

Vale of White Horse and South Oxfordshire District Councils

Habitat Regulations Assessment of Neighbourhood Plans

Implications of Recent European Court of Justice Judgment¹: Guide for Neighbourhood Planning Groups

What is a Habitat Regulations Assessment and How does it Relate to Neighbourhood Plans?

Habitat Regulations Assessments (HRAs) are carried out to determine whether a draft Neighbourhood Plan would have the potential to cause a likely significant effect on a Natura 2000 or European protected site.

Natura 2000 sites are EU-wide nature conservation sites established under the EC Habitats and Birds Directives.

These protected sites are often more commonly referred to as Special Areas of Conservation (SACs), Special Protection Areas (SPAs) and Ramsar sites². The HRA is required to consider the effect of the Neighbourhood Plan either in isolation or in combination with other plans and projects.

To put this into context, one of the 'basic conditions'³ neighbourhood plans must meet is that the making of the plan is not likely to have a significant effect on a European site (as defined in the Conservation of Habitats and Species Regulations 2017) either alone or in combination with other plans or projects. The HRA screening and/or Appropriate assessment has an important role in demonstrating whether or not a neighbourhood plan meets this basic condition.

The relevant over-arching legislation is the Conservation of Habitats and Species Regulations 2017 which transpose the European Habitats Directive 1992 and the Wild Birds Directive 2009 into English law.

As the Local Authority we are a 'competent authority'⁴ under the 2017 Regulations. 'Competent authorities' are required to make an appropriate assessment of the implications of a Neighbourhood Plan if that Plan is likely to have a significant effect on a European protected site or a European offshore marine site⁵ (either alone or in combination with other plans or projects).

On the 12 April 2018 the European Court of Justice (ECJ) issued a judgment in the above case which has led to significant changes in the way that Neighbourhood Plans are assessed for Habitat Regulations purposes.

¹ People Over Wind and Sweetman v Coillte Teoranta (Case C-323/17)

² Ramsar sites are internationally important wetland sites

³ See the Planning Practice Guidance website: paragraph 079 Reference ID: 41-079-20140306 Revision date: 06 03 2014 (<https://www.gov.uk/guidance/neighbourhood-planning--2#basic-conditions-for-neighbourhood-plan-to-referendum>)

⁴ 'Competent Authorities' are defined at Regulation 7 as being "(a) any Minister of the Crown (as defined in the Ministers of the Crown Act 1975(a)), government department, statutory undertaker, public body of any description or person holding a public office; (b) the Welsh Ministers; and (c) any person exercising any function of a person mentioned in sub-paragraph (a) or (b)."

⁵ See Regulation 63.

Previous Procedure

Up until April 2018, once the background information had been gathered, the standard procedure for assessing draft Neighbourhood Plans was to 'screen' the Plan's policies and/or allocation sites for 'likely significant effects' upon European sites, taking account of any mitigation set out in the draft Neighbourhood Plan. Where it wasn't possible to be certain that the draft Neighbourhood Plan's policies or allocation sites wouldn't have significant effects, taking any mitigation into account, an Appropriate Assessment would have to be carried out.

What has Changed

The recent judgment in the 'People over Wind' case⁶ confirmed that Article 6(3) of the Habitats Directive should be interpreted as meaning that any mitigation measures should no longer be taken into account at the HRA screening stage, rather they should be considered as part of an Appropriate Assessment.

This means that where we have previously screened draft Neighbourhood Plans and they haven't yet been 'made' (i.e. brought into effect following a referendum) it may be necessary for a new HRA screening exercise to be undertaken without taking into account any of the mitigation measures in the draft Neighbourhood Plan.

Our Support to You

It is strongly recommended that you speak to your Neighbourhood Plan lead officer at the earliest opportunity. They will help to determine whether further action may be required, this will ensure that any delays are minimised.

For more information please contact a member of the Neighbourhood Planning Team on 01235 422600.

Abbreviations:

HRA – Habitat Regulations Assessment
SAC - Special Areas of Conservation
SPA - Special Protection Areas
ECJ – European Court of Justice
IROPI - Imperative Reasons of Over-riding Public Interest
SEA – Strategic Environmental Assessment

⁶ Paragraph 40 of the judgment states: “.....the answer to the question referred is that Article 6(3) of the Habitats Directive must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of the measures intended to avoid or reduce the harmful effects of the plan or project on that site.”