

Otley Neighbourhood Development Plan

HABITATS REGULATIONS ASSESSMENT
SCREENING REPORT UPDATE SEPTEMBER 2018

1. Introduction

- 1.1 This update to the Otley SEA/HRA Screening Report (XX) has been produced as a result of the European Union Court of Justice Judgement in 'People over Wind' dated 12 April 2018. It considers whether the previous HRA screening report is compliant with the Judgement and if not, it highlights any actions proposed to ensure compliance.

2. The Judgement

- 2.1 This note is not intended to provide a legal synopsis of the Court of Justice's Judgment, but the following is noted:
- i. The preliminary ruling given in the Judgment is concerned with whether Article 6(3) of the Habitats Directive 92/43/EEC means that at the screening stage of a plan (or project) for Appropriate Assessment, it is possible to take account of "*measures intended to avoid or reduce the harmful effects of the plan (or project) on the site*" (emphasis added): J22; J27; J40;
 - ii. The phrase "*measures intended to avoid or reduce the harmful effects of the plan (or project) on the site*" means mitigation (or, as had been characterised by the subject screening report in the case, "*protective measures*"): J17, J25, J26 [see also: Orleans and Others, C-387/15 and C-388/15, EU:C:2016:583: J25];
 - iii. The Directive and Article 6, distinguishes this 'mitigation' from other conceptually different measures, defined as "*conservation*", "*preventative*" and "*compensatory*" which are provided for in Articles 6(1) [conservation: "...*involving appropriate management plans specifically designed for the sites or integrated into other development plans...which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites*"], (2) [preventative: "*steps to avoid...the deterioration of natural habitats...as well as disturbance of the species from which the areas have been designated...*"] and (4) [compensatory], respectively (J25). It is consistent with the Directive being silent on the separate concept of 'mitigation', that the Court found ultimately that at the screening stage for Appropriate Assessment, it is *not* possible to take account of mitigation, again characterised as "*measures intended to avoid or reduce the harmful effects of the plan (or project) on the site*";
 - iv. Consistent with the Directive, the Judgment is *not* authority for any proposition that at the screening stage for Appropriate Assessment, it is not similarly possible to take account of measures *other than* mitigation, including conservation, preventative, or compensatory measures [J22; J35 - J36; J40];
 - v. Separately, the *integration* of the *precautionary principle* within Article 6(3) and the possibility of preventing in an effective manner adverse effects on the integrity of protected sites [J30], is consistent with any requirement for Appropriate Assessment being a "...*probability or a risk that the plan [or project] in question will have a significant effect on the site concerned...*" and that

“...such a risk exists if it cannot be excluded on the basis of objective information that a plan [or project] will have a significant effect on the site concerned...The assessment of that risk must be made in the light inter alia of the characteristics and specific environmental conditions of the site concerned by such a plan or project” [J34] (emphasis added);

- vi. The assessment of risk in (v) takes account of all types of measures, *including* mitigation, which has already been completed (including under an adopted plan) at the date of the screening assessment. For, that assessment is undertaken of the characteristics and specific environmental conditions as they appear at the date of the screening assessment, rather than at some historic date prior to the completion of that mitigation or other measure. This avoids a theoretical, backdated exercise that fails to take account of present environmental conditions that incorporate or have benefitted from completed mitigation or other measures. The requirement under Article 6(3) to consider the effect of the plan (or project) “...*either individually or in combination with other plans and projects...*” does not exclude, for example, the consideration at screening stage of *completed* mitigation which has been delivered under another (adopted) plan.

3. HRA Screening Assessment Update

- 3.1 The HRA Screening process involves an assessment of any plan or project to establish if it has potential effects on European wildlife sites. The HRA Screening considers if the proposals in the neighbourhood plan have the potential to harm the habitats or species for which European wildlife sites are designated. European wildlife sites are:
- Special Protection Areas (SPA) designated under the Birds Directive (79/409/EEC)
 - Special Areas of Conservation (SAC) designated under the Habitats Directive (92/43/EEC).
- 3.2 In addition to SPA and SAC sites, Ramsar sites are designated under the Ramsar Convention (Iran 1971 as amended by the Paris Protocol 1992). Although they are not covered by the Habitats Regulations, as a matter of Government Policy, Ramsar sites should be treated in the same way as European wildlife sites. European wildlife sites and Ramsar sites are collectively known as Natura 2000 sites.
- 3.3 The initial screening stage of the HRA process determines if there are any likely significant effects possible as a result of the implementation of the plan (or project) and if an appropriate assessment is needed. This stage should provide a description of the plan and an identification of the Natura 2000 sites which may be affected by the plan and assess the significance of any possible effects on the identified sites.

