

**BATH & NORTH EAST SOMERSET CORE STRATEGY EXAMINATION****COUNCIL'S RESPONSE TO CAM VALLEY WILDLIFE GROUP AND  
SOMER VALLEY FRIENDS OF THE EARTH STATEMENTS RELATING  
TO STATUTORY AND REGULATORY REQUIREMENTS****Introduction**

1. Through document ID/7 the Inspector raised a number of questions relating to compliance with statutory and regulatory matters. These questions guided discussion at the Examination hearing session on 17<sup>th</sup> January 2012. The Cam Valley Wildlife Group and Somer Valley Friends of the Earth submitted a number of statements responding to the Inspector's questions relating to compliance with the Statement of Community Involvement (question B); Sustainability Appraisal (E); and Habitat Regulations Assessment (G). However, as these statements were submitted late the Inspector was unable to discuss the issues raised at the hearing session on 17<sup>th</sup> January and asked the Council to respond in writing. This statement is the Council's response.

**B) Has the CS been prepared in compliance with the Statement of Community Involvement (SCI)?**

2. As set out in BNES/4 the Council considers that the Core Strategy has been prepared in accordance with the Council's Statement of Community Involvement (SCI) (CD5/13) adopted in 2007.
3. The Cam Valley Wildlife Group (CVWG) and Somer Valley Friends of the Earth (SVFE) consider that the Council has failed to comply with SCI. The CVWG and SVFE state that the SCI requires the Council to consider responses to the Draft Core Strategy. The Council has failed to do this as not all 'duly made' representations by CVWG and SVFE are included in the schedule of responses and some documents are only partially recorded or not included.
4. CVWG and SVFE suggest (in their statement on Matter ID/7 1B) that failure to include a response to all representations in the schedule means:
  - Some representations/supporting information has not been viewed by the Inspector
  - Some groups could be deprived from making certain points
  - It is difficult for voluntary groups to engage in the process
  - Increased costs (of copying material 3 times for inclusion as appendices to statements at the Examination stage)
  - CVWG/SVFE responses highlighting B&NES failure to comply with Section 40 of the NERC Act have not been recorded (see paragraphs 14 to 16 below)
5. The Regulation 30(1)(d) Statement (Reg 25 participation/consultation) (CD5/8) and Regulation 30(1)(e) Statement (Regs 27 consultation) (CD5/9) articulate how

the Council has met the requirements of the adopted SCI throughout the preparation of the Core Strategy. Each statement includes a 'Statement of compliance with the Statement of Community Involvement'. See also Legal Compliance Assessment (CD5/29) and Soundness Toolkit (CD6/S1).

6. With regard to the CVWG and SVFE representations on the draft Core Strategy the Council analysed all of the representations submitted and those representations or elements of representations considered to be 'duly made' (i.e. directly related to the soundness of the draft Core Strategy and received during the consultation period) were included in the schedule of 'duly made' representations (as required by the Council's adopted SCI – see paragraph 3.20 of CD5/13). The schedule was made publicly available on the Council's website. In addition it should be noted that the Inspector was also supplied with a hard copy of all the representations received on the draft Core Strategy and supporting material supplied by respondents. Furthermore, a hard copy set of all of this material was also available to the public to view. Therefore, information supplied by CVWG and SVFE was able to be viewed and considered by the Inspector and the public. As such the material did not need to be copied again and supplied as Appendices to the CVWG and SVFE examination statements.
7. At each stage in the Core Strategy process the Council has, following analysis of all of the representations received, summarised the main comments made relating to soundness and responded to them. In accordance with the SCI (see paragraph 3.20 of CD5/13) the Council has produced consultation reports setting out this information (see CD5/8 and CD5/9). The Council is not required to respond to individual representations as it was through the Local Plan process. This is because the Examination is into the soundness of the DPD, and not an Inquiry relating to individual representations.
8. Whilst it may be more difficult for voluntary groups to engage in the Core Strategy process than professional organisations the Council has made significant efforts throughout the preparation process to keep such groups informed and encourage their engagement. The initiatives undertaken accord with the requirements of the SCI (see CD5/8 and CD5/9).

