



Consultation Draft Habitats Regulations Assessment of the Broxtowe Borough Council Part 2 Local Plan

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Fleming Ecology Ltd



Client: Broxtowe Borough Council – Steffan Saunders
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Summary

Broxtowe Borough Council is preparing its Local Plan; this is known as the 'Broxtowe Part 2 Local Plan' (or *the Plan*). This new plan identifies the detailed allocations and policies which it is anticipated will deliver the strategic policies already adopted in the Greater Nottingham Aligned Core Strategy (ACS).

As required by the Conservation of Habitats and Species Regulations 2017 (the *Habitats Regulations*), the Council must assess the impact of the proposed policies and allocations on the internationally important sites for biodiversity in and around the Borough. Together, these Special Protection Areas, Special Areas of Conservation and Ramsar sites are known as European sites and the process is called *Habitats Regulations Assessment* (HRA).

HRA asks very specific questions of a local plan. Typically, it first “*screens*” the plan to identify which policies or allocations may have a *likely significant effect* (LSE), *alone or (if necessary) in combination* with other plans and projects, on the European sites. If LSEs can be ruled out, then the plan may be adopted (notwithstanding any other issues). If they cannot, the plan must be subjected to the greater scrutiny of an ‘*appropriate assessment*’ to find out if it may result in an *adverse effect on the integrity* (AEOI) of the European sites. Again, if AEOI can be ruled out, the plan may be adopted. At this stage, but only if necessary, the plan should be amended to *mitigate* any problems, which typically means that some policies or allocations need to be modified or, more unusually, may have to be removed altogether. If mitigation is unable to rule out AEOI then derogations may be sought but only as a last resort and few local plans would be expected to pass these additional tests.

In certain circumstances, an HRA can draw on earlier assessments if they remain valid ie if they can be shown to be *robust and up to date* with no material changes. This can allow previous decisions to be adopted so saving time and reducing unnecessary duplication. This is the case here.

Consequently, this HRA of the Part 2 Local Plan evaluated the HRA of the ACS carried out in 2010/12 and, where possible, adopted its conclusions. Where it was not able to do so or where there was uncertainty, the policies and allocations were scrutinised as normal.

In all, thirty-two policies were screened; the individual outcomes for each policy and allocation can be found in Appendix A and are summarised in Table 8. Overall, and despite an increase of 18% in the proposed housing numbers above and beyond that assessed in the ACS, this HRA found that likely significant effects could be ruled out alone for all thirty-two. Consequently, there was no need for an in-combination assessment and no need for an appropriate assessment. There is, therefore, no need for any further scrutiny of the Plan under the Habitats Regulations.

This document followed best practice, drawing heavily, in particular, on guidance contained within the Habitats Regulations Assessment Handbook¹, and took full account of current Government and European policy and law.

This HRA has been prepared for Broxtowe Borough Council however, the decision whether to adopt its findings or not, lies with the Council.

¹ Tyldesley, D., and Chapman, C., (2013) *The Habitats Regulations Assessment Handbook*, July 2018 edition UK: DTA Publications Ltd

1. Introduction

Background

- 1.1. In 2010, Broxtowe Borough Council, along with its neighbours Nottingham City Council and Gedling Borough Council, produced the Greater Nottingham Aligned Core Strategy (ACS) to identify the strategic vision and objectives of the three local authorities. This included provision for 30,550 new dwellings up until 2028 across the three Council areas.
- 1.2. Broxtowe Borough Council is now independently preparing the second stage in that process: The Broxtowe Part 2 Local Plan. When adopted this will deliver the aims of the ACS by identifying detailed allocations and policies that will influence development across the 80 square kilometres of the Council area until 2028.
- 1.3. Broxtowe's Part 2 Local Plan allocates land for the construction of 2,820 new dwellings. When combined with other consented applications, this will allow the Council to deliver a total of 7,249 new homes over the Plan period (including those already built).
- 1.4. Importantly, this means the Local Plan makes provision for 1,099 (or 18%) more dwellings in the Borough than identified in the ACS (7,249 compared with 6,150) although effectively all of the additional dwellings will be located in the south of the Borough. The additional housing numbers have been included to provide flexibility in the supply to help the borough meet the ACS minimum target given the likelihood that some sites may not come forward for development as planned. Apart from this though, the overall approach is essentially the same as that anticipated in 2012. In terms of the wider ACS this represents an increase of 3.6% in the number of new dwellings. However, it is important to understand that the new target is a *maximum* of 7,249 whereas the original ACS target was for a *minimum* of 6,150.
- 1.5. The Habitats Directive requires² *competent authorities*, in this case the Council, to evaluate the impact of development plans on the Natura 2000 network of protected sites. The Directive is given domestic effect by the Habitats and Species Regulations 2017³ (the *Regulations*) and the evaluation process is delivered via a *Habitats Regulations Assessment (HRA)*, specifically, Regulation 105.
- 1.6. The ACS was subjected to HRA between 2010/12. Given the high-level, strategic role of the ACS, that HRA only assessed the overall increase in population and the broad locations for new development. Specific locations were not assessed as this information was simply not available at the time. Correspondingly, this HRA must assess whether the specific allocations now proposed in the Plan would affect these protected sites as a result of the scale and location of the development.
- 1.7. Nottingham City Council faces similar issues and has recently completed the HRA⁴ of its emerging plan; the Land and Planning Policies Development Plan Document (LAPP). This embraced Defra guidance to adopt elements of the ACS HRA where possible. This HRA also takes this approach and for ease of comparison, even adopts a similar style and language in places; certain diagrams are common to both reflecting the strong influence of the Handbook from which they are drawn. Gedling Borough Council adopted its Local Planning Document (Part 2 Local Plan) in July 2018. To avoid duplication, information contained within the ACS HRA is not repeated here; readers are referred to the original reports for information on European sites, the ACS and matters of opinion.
- 1.8. Although there are good reasons to believe that the full allocation of new dwelling is not expected to be built out in full, as a precautionary approach, this HRA assumes that they will. It therefore represents a worst case scenario and there can be some confidence that the scale of any negative outcomes will actually be considerably less in reality.