Relevant Natura 2000 sites

- 3.4 As a general 'rule of thumb' it is identified that sites with pathways of 10-15km of the plan/project boundary should be included within a HRA. The South Pennine Moors Phase 2 SPA/SAC is the only international designated site within a 15km radius of the Otley Area boundary.
- 3.5 The South Pennine Moors Phase 2 SPA/SAC is the largest area of unenclosed moorland within West Yorkshire and contains the most diverse and extensive examples of upland communities in the county. An area of this European site covers a small part of north-west Leeds known as Hawksworth Moor. Extensive areas of blanket bog occur on the upland plateau and are punctuated by species rich acidic flushes and mires. There are also wet and dry heaths and acid grasslands. Three habitat types which occur on the site are rare enough within Europe to be listed on Annex 1 of the EC Habitats and Species Directive (92/43) EEC and justify the SAC designation. These Communities are typical of and represent the full range of upland vegetation classes found in the South Pennines.
- 3.6 The mosaic of habitats also supports a moorland breeding bird assemblage which, because of the range of species and number of breeding birds it contains, is of regional, national and European importance. The large numbers of breeding Merlin Falco Columbarius, Golden Plover Pluvialis Apricaria and Twite Carduelis Flavirotris together with the breeding assemblage are of international importance.

Consideration of the likely effects of the neighbourhood plan

- 3.7 The following questions will help to establish whether an Appropriate Assessment is required for the Otley NP:
- a) Is the Otley NP directly connected with, or necessary to the management of a European site for nature conservation?**
- 3.8 The South Pennine Moors Phase 2 SPA/SAC does not lie within the Otley Neighbourhood Area, therefore the ONP does not relate nor is directly connected with the management of the SAC. The policies in the Otley NP can only apply within the designated Neighbourhood Area, not outside.
- b) Does the Otley NP propose new development or allocate sites for development?**
- 3.9 No, the Otley NP does not propose new development or allocate sites for development however it does encourage certain types of development on certain sites and generally in the neighbourhood area. The impact of these will be assessed at the planning application stage. It seeks to shape and guide development that will come forward in the Neighbourhood Area.
- 3.10 It includes policies covering:
- Green Environment
 - Built Environment
 - Mixed Use developments

- Housing
- Employment
- Community Facilities and Services
- Transport and Travel

c) Are there any other projects or plans that together with the Otley NP could impact on the integrity of a European site, the ‘in combination’ effect?

Leeds Site Allocations Plan

3.11 The Site Allocations Plan is at Examination and Stage 2 of the Hearing Sessions concluded on 3 August 2018. The Council re-considered the [HRA Screening of the Site Allocations Plan](#) to determine whether the HRA Screening of the SAP could be considered legally compliant. It is appropriate to refer to the HRA Screening of the SAP, as this provides a summary of the Council’s position with regard to the ‘in combination’ effect.

3.12 The following points are noted:

- As set out in paragraphs 3.1 – 3.3 of EX35, the Council confirms that no mitigation measures as such (i.e. as characterised as mitigation in the Judgment), whether proposed under the SAP, or proposed or completed under an adopted plan, has been taken into account as part of any of the HRA Screening Stage Assessments.
- The Council also confirms that no other *new* measures, whether *conservation*, *preventative* or *compensatory* measures (i.e. as characterised under Directive 6(3)) proposed under the SAP has been taken into account as part of any of the HRA Screening Stage Assessments.
- There are in fact no such new measures required under the SAP because in light of the completed (conservation or preventative) measures deriving from adopted plans, the SAP does not require any measures to be put in place.
- In conclusion, the HRA Screening Stage Assessments that have been undertaken by the Council satisfy the requirements of the Directive and in particular, Article 6(3) when properly interpreted and in accordance with the Judgment.