**E) Has the DPD been subject to sustainability appraisal (SA)? Does the SA show how different options perform and is it clear that sustainability considerations informed the content of the CS from the start?**

9. The Core Strategy has been subject to Sustainability Appraisal (SA) throughout the process as explained in Topic Paper 1 – Core Strategy Preparation Process (CD6/S2), BNES/4 and BNES/21 which list the SA documents.
10. In their statements on matters ID7/1A and 1E CVWG and SVFE raise concerns that the Core Strategy is based on insufficient baseline information and evidence, principally relating to biodiversity, wildlife and nature conservation. This lack of information also means that the sustainability of the Core Strategy

with regard to environmental impacts cannot be properly appraised. Furthermore, the insufficiency of information leads to the Council failing to comply with Section 40 of the Natural Environment and Rural Communities (NERC) Act 2006. The issue regarding information insufficiency is raised specifically in relation to the Somer Valley and in particular the Radstock Railway Land site. CVWG and SVFE therefore, consider that the strategy for this part of the District is inadequately informed and will significantly harm biodiversity, wildlife and nature conservation interests.

11. The Council considers that the Core Strategy is based on sufficient evidence and information relating to biodiversity, wildlife and nature conservation. The evidence used is appropriate and relevant to the objectives and nature of the Development Plan Document (DPD). The key documents/evidence (plans and strategies) are listed in the Core Documents List (principally under CD4, Environment section). The Core Documents List does not include all detailed evidence and information which informed both these plans and strategies and therefore, the Core Strategy. In addition to the national and regional review of nature areas the Council has access to significant levels of information relating to nature conservation (flora and fauna) within its District (principally collected and held by the Bristol Environmental Records Centre which is jointly funded by the West of England Unitary Authorities). This information is numerous, but an inventory of information held or examples could be supplied if required by the Inspector.
12. With regard to the issues raised in relation to the SA the Core Strategy and Site Allocations DPD SA Final Scoping Report (CD4/A1) outlines the approach taken to scoping the SA and the collection and analysis of baseline information. In order to assist the identification of key issues and use these to establish SA objectives, the scoping of existing policies and strategies, the baseline information and the identification of key sustainability, issues are grouped into topic based sections. These include 'Biodiversity, flora and fauna'. Each topic section leads to a number of specific SA objectives listed at the end of each section which are used to assess the sustainability effects of the DPD.
13. A summary of the results of the topic based scoping reviews is set out in the Scoping Report (CD4/A1) and the baseline information used is set out in Appendix B to the Scoping Report (CD4/A3). The scope of the SA and baseline information accords with the Strategic Environmental Assessment Regulations, which were transposed in the UK by the Environmental Assessment of Plans and Programmes Regulations 2004 (CD1/27). The Scoping Report was sent to statutory consultees. Natural England, Environment Agency and English Heritage as the consultation bodies with environmental responsibilities did not raise any objections to either the scope of the SA or the appropriateness of the baseline information.

14. CVWG and SVFE suggest that the lack of sufficient information on biodiversity and nature conservation results in the Council failing to comply with Section 40 of the NERC Act, 2006. Section 40(1) imposes a duty to conserve biodiversity:

*“Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.”*

Section 40(3) of the Act explains that:

*“Conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat”.*

The duty applies to all local authorities and extends beyond just conserving what is already there to carrying out, supporting and requiring actions that may also restore or enhance biodiversity.

15. The information relating to nature conservation and biodiversity used to inform preparation of the Core Strategy is outlined above. Both the information used and the resultant Core Strategy approach is considered by the Council to show that it has and will have regard to conserving biodiversity, thereby meeting its duty under the NERC Act. The strategic objectives in the Core Strategy include protecting and enhancing the District’s natural environment (and specifically helping to conserve, enhance and restore the diversity and resilience of the District’s wildlife). This strategic objective is followed through in the Plan’s policy approach, in both spatial strategy policies and the core policy on environmental quality (CP6).
16. The Core Strategy provides a framework for subsequent DPDs which will also ensure that nature conservation interests are appropriately taken into account. Specifically in relation to the Somer Valley the Core Strategy proposes only limited development in addition to that which is already committed. Sites will be allocated through the Placemaking Plan to provide for this development and this process will include further assessment of biodiversity and nature conservation interests within the policy framework set out in the Core Strategy. With regard to Radstock Railway Land (specifically referred to in the CVWG & SVFE statements) the site/proposed scheme has the benefit of planning permission (see also paragraphs 21 and 22 below).