² Case C-6/04: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland judgment of the Court 20 October 2005.

³ The Conservation of Habitats and Species Regulations 2017 SI No 1012

⁴ Shadow Habitats Regulations Assessment to inform the assessment of the Local Plan Part 2 (Submission Version) by Nottingham City Council. DTA Ecology. 25 September 2018.

- 1.9. Finally, although this HRA has been prepared to help the Council discharge its duties under the Habitats Regulations, the Council is the competent authority and it must decide whether to adopt the conclusions and recommendations this report, or otherwise, for the purpose of their own assessment.

Natura 2000, European sites and the HRA of Local Plans

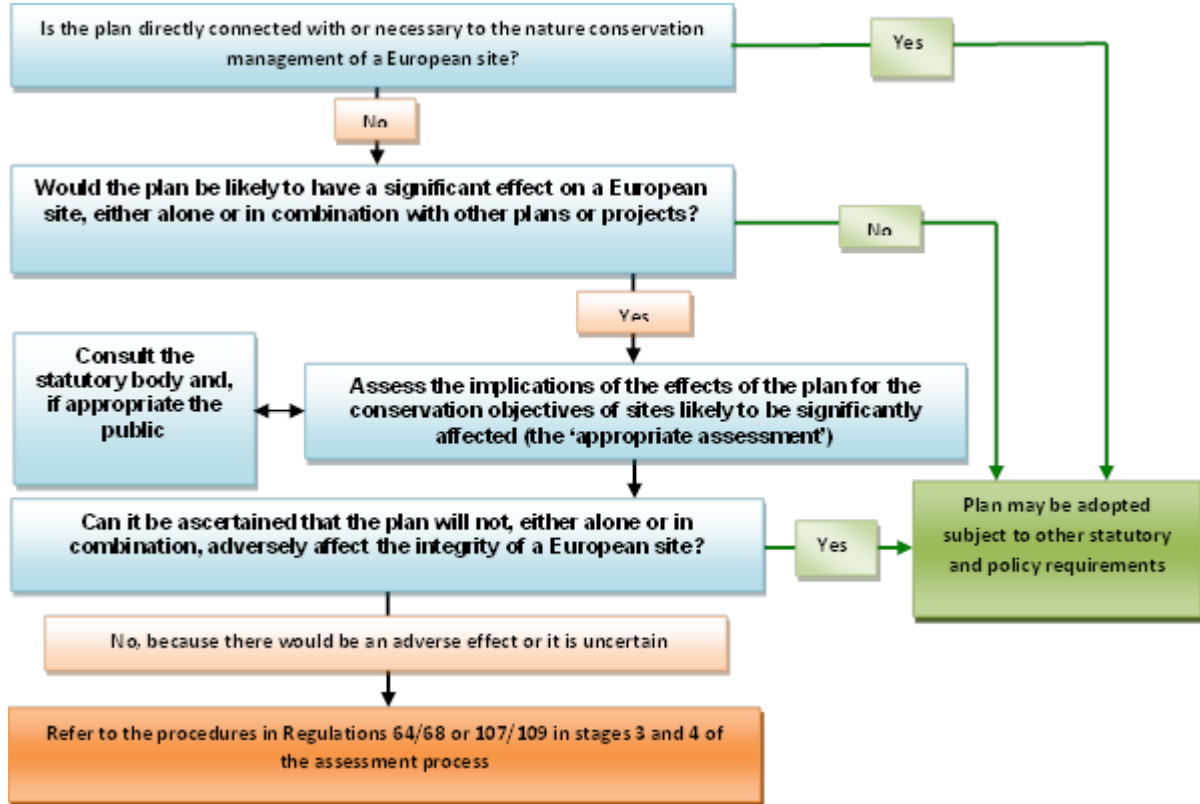
- 1.10. Natura 2000 is the cornerstone of European nature conservation policy, an EU-wide network of Special Protection Areas (SPA) classified under the 1979 Birds Directive and Special Areas of Conservation (SAC) designated under the 1992 Habitats Directive. Together, the network comprises nearly 28,000 sites extending across 18% (over 1.3 million km²) of the land and sea area of the EU28⁵ and safeguards the most valuable and threatened habitats and species across Europe; it represents the largest, coordinated network of protected areas in the world.
- 1.11. In England, Natura 2000 sites are referred to in law and elsewhere as *European sites* which, according to Government policy⁶, also comprise 'Wetlands of International Importance' (Ramsar sites) Importantly, European sites also include the relevant 'proposed' or 'potential' sites which have not yet been formally designated. SPAs and SACs are, respectively, 'classified' or 'designated' for a range of habitats and species which are referred to as 'qualifying features'.
- 1.12. The 'prospective' SPA of Sherwood Forest does not represent a formal European site (defined by Regulation 8 of the Habitats Regulations) as although evidence does support future classification, no formal steps have been taken to pursue this. However, as a precautionary approach in terms of planning, it is considered by the Council and by this HRA to be fully classified. The prospective SPA comprises a number of discrete land parcels that extend across a wide expanse of land just to the north of the Borough and is based on the Sherwood Forest Important Bird Area (IBA) identified by RSPB (as part of Birdlife International) as a site that is of great importance for the conservation of wild birds. IBAs are selected according to a rigorous set of internationally-agreed criteria albeit with regional thresholds.
- 1.13. Although over 8% of the UK land area forms part of this network, there are no European sites within the administrative area of Broxtowe. However, a number, including Rutland Water and the Peak District Dales can be found further afield.
- 1.14. The HRA decision-making process is graphically represented in Figure 1.

