Rushcliffe Local Plan Part 2: Land and Planning Policies

Habitats Regulations Assessment Addendum

Consideration of the Court of Justice of the European Union’s judgement: *People over Wind, Peter Sweetman v Coillte Teoranta*

July 2018

SUB/18
1. **Introduction**

1.1 On the 12 April 2018, the Court of Justice of the European Union (CJEU) issued a judgment which ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of an appropriate assessment (AA) and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage.

1.2 This judgement came shortly before the publication of Rushcliffe Borough Council’s Local Plan Part 2: Land and Planning Policies which commenced on the 16 May 2018. The Local Plan Part 2 Publication Version was accompanied by a completed Habitats Regulations Assessment (HRA) which screened the likely significant effects (LSE) of all the policies within the plan. It concluded that the plan would not have any significant effects alone or in combination with other plans or projects and mitigation measures were not required. Therefore an appropriate assessment of adverse effects on the integrity of internationally protected sites is not required.

1.3 In light of the CJEU judgment it was deemed necessary to review the screening of LSE to ensure it remains compliant with the Habitats Regulations.

**Rushcliffe Core Strategy Habitats Regulations Assessment**

1.4 The effect of Rushcliffe’s Local Plan Part 1: Core Strategy upon internationally protected nature conservation sites was assessed within the Greater Nottingham HRA (2012) prepared in support of the Core Strategies of Broxtowe, Erewash, Gedling, Nottingham City and Rushcliffe (the Greater Nottingham local planning authorities). As the level of development and its distribution within the Local Plan Part 2 is broadly consistent with the Core Strategy, the conclusions of the HRA for the Greater Nottingham Core Strategies are pertinent and have been considered.

1.5 The conclusion that the Local Plan Part 2 will not have a LSE mirrors the conclusions of the Greater Nottingham Core Strategies’ HRA, which did not identify any effects from development proposed in Rushcliffe upon the prospective Sherwood Forest Special Protection Area (SPA) (the only site identified in the HRA that the Greater Nottingham Core Strategies may affect). Critically, whilst effects upon the prospective SPA could not be ruled out (due to development in proximity to the site (outside Rushcliffe)), the Greater Nottingham Core Strategies’ HRA did not identify any mitigation measures within Rushcliffe.
1.6 No LSE also mirrors the Rushcliffe Core Strategy HRA Addendum which assessed effects of the east of Gamston/north of Tollerton strategic allocation (which was a main modification to the submitted Rushcliffe Core Strategy).

2. **Review of Local Plan Part 2: Screening of Likely Significant Effects**

   **Planning Inspectorate Note 05/2018**

2.1 Guidance produced by the Planning Inspectorate\(^1\) (PINS) sets out three scenarios regarding the screening of LSE and explains whether in each case, further work on the HRA are required.

2.2 These are:

   - If the HRA report identifies that the plan is likely to have significant effects on European site(s) and their designated features and an appropriate assessment of the plan has been carried out then **no further action is required**.
   - If the HRA report includes information that concludes that there are no pathways for the policies/allocations in the plan to cause significant effects on European site(s) and their designated features then **no further action is required**.
   - If the HRA report includes information that identifies likely significant effects on European site(s) and their designated features but concludes that they can be mitigated through avoidance or reduction measures (and does not go on to the AA stage) then **the following actions may be required**:  
     o The LPA should re-visit the screening assessment and confirm the extent to which they consider their HRA report is legally compliant in light of the judgment; or  
     o If the revised screening assessment concludes that an appropriate assessment is required this should be carried out; and  
     o Consider whether the appropriate assessment necessitates any main modifications to the plan. If the avoidance and reduction measures are adequate to exclude adverse effects on European site(s) integrity, the approach required is primarily a procedural one ensuring that the assessment has been undertaken where required.