**G) Have the requirements of the Habitat Regulations been satisfied?**

17. The Council considers that the requirements of the Habitat Regulations have been satisfactorily met in preparing the Core Strategy (see Topic Paper 1 – Core Strategy Preparation Process (CD6/S2) and BNES/4).
18. The CVWG suggest in their statement on matter ID7/1E (and supplementary Appendix) that the requirements of Habitat Regulations have not been met because the effects of the Somer Valley strategy (chapter 4) have not been

assessed properly. Specifically they are concerned that the important role the Radstock Railway Land site plays as a bat flight/commuting link between Bath-Bradford on Avon and Mells Valley SACs has not been acknowledged and adequately taken into account.

19. The Core Strategy Habitat Regulations Assessment (HRA) (CD4/A9 and CD4/A16) concluded that the spatial strategy for the Somer Valley set out in the Core Strategy was unlikely to have a significant effect on any European site, and so Chapter 4 (Somer Valley) need not be subject to more detailed review. This conclusion was based upon information available at the time and the following factors:
  - The proximity of the Somer Valley Area to European sites. Both the Mells SAC and the Bradford on Avon Bats SAC are located more than 5km from the existing urban areas of the Somer Valley (the main focus for development in this part of the District). This distance marks the extent of what is typically considered to be the main sustenance zones for the designated sites. Whilst it is known that individual bats will travel much further than this, for foraging, commuting between roosts, and for breeding, the key supporting hinterland is considered to be close to the SAC hibernation and breeding sites.
  - The low levels of total new development proposed for the Somer Valley area– up to 500 homes over and above that which is already committed
  - Strategic objective 2 and policy CP6 of the Core Strategy
  - Saved local plan policies relating to designated site protection
  - Recommendation to include a clear requirement within the Placemaking Plan to protect designated sites.
20. Natural England were consulted at all stages of the HRA process in terms of its methodology, scope and conclusions. They confirmed that it is ‘fit for purpose’ (see CD4/A22). Since the HRA was undertaken new survey information has come to light regarding Lesser Horseshoe bats roost on the boundary of the Radstock Railway Land site.
21. The Radstock Railway Land scheme has the benefit of planning permission and is therefore, treated as a commitment in the Core Strategy. In order to assist with on-going planning negotiations relating to the consented scheme and to test the HRA and resultant Core Strategy approach and conclusions the Council have commissioned an independent review of known bat activity for the site and adjacent areas. Dr Roger Ransome (as an expert of international standing in studies of Greater and Lesser Horseshoe bats and long term advisor to Natural England) was commissioned to undertake this review.
22. Dr. Ransome’s report ‘Former Railway Land at Radstock: Site Re-Development: Assessment of the potential impacts of proposed re-development on the Mells and Bath & Bradford on Avon SACs’ (January 2011) is available as CD4/ENV12. The report concludes that the approved and proposed development of the Radstock Railway Land site will have no significant harmful impacts on greater

horseshoe bat populations present in the Mells Valley and Bath and Bradford on Avon SACs if all the mitigation proposed as part of the planning consent is implemented. This supports the Core Strategy HRA conclusion that the spatial strategy for the Somer Valley is (subject to necessary and appropriate mitigation measures being implemented) not likely to have significant effects on the integrity of any European sites.

23. The bat survey information relating to the Radstock Railway land site and the mitigation approach proposed will be used to inform the Placemaking Plan in allocating sites to deliver the additional development set out in the Core Strategy. The Placemaking Plan will, where appropriate and necessary, require similar mitigation measures for other site allocations. Within the context of the conclusions of the Core Strategy HRA the detailed consideration of site allocations and mitigation measures will also be subject to further HRA associated with the Placemaking Plan.