⁵ Natura 2000 Barometer

<https://view.officeapps.live.com/op/view.aspx?src=http://ec.europa.eu/environment/nature/natura2000/barometer/docs/Natura%202000%20barometer.xlsx> accessed 14 October 2018

⁶ ODPM Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System (16 August 2005)

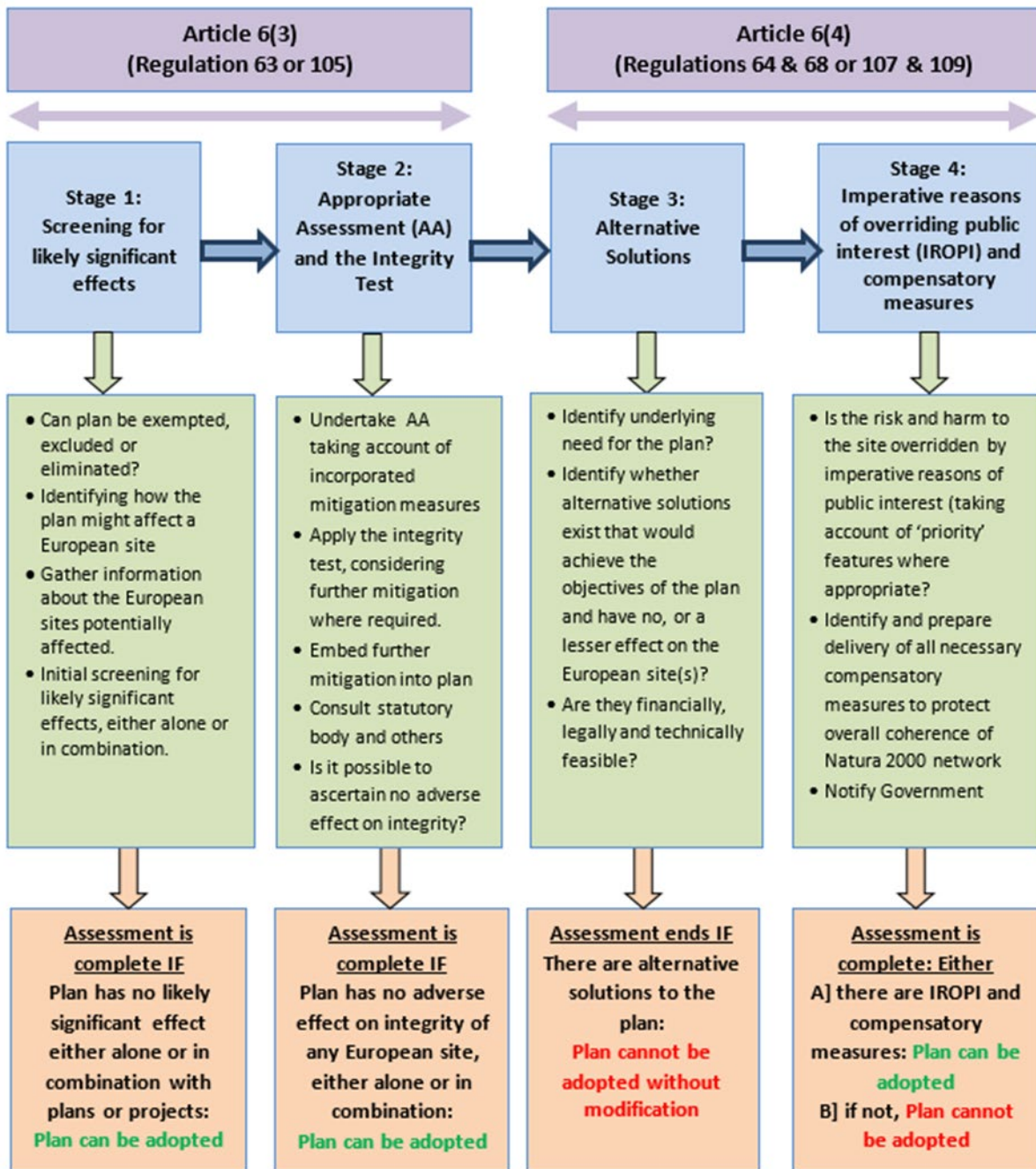
Figure 1: Consideration of development proposals affecting European sites



