



22 August 2017

Sing a Song of Sangs

SANGS can be taken into account by local authorities considering development proposals, but they must be real and deliverable, not hypothetical.

Much of the pressure on the planning system at present stems from the drive to increase delivery of new housing, particularly in the face of the housing delivery test coming into force in November 2017 pursuant to the Housing White Paper. It is inevitable that there will be increasing tensions between this aspect of the regime and other policies intended to protect both the natural environment and the built environment from overdevelopment.

Development versus protection

This tension is heightened in relation to development near land which is classified as greenbelt, greenfield land, areas of outstanding natural beauty and national parks. Some green spaces are afforded greater protection than others; particularly those designated as European sites or European offshore marine sites, which includes areas designated as Special Protection Areas, Special Areas of Conservation, and Ramsar wetlands sites ('protected sites').

These benefit from the protective measures contained in the Conservation of Habitats and Species Regulations 2010 (the 'Regulations'). Under the Regulations, the local planning authority ('LPA') must consider whether development proposals (alone or in combination) in the proximity of a protected site are likely to have a significant detrimental effect on it. If so, they should refuse consent, although mitigation measures can be taken into account (*R (Hart DC) v. Secretary of State* [2008] 2P&CR 16, para 76) including the provision of Suitable Alternative Natural Green Space ('SANGS').

"Developers who propose to build in the vicinity of a protected site must not only find space for the development itself, including any affordable housing component, but also find space for SANGS."

Providing an alternative

If SANGS is offered, it must be real and deliverable, not hypothetical (*R (Helford Village Company) v Kerrier DC* [2009] EWHC400 (Admin) paras 39, 40) and if financial contributions are to be made in lieu of contributing land for SANGS, they must be applied to some definite and achievable effective mitigation measures – simply making payments is not enough (*Wealden DC v SoS DCLG* [2017] EWCA Civ 39, paras 30-

34). This means that developers who propose to build in the vicinity of a protected site must not only find space for the development itself, including any affordable housing component, but also find space for SANGS. If pooled contributions are collected through CIL for smaller sites, for example, then the LPA must find the land and demonstrate that it is effective and deliverable as mitigation.

How is SANGS calculated?

LPAs' SANGS policies typically require a specific amount of new and/or improved green space for every new dwelling unit or per new floor-space of residential provision. This is required to be:

- within 0.5 to 1km of the new development;
- sufficiently large - around 8ha/1000 population and big enough to allow a 2.5km walk around it; and
- of sufficient quality that it will reasonably attract the local population to visit it, according to Natural England advice to several LPAs.

The idea of SANGS is not to replicate a protected site, but to provide easily accessible green space for every-day activities such as dog-walking, early morning runs, children playing on the way home from school, and a summer evening stroll. In other words, it is designed to take the pressure of 'ordinary' visits away from the protected site.

An obvious flaw

This is a sensible approach to mitigation, and aligns with other biodiversity substitution and compensation schemes which have been developed to enable development of land previously blessed by newts, bats or slow worms. In this context though there is an obvious flaw: it is precisely in those areas where the supply of housing land is already restricted (by topography, or the sea or river or along its boundaries, for example) where it will be the most difficult for developers to deliver the requisite amount of SANGS to satisfy the relevant LPA's policy.

Most SANGS policies provide a menu of options to fulfil their requirements: new green space, improved green space, and developing connectivity between existing green spaces, for example. In addition, there is a monitoring requirement, a form of 'self-assessment' as to how effective the measures are, with the uncomfortable pea under the mattress that additional measures might be required if those delivered are not, in fact, effective at diverting those 'everyday' trips to the protected areas. This at the very least means head counting and surveys of users.

If SANGS is to be provided on the development site itself, it might take up to a third of the available area. This clearly has severe implications for the viability of such schemes, and where viability is at issue, the first benefit to be compromised is often the provision of affordable housing. If this arises in areas where available land is in short supply, but the need for SANGS is enhanced by close proximity to protected sites, then there is a risk of stalemate: either there is no (or insufficient) housing development, or no SANGS is provided, with inevitable problems arising from either decision.

The SANGS effect, therefore, is one area where environmental protection is brought head to head with the push for more residential development. It is also an area that may be affected by post-Brexit legislative changes, when the UK will need to address the efficacy of the domestic regimes in relation to protected sites when European designations cease to have effect.

This article was first published by Estates Gazette on 11 July 2017.

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