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\(^1\) PINS Note 05/2018: Consideration of avoidance and reduction measures in Habitats Regulations Assessment: People over Wind, Peter Sweetman v Coillte Teoranta (May 2018)
Review

2.3 The HRA screening of Local Plan Part 2 comprised a complete assessment of every policy (including allocations). None of the policies were identified as likely to have a significant effect on an internationally protected nature conservation site and therefore did not require mitigation to avoid LSE (now deemed contrary to the Habitats Regulations following the judgement) or an appropriate assessment.

2.4 The principle reason for these conclusions is the distance of these sites from the prospective SPA and the existence of more easily accessible alternative recreational areas within Rushcliffe (notably the River Trent Corridor, Country Parks and accessible countryside).

2.5 Whilst the HRA of the Local Plan Part 2 has also drawn conclusions from the HRA of the Core Strategies, and this HRA has identified mitigation measures which avoid LSE (now determined contrary to the Habitats Regulations), these mitigation measures are required to address effects of development within Gedling Borough, close to the prospective SPA, not Rushcliffe Borough. As no mitigation is required to address effects of development within Rushcliffe, pertinent elements of the Core Strategies’ HRA are not affected by the CJEU judgement.

2.6 This position has been agreed by Natural England who, though not yet in a position to provide detailed guidance, have confirmed that it considers the plan is legally compliant and sound (see Appendix A). It advises that as the plan’s HRA does not involve any mitigation measures at the screening stage it would be unlikely to be impacted by the judgement. The Greater Nottingham Core Strategies’ HRA also does not identify mitigation issues within Rushcliffe’s area.

2.7 Considering the above and the PINs guidance note, Rushcliffe Borough Council, as the competent authority responsible for the HRA, determines that no further action is required as the HRA report for Local Plan Part 2 includes information that concludes that there are no pathways for the policies/allocations in the plan to cause significant effects on European site(s) and their designated features.
Appendix A: Natural England Advice
This form has two parts:

**Part A** – Personal details

**Part B** – Your representation(s). Please fill in a separate part B for each issue/representation you wish to make.

Please read the Representation Guidance Notes (available separately) and the Data Protection Notice (see below) before completing the form.

**Part A** (Please complete in full; in order for the Inspector to consider your representations you must provide your name and postal address).

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Representations must be received by 5pm Thursday 28 June 2018. Representations received after this time will not be considered duly made.
Part B (please use a separate Part B form for each representation)

Name/Organisation: NATURAL ENGLAND

3a. To which document does your response relate? (please tick one)

- Local Plan Part 2 Publication Version
- Local Plan Part 2 Policies Map
- Other supporting document
 请选择 which:
  - Habitat Regulations Assessment

3b. To which part of the document does this representation relate? (complete all that apply)

- Page no. 点击此处输入文本
- Paragraph no. 点击此处输入文本
- Policy ref. 选择项目
- Site ref. 选择项目
- Policies Map 点击此处输入文本

4. Do you consider the Local Plan Part 2:

- 4(1) Legally compliant
  - Yes [✓]
  - No
- 4(2) Sound
  - Yes [✓]
  - No
- 4(3) Complies with the Duty to Co-operate
  - Yes [✓]
  - No

→ If you have selected No to Question 4(2), please continue to Question 5.
→ In all other circumstances, please go to Question 6.

What makes a Local Plan “sound”?

Positively prepared - the plan should be prepared in a way that meets the need for housing and other development, including infrastructure and business development.

Justified – the plan should be based on evidence, and be the most appropriate strategy for the district when considered against other reasonable alternatives.
Effective – the plan should be deliverable; the housing and other development should be capable of being carried out.

Consistent with national policy – the plan should enable sustainable development and be consistent with the policies in the National Planning Policy Framework (NPPF).