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1.15. The relationship between all four stages is shown in Figure 2 which set out the four key 'stages of the HRA process'.

Figure 2: The four stage assessment of plans under the Habitats Regulations



Extract from *The Habitats Regulations Assessment Handbook*, www.dtapublications.co.uk
(Amended to take account of People Over Wind decision)

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- 1.16. Essentially, the both charts show that if harmful effects can be ruled out during screening or appropriate assessment (Stages 1 and 2), a plan can escape further scrutiny under the Habitats Regulations. In reality, the vast majority of local plans are resolved in Stages 1 and 2 as by their nature few, if any, would pass the stringent tests of Stages 3 and 4.

Definitions, Process, Evidence, the Precautionary Principle, Case Law and competent authority co-ordination

- 1.17. The specific meaning of key terms and tests in HRA is of great importance. Drawing on Section C.7 of the Handbook and other sources the following definitions, embedded in case law apply to key words and stages in the overall HRA process

Stage One - Screening

- ‘Likely’ in the context of ‘a likely significant effect’ means ‘a possible significant effect; one whose occurrence cannot be excluded on the basis of objective information’⁷; therefore, ‘likely’ means a possibility or a risk and so differs from the normal English meaning of a probability;
 - Objective information⁸ means clear verifiable fact rather than subjective opinion ...
 - ‘Significant’, in the same context, means ‘any effect that would undermine the conservation objectives for a European site ...’⁹
 - There should be “credible evidence that there was a real, rather than a hypothetical, risk” of effects that could undermine the site’s conservation objectives (Boggis¹⁰).
- 1.18. The Bagmoor ruling¹¹ further clarified the differing levels of scrutiny which apply at screening and appropriate assessment as follows:
- ‘If the absence of risk ... can only be demonstrated after a detailed investigation, or expert opinion, [then] the authority must move from preliminary examination to appropriate assessment’.*
- 1.19. For the avoidance of doubt, an *in-combination* assessment is required only where an impact is identified which would have an insignificant effect on its own (‘a residual effect’) but where likely significant effects may arise cumulatively with other plans or projects.

Stage Two – Appropriate Assessment and the Integrity Test

- 1.20. Fundamentally, the HRA process employs the precautionary principle and Regulation 105¹² ensures that where a plan is ‘likely to have a significant effect’, it can only be adopted if the competent authority can ascertain (following an appropriate assessment) that it ‘will not adversely affect the integrity of the European site’ (or AEOI). In simpler terms, it is not for the competent authority to prove harm but for the plan proposer to demonstrate its absence.
- 1.21. Further, the Supreme Court (Champion)¹³ has found ‘appropriate’ is not a technical term and indicates no more than that the assessment should be appropriate to the task in hand.
- 1.22. Prior to this, para 20 of ODPM Circ. 06/2005 described the *integrity* of a European site as *the coherence of its ecological structure and function, across its whole area, that enables it to sustain the habitat, complex of habitats and/or the levels of populations of the species for which it was classified*

⁷ European Court of Justice Case C – 127/02 *Waddenzee* 7 September 2004

⁸ European Court of Justice Case C – 127/02 *Waddenzee* 7 September 2004

⁹ Peter Charles Boggis and Easton Bavants Conservation v Natural England and Waveney District Council, High Court of Justice Court of Appeal case C1/2009/0041/QBACF Citation No [2009] EWCA Civ. 1061 20th October 2009

¹⁰ Peter Charles Boggis and Easton Bavants Conservation v Natural England and Waveney District Council, High Court of Justice Court of Appeal case C1/2009/0041/QBACF Citation No [2009] EWCA Civ. 1061 20th October 2009

¹¹ Bagmoor Wind Limited v The Scottish Ministers Court of Sessions [2012] CSIH 93

¹² Change in Regulation numbers from previous HRA relates to consolidation of the 2010 Regulations in 2017

¹³ R (on the application of Champion) v. North Norfolk District Council [2015] UKSC 52.