3.13 The Council confirms the above notwithstanding that it could properly have been open to the Council to have taken into account *mitigation* delivered under a previous, adopted plan, and which had been completed in respect of one or more SAC sites before the screening assessments were undertaken.

Harrogate District Local Plan Submission Draft - Habitat Regulations Assessment August 2018 (submitted for examination 31/08/2018)

3.14 Harrogate BC revisited the HRA of the Submission Draft Local Plan following the ruling by the Court of Justice of the European Union to ensure that no mitigation was included in the screening process. Consequently, an Appropriate Assessment was required and undertaken as set out in the August 2018 document. The assessment considered the significant effects of three elements of the draft Local Plan – Growth Strategy, Draft Development Policies and Draft Allocations - under the following issues:

- Loss of land

- Urban disturbance
- Recreational pressure
- Water quantity and quality
- Pollution levels

3.15 For all but one of the above issues the assessment concludes that, due to certain policies in the draft Local Plan, the policies alone or in-combination with other projects or plans will not have a significant impact on European Sites. It does, however, identify that there will be an impact on air quality. This impact cannot be sufficiently assessed at this time before the Local Plan examination therefore work is ongoing and will continue during the examination. The Appropriate Assessment considers the South Pennine Moors Phase 2 SAC/SPA, particularly in relation to recreational pressures. It concludes that the Growth Strategy and draft Development Policies have the potential to locate development within 7Km of the South Pennine Moors Phase 2 SAC/SPA thereby increasing the likelihood of such pressure, however due to the provisions of other policies within the plan and the small number of proposals, significant environmental impacts are unlikely. Furthermore, due to avoidance measures in the Leeds Site Allocations Plan and the Bradford Core Strategy, it is not considered that any in-combination recreational impact on the North Pennine Moors SAC/SPA will be significant.

Otley Neighbourhood Plan

- 3.16 The Otley NP does not propose any development sites however it does encourage certain types of development on certain sites and generally in the neighbourhood area. The impact of these will be assessed at the planning application stage. It also contains policies that will help to shape new development within the area. Overall there are no identified likely significant effects of this Plan. The policies within the plan are required to be in general conformity with those of the development plan and the Council considers that the Otley NP meets this Basic Condition. The neighbourhood plan does not promote a greater amount of development than the Local Plan.
- 3.17 There are no identified likely significant effects on the South Pennine Moors SPA/SAC identified as a result of the Neighbourhood Plan therefore no mitigation measures are required, and the 'in combination' effect is properly addressed through the Council's conclusions in respect of the Site Allocations Plan HRA Screening. There are no new measures required under the SAP owing to the completed (conservation or preventative) measures deriving from adopted plans, the SAP does not require any measures to be put in place.
- 3.18 The above conclusions provide the background to, and the summary of, an assessment of any potential 'in combination' effects of the Otley NP. It is considered that the HRA Screening of the SAP is legally-compliant. The HRA Screening Update of the Otley NP builds on this, in particular that an appropriate assessment is not required.

4. HRA Screening Update Conclusion

- 4.1 It is considered that none of the policies in the Otley NP are likely to have a significant positive or negative effect on the South Pennine Moors SPA/SAC, and therefore the NP does not give rise to, or include, any mitigation measures.

- 4.2 In light of the above, it is considered that given that no likely significant positive or negative effects on the South Pennine Moors SPA/SAC are identified for the Otley NP either alone or in combination with other plans or projects, this HRA Screening Update therefore concludes that the Screening is legally-compliant in respect of the Judgement and therefore does not require further appropriate assessment.

5. Further European Union Court of Justice Ruling

- 5.1 On 25 July 2018 the Court of Justice (Second Chamber) ruled in the case of Grace, Sweetman and the National Planning Appeals Board Ireland (ECLI:EU:C2018:593).
- 5.2 The Judgement relates to how the conclusions of the Appropriate Assessment should be interpreted which in turn determines whether Article 6(3) or Article 6(4) of the Directive applies.
- 5.3 The trigger point for the Judgement to apply is once the Screening Stage has concluded that Appropriate Assessment of a plan or project is required. This HRA Screening Update concludes that Appropriate Assessment of the Otley Neighbourhood Plan is not required. As such this Judgement is not applicable.