prior to eventual adoption.

#### 7.5 **Consideration by Overview and Scrutiny**

- Not applicable

#### 7.6 **Climate Impact**

- If the Cabinet does not allow for the UNVGP SPA SPD to be adopted for West Northamptonshire and the mitigation strategy to go out to consultation and eventually be adopted by the council, then the UNVGP SPA is at risk of disturbance to protected birds from further recreational impact.
- Statutory bodies including Natural England and the Environment Agency as well as the Bedfordshire, Cambridgeshire and Northamptonshire Wildlife Trust have been involved in the production of both the UNVGP SPA SPD and the West Northamptonshire UNVGP SPA SPD – Addendum to the SPA SPD: Mitigation Strategy.

#### 7.7 **Community Impact**

- The measures contained within the mitigation strategy will impact visitors to Unit 1 of the SPA. The visitors are mainly expected to come from within 3km of Unit 1 of the SPA and will include dog walkers, walkers and other people who use the SPA recreationally. The measures will require the community to adhere to specific rules set out in terms of observing the Countryside Code and build behaviour patterns that help preserve the SPA for the reasons related to its designation, namely over wintering bird species.

#### 7.8 **Communications**

- The document has been checked for accessibility.
- Consultation on the mitigation strategy will consist of informing organisations on the Planning Policy database and statutory consultees that comments are welcome on the draft UNVGP SPA SPD Mitigation Strategy over an eight-week period.
- A press release will be prepared to coincide with the start of the consultation.

### **8. Background Papers**

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- 8.1 The North Northamptonshire Upper Nene Valley Gravel Pits Special Protection Area Supplementary Planning Document – Addendum to the SPA SPD: Mitigation Strategy  
<http://www.nnjpu.org.uk/publications/docdetail.asp?docid=1584>

- 8.2 Visitor Access Study of the Upper Nene Valley SPA (Footprint Ecology, 2014) - <https://www.footprint-ecology.co.uk/work/reports-and-publications>
- 8.3 Submitted Northampton Local Plan Part 2 - <https://www.northampton.gov.uk/info/200205/planning-for-the-future/2553/northampton-local-plan-part-2-submission>