- 1.23. In the Sweetman case¹⁴ integrity was defined as: *‘the lasting preservation of the constitutive characteristics of the site ... whose preservation was the objective justifying the designation of that site’*

Stages Three and Four – The Derogations

- 1.24. If AEOI cannot be avoided, derogations would have to be sought to allow the plan to continue; these are regarded as a last resort¹⁵ and considered only in exceptional circumstances. These explore whether alternative solutions are possible and if they are not, whether imperative reasons of overriding public interest apply and if so, whether compensation is feasible. These latter stages are not shown in Figure 1 but are summarised in Stages 3 & 4 of Figure 2.

Overall

- 1.25. Underpinning all these stages definitions however, is recognition¹⁶ that any assessment had to reflect the actual stage in the strategic planning process and the level of evidence that might or might not be available: *“Each ... assessment ... cannot do more than the level of detail of the strategy at that stage permits”* (Feeney)¹⁷.

Mitigation and recent case law

- 1.26. Recently, the European Court of Justice (CJEU) ruled on the People Over Wind¹⁸ case and provided a new interpretation of when and how mitigation measures should be considered in an HRA. In departing from previous decisions, it makes clear that measures designed specifically to avoid or reduce likely significant effects should not be taken into account at the screening stage but reserved for evaluation as part of the appropriate assessment. For the avoidance of doubt, this HRA takes full account of this new ruling.

Competent authority co-ordination

- 1.27. Defra guidance¹⁹ (Para. 5) explains that Regulation 67 enables *‘... competent authorities to adopt the reasoning or conclusions of another competent authority as to whether a plan or project is likely to have a significant effect on ...or adversely affect the integrity of a European site’ ...’*
- 1.28. The following paragraph goes further by stating (emphasis added): *‘... competent authorities should adopt the reasoning, conclusion or assessment of another competent authority in relation to the appropriate assessment requirements for a plan or project, if they can’.*
- 1.29. Earlier paragraphs provide examples where, and how this could be used to *‘...simplify the assessment process and reduce its time and costs ...’* including (again with emphasis added):
‘... where previous decisions have been taken in relation to the appropriate assessment requirements for a plan or project, competent authorities should adopt the parts of the earlier assessment that are robust and have not been outdated by further information or developments...’
- 1.30. That this approach should not weaken the protection afforded to the network of European sites is made clear in Paragraph 6 that in each case (with emphasis added):
‘... competent authorities remain responsible for ensuring their decisions are consistent with the Habitats Directive, so must be satisfied:

¹⁴ Sweetman EU:C:2013:220 para 39

¹⁵ European Commission, 2012, Guidance document on Article 6(4) of the ‘Habitats Directive’ 92/43/EEC. Clarification of the concepts of: alternative solutions, Imperative reasons of overriding public interest, compensatory measures, overall coherence, opinion of the Commission. 200/2012

¹⁶ Opinion of advocate general Kokott, 9th June 2005, Case C-6/04. Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

¹⁷ Sean Feeney v Oxford City Council and the Secretary of State CLG para 92 of the judgment dated 24 October 2011 Case No CO/3797/2011, Neutral Citation [2011] EWHC 2699 Admin

¹⁸ [Case C/323-17 People Over Wind](#)

¹⁹ Guidance on competent authority coordination under the Habitats Regulations. July 2012

- No additional material has emerged ... that means the ... assessment has become out of date (and)
- The analysis ... they are adopting is rigorous and robust.

1.31. The focus on the need of the existing HRA to be robust and up to date is clear which is perhaps why, Paragraph 7 acknowledges that it may:

- *'... only (be) appropriate to adopt some elements of an earlier assessment.'*

1.32. Although much of Defra's guidance refers specifically to appropriate assessment, Fleming Ecology is of the opinion that the underlying approach can be reasonably and safely applied to the screening assessment as well. Furthermore, Fleming Ecology believes that on the basis of Regulation 67 and opinion provided in the Handbook that it is entirely reasonable for the Council to explore whether aspects of the ACS HRA can be adopted for use in this assessment.

1.33. The next section of this HRA therefore addresses which elements of the Plan can be considered to have already been assessed by the ACS HRA of 2010/12. It starts by evaluating whether the ACS HRA followed best practice before evaluating each step in the screening process e.g. the identification of the European sites considered to be at risk, the evaluation of that risk and so on. It finishes by evaluating whether the ACS HRA can be considered to be meet Defra's requirements that it should be both robust and up to date.