5. If you consider the Development Plan is UNSOUND, do you consider this to be because it is NOT: (please tick all that apply)

- Positively Prepared
- Effective
- Justified
- Consistent with national policy

6. Please give reasons for you answer to Questions 4(1), 4(2), 4(3) and 5, where applicable.

You may also use this box if you wish to make representations on one of the Local Plan Part 2’s supporting documents (e.g. Sustainability Appraisal, Habitat Regulations Assessment or Equalities Impact Assessment). You can attach additional information but please make sure it is securely attached and clearly referenced.

Natural England welcomes the Habitat Regulations Assessment. Based on the information provided Natural England is satisfied that the HRA screening report covers our concerns and agrees with the Report’s conclusions that the Local Plan (part 2) policies would not be likely to have a significant effect on European Sites or on the Sherwood Forest prospective SPA either alone or in combination with other plans or projects.

With respect to the implications resulting from the recent decision of the Court of Justice of the European Union, People over Wind & Sweetman v Coillte Teoranta, Natural England is currently taking legal advice on this situation. Therefore we are not yet in a position to provide any detailed guidance on this matter. However as the Rushcliffe Local Plan’s HRA does not involve any mitigation measures at the screening stage it would unlikely to be impacted by this case. The Aligned Core Strategy HRA also does not identify mitigation issues within Rushcliffe’s area. However Natural England suggests that your authority seek their own legal advice on any implications of this recent ruling for your decision making on this plan.

7. Please set out what change(s) you consider necessary to make the Local Plan Part 2 legally compliant or sound, having regard to your responses to Questions 5 and 6. You will need to say why this change will make the Local Plan Part 2 legally compliant or sound. It will be helpful if you could put forward your suggested revised wording of any policy or text. Please be as precise as possible.

(If you are suggesting that the Local Plan Part 2 is legally compliant or sound please write “Not applicable”).

Click here to enter text.

Representations must be received by 5pm Thursday 28 June 2018. Representations received after this time will not be considered duly made.
8. If your representation is seeking a change, do you consider it necessary to participate at the hearing sessions of the Public Examination? (please tick one box only)

**Yes**, I wish to appear at the examination

**No**, I do not wish to participate at the hearing session at the examination. I would like my representation to be dealt with by written representation

If you have selected **No**, your representation(s) will still be considered by the independent Planning Inspector by way of written representations.

9. If you wish to participate at the hearing sessions of Public Examination, please outline why you consider this to be necessary:

[Click here to enter text.]

**Please note:** the Planning Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate at the hearing session of the examination.

10. Please indicate if you wish to be notified that: (please tick all that apply)

- The Local Plan Part 2 has been submitted for independent examination.
- The recommendations of the Planning Inspector appointed to carry out the independent examination have been published.
- The Local Plan Part 2 has been adopted

Date form completed: 19/06/2018

Please return the completed form by **no later than 5pm on Thursday 28 June 2018** to:

localdevelopment@rushcliffe.gov.uk; or

Planning Policy
Rushcliffe Borough Council
Rushcliffe Arena
Rugby Road,
(Electronic copies of this form are available to download at www.rushcliffe.gov.uk/planningpolicy).

If you have any questions, please contact the Planning Policy team by telephone on 0115 981 9911, or email at localdevelopment@rushcliffe.gov.uk

Data Protection Notice

The personal information you provide will only be used by Rushcliffe Borough Council, the Data Controller, in accordance with General Data Protection Regulation 2016/Data Protection Act 2018 to undertake a statutory function (also known as a ‘public task’)

Your personal information will be shared with the Planning Inspectorate in connection with the above purpose.

Your personal data will be kept in accordance with the Council’s retention policy and schedule. Details of which can be found on the Council’s website at http://www.rushcliffe.gov.uk/retention_schedule/

Your data protection rights are not absolute and in most cases are subject to the Council demonstrating compliance with other statutory legislation, for further information see http://www.rushcliffe.gov.uk/privacy/

Representations will be available to view on the Borough Council’s website, but any signatures, addresses, email addresses or telephone numbers will not be included. However, as copies of representations must be made available for public inspection, comments cannot be treated as confidential and will be available for inspection in full.