2. The Habitats Regulations Assessment of the Aligned Core Strategy

- 2.1. The ACS was subjected to HRA between 2010 and 2012. It is clear that it was based on the most up to date policy, guidance and best practice at the time. Indeed, the author of the ACS HRA was (and remains) the leading, independent authority on HRA methodology who went on to produce the HRA Handbook relied upon for guidance by this HRA. In other words, even though some techniques have changed or been refined, due to case law and other influences, the overall approach of the ACS HRA cannot be doubted. In addition, the assessment process employed followed a similar pattern to that endorsed today in the Handbook.
- 2.2. Therefore, as encouraged in the HRA Handbook today, the ACS HRA began by first identifying those European sites at risk from the policies and proposals of the ACS. By utilising a series of robust, repeatable, evidence-based, geographical and ecological criteria, it identified those sites in the area that could be vulnerable to changes such as direct land-take, pollution and recreational pressure, irrespective of distance from the ACS area.
- 2.3. This process initially identified seven European sites at risk from proposals within the ACS as listed below. As there are no European sites within the Borough, all were to be found in neighbouring administrative areas.

Table 1: The initial list of European sites that could be affected

| European site (within the Plan area) | European site (outside the Plan area) |
|--------------------------------------|---------------------------------------|
| None | Birklands and Bilhaugh SAC |
| | South Pennine Moors SAC |
| | South Pennine Moors SPA |
| | Peak District Dales SAC |
| | Rutland Water SPA |
| | Rutland Water Ramsar site |
| | Sherwood Forest prospective SPA |

- 2.4. Curiously, this exercise did not specifically identify or provide any assessment of two small European sites to the west of the ACS area: Gang Mine SAC and Bees Nest and Green Clay Pits SAC. However, the process did not require exclusions to be justified, only to provide a rationale for those that were. Despite this, their distance from the plan area (some 19km as the crow flies from the nearest allocation), the lack of hydraulic connectivity, sensitive management of the former by the Derbyshire Wildlife Trust, distance from major roads and population centres all suggest a lack of any credible threat and, therefore, we can therefore be confident the site selection exercise was comprehensive and thorough.
- 2.5. It is worth noting at this point to acknowledge a decision made early in the process of the ACS HRA that ruled out completely any effects on the River Mease and Humber Estuary European sites from the disposal of waste water. The former was excluded as no waste water is pumped into (or water abstracted from) the Mease as its catchment lies beyond the boundaries of Greater Nottingham. In contrast, the Humber, though 95km distant, has a direct hydraulic link with the Greater Nottingham area via the River Trent. However, the competent authority for the discharge of water, the Environment Agency, generally discount the effect of discharges on European sites more than 50k away. Therefore, likely significant effects were ruled out. As this factor is relatively immune from increases in housing, **this outcome of the ACS HRA can be regarded as reasonable and robust**

and so can be adopted meaning there is no need for further consideration of this issue on those sites; neither European site was considered vulnerable to any other threat.

- 2.6. Similarly, likely significant effects were also ruled out on Rutland Water SPA in terms of recreational pressure on account of the comprehensive visitor management measures in place which safeguard otherwise vulnerable bird populations from disturbance. As this factor is relatively immune from increases in housing, **this outcome of the ACS HRA can be regarded as reasonable and robust and so can be adopted** meaning there is no need for further consideration of this issue. Again, Rutland Water was not considered vulnerable to any other threat so was removed from the assessment process.
- 2.7. It is also noteworthy that the ACS and its HRA applied to a much larger area than Broxtowe and to a greater range of impacts. Therefore, the adoption of its site selection process represents a very precautionary approach and not all threats identified will relate to matters that apply just to Broxtowe.
- 2.8. Importantly, the ACS HRA assessed the level of *growth* provided for by the Core Strategy. This was largely defined by the ambition to deliver 30,550 new homes across the three Council areas and accordingly, the ACS HRA first identified a range of possible threats typically associated with large-scale residential development. An initial sift then identified that there was credible evidence to suggest that the following sites could be vulnerable to the potential threats as shown in Table 2 below:

Table 2: Pressures, Rationale and European sites

| Potential threat | Rationale | European sites |
|--------------------------|--|---|
| Recreational pressure | Indirect effect through increased population being likely to lead to increased number of visitors to the countryside | Birklands and Bilhaugh SAC Sherwood Forest (prospective) SPA Peak District Dales SAC South Pennine Moors SAC/SPA |
| Proximity to urban areas | Indirect effects from the allocation of new housing in close proximity to the habitat of qualifying breeding birds | Sherwood Forest (prospective) SPA |
| Air quality | Indirect effects from increased air pollution from an increased population being likely to lead to increased traffic | Birklands and Bilhaugh SAC Sherwood Forest (prospective) SPA South Pennine Moors SAC |
| Water abstraction | Indirect effects from an increased population requiring increased abstraction from reservoirs in south Pennines | South Pennine Moors SAC/SPA |

- 2.9. The ACS HRA then subjected these sites to formal screening to evaluate whether proposals in the ACS could undermine the conservation objectives of these European sites. This concluded that the overall level of growth provided for by the ACS would not be likely to have a significant effect on any European site, alone or in-combination with other plans or projects.
- 2.10. It summarised this as follows:
Potential effects arising as a result of changes to air quality, deposition of air-borne pollutants, water abstraction, waste water discharges and increased recreation pressure ... would not be likely to be significant, either alone or in combination with other plans or projects.
- 2.11. The validity of the conclusion above is central to the judgement of whether this can be adopted by the HRA of the Plan, or not. Fundamentally, to enable this outcome to be adopted by the Council for the purposes of the HRA of its new Plan, it is imperative it is certain that:

- No material changes have emerged which makes the Plan out of date; and
- The original assessment is rigorous and robust

2.12. These criteria are discussed in turn below in the context of each of the four 'potential threats' in Table 2. Where they arise, the influence of external pressures (or external material changes) is also addressed:

MATERIAL CHANGE

Recreational pressure

- 2.13. The ACS HRA identified this potential threat in terms of possible impacts on Birklands and Bilhaugh SAC, Sherwood Forest prospective SPA, Peak District Dales SAC and the South Pennine Moors SAC. There is a clear link between population growth and recreational pressure in the countryside and so it is clear that the 18% increase in new dwellings proposed represents a significant material change.
- 2.14. **This means that the outcomes of the ACS HRA in terms of recreational pressure on these four European sites cannot be simply adopted and so will require further consideration.**
- 2.15. Again, though, it is important to realise that the original target was a *minimum* of 6,150 new houses whereas the new target is for a *maximum* of 7,249. Whilst there are good reasons to believe that the full allocation of new dwelling is not expected to be built out in full, as a precautionary measure, this HRA assumes that they will. It therefore represents a worst case scenario and there can be some confidence that the scale of any negative outcomes will actually be considerably less in reality.

Proximity to urban areas

- 2.16. Reflecting the distance between the Borough and all formal European sites, the ACS HRA only identified this potential threat in terms of possible impacts on the Sherwood Forest prospective SPA. As housing numbers in Broxtowe are proposed to increase overall by 18% or 1,099 new dwellings it could be expected that impacts from the proximity of new development would also increase. Typical impacts include illegal dumping and fires, cat predation, disturbance and disturbance from construction and occupation which are only associated with developments, within a few hundred metres of a European site.
- 2.17. However, the broad locations in the Plan for new housing remain unaltered from those in the ACS. Therefore, the assessment made in the ACS HRA should still stand which, whilst acknowledging the possible impact of simple housing growth, went on to specifically stated that this threat did not apply to allocations in Broxtowe (instead highlighting associated with proposed allocations in Gedling). The ACS HRA concluded that:
- Potential effects of this element ... are fully considered under the assessment of overall level of growth provision ... No additional effects would arise as a result of the location of development in Broxtowe ... because there are no other links or pathways for effects between the any part of Broxtowe and European sites and there is no likelihood of any site-specific or local effects occurring which have not been addressed in the assessment of overall level of growth provision.*
- 2.18. Whilst *growth* and housing numbers in the Borough has obviously increased, confidence in this outcome can be drawn from the fact that numbers for the three allocations within 5km of the only vulnerable site identified in Table , Sherwood Forest prospective SPA, have actually fallen from 2,000 to 1,708 (ie in Brinsley, Eastwood and Kimberley). This, along with the fact that the closest allocation is still over 3km away as the crow flies, would further reduce the scale of any conceivable impacts.
- 2.19. **Therefore, the findings of the ACS HRA in terms of proximity to urban areas can be adopted.**

Air quality

- 2.20. In terms of air quality and pollution, changes in case law, allied with the increase in housing and other developments elsewhere in the Greater Nottingham area also represent other material changes. There are direct links between increases in housing numbers, road traffic and pollution and latter can have clear impacts on the semi-natural habitats of European sites. Again, **this means that the outcomes of the ACS HRA cannot be simply adopted and air quality will require further consideration** in terms of the three potentially affected sites: Birklands and Bilhaugh SAC, Sherwood Forest (prospective) SPA and South Pennine Moors SAC identified in Table 2.
- 2.21. Again, though, it is important to realise that the original target was a *minimum* of 6,150 new houses whereas the new target is for a *maximum* of 7,249. Whilst there are good reasons to believe that the full allocation of new dwelling is not expected to be built out in full, as a precautionary measure, this HRA assumes that they will. It therefore represents a worst case scenario and there can be some confidence that the scale of any negative outcomes will actually be considerably less in reality.

Water abstraction

- 2.22. The ACS HRA evaluated a worst case scenario that an increased population could require greater volumes of water to be abstracted from the Derwent Reservoirs which in turn could harm the surrounding moorland qualifying features of the South Pennine Moors European site.
- 2.23. It utilised information captured from the Environment Agency's (Habitats Regulations) Review of Consents process and specific correspondence. The outcomes of this exercise ruled out the potential for any credible threats for reasons including the lack of a direct ecological relationship between the reservoirs and moorland, and a similar lack of a hydraulic link between the flows of water in channels with the peat which supports the SAC features.
- 2.24. None of these reasons had any relationship with the population the reservoirs served. Therefore, the growth in population associated with the 18% increase in housing in the Part 2 Plan is not relevant and cannot represent a credible threat to the European site. **Therefore the findings of the ACS HRA in terms of water abstraction that an 'increased water consumption from the Derwent reservoirs associated with development will have no effect on the South Pennine Moors SAC or SPA'** and the outcome of the ACS HRA **can be safely adopted.**

Material changes in case law

- 2.25. It is noted that some of the positive outcomes of the ACS HRA were dependent on the use of mitigation at the screening stage. Whilst not acceptable now, none of the proposed mitigation e.g. the construction of a new visitor centre at Sherwood Forest relates to specific proposals in the Plan (which has now been completed). **Therefore, the effect of the recent People Over Wind judgement does not represent a material change** and the Plan can continue to rely on the ACS HRA in this regard.

RIGOROUS AND ROBUST ASSESSMENT

- 2.26. In terms of the second bullet point, it is Fleming Ecology's opinion, the ACS HRA followed best practice by methodically evaluating objective information to characterise the types of impact and related this to the ecological aspects (the conservation objectives) of each European site. The analysis can be considered to be thorough, the tests were properly applied and the outcomes justified.

OVERALL ASSESSMENT OF DEFRA CRITERIA

- 2.27. **In terms of the potential threats: Proximity to urban areas and Water abstraction, identified in Table 2, the findings of the ACS HRA can be regarded as robust, up to date and to meet the terms of Defra's guidance. Consequently, for these issues, its conclusions can be adopted.**

2.28. However, this is not the case in terms of air quality and recreational pressure which require further scrutiny. These initial findings are summarised in Table 3 below.

Table 3: Outcome of assessment of pressures and threats

| Potential threat | European sites | Is the ACS robust and up to date? |
|--------------------------|---|---|
| Recreational pressure | Birklands and Bilhaugh SAC Sherwood Forest (prospective) SPA Peak District Dales SAC South Pennine Moors SAC/SPA | Further scrutiny required. Findings of ACS HRA cannot, yet, be adopted |
| Proximity to urban areas | Sherwood Forest (prospective) SPA | In terms of the impact of impacts associated with proximity to urban areas, the ACS HRA can be considered robust and up to date and can be adopted by the HRA of the Plan |
| Air quality | Birklands and Bilhaugh SAC Sherwood Forest (prospective) SPA South Pennine Moors SAC | Further scrutiny required. Findings of ACS HRA cannot, yet, be adopted |
| Water abstraction | South Pennine Moors SAC/SPA | In terms of the impact of water abstraction, the ACS HRA can be considered robust and up to date and can be adopted by the HRA of the Plan |

Re-evaluation of recreational pressure

2.26. Adverse ecological effects from recreational pressure are largely limited to walking (frequently with dogs). The most popular destinations can draw in visitors in great numbers from considerable distances and lead to erosion and disturbance. Less popular sites, or those with fewer facilities, tend to have a smaller catchment, fewer visitors and the issue is typically less problematic. Alternatively, sites managed specifically to encourage large numbers of visitors can tolerate these pressures without causing significant harm.

2.27. Excessive recreational pressure typically leads to the disturbance of qualifying species, and a reduction in habitat quality/extent from trampling. It can be particularly problematic on land with open or unauthorised access where desire lines can be created and so compromise site management.

2.28. In addition, dogs can not only cause localised eutrophication but can also disturb grazing stock, reducing the effectiveness of site management and a decline in the condition of features not normally considered vulnerable.

2.29. Distance and accessibility remain key factors and in general, where modest residential allocations are situated over 5km from a vulnerable European site, then LSE (alone) can often (but not always) be ruled out. Of course, each site is different and other key factors will include the fragility of the feature, size of the development, the accessibility of alternative destinations, the availability of footpaths, public transport, the presence of a Warden Service and so on.

2.30. The four European sites identified as under threat in Tables 2 & 3 are discussed in turn below:

Peak District SAC and South Pennine Moors SPA/SAC

2.31. The Peak District Dales SAC was considered vulnerable to increased recreational pressure from growth in the ACS. However, after through research, the ACS HRA was able to conclude that the powers and management initiatives available to land managers was adequate to rule out harmful

effects. Given that the European site lies around 20km from the boundary of the Borough (and further from identified allocations), the ACS HRA was able to rule out any threat from recreational pressure.

- 2.32. As the opinion is a consequence of the characteristic of the site and not population, the increased population of Broxtowe from the additional 1,099 dwellings will have no effect on this conclusion. Further confidence in this assessment can be drawn from the fact that the closest allocations to these European sites in the north of the Borough will decrease in size with the additional housing concentrated in the south, even further away from the upland sites. **Therefore, in terms of the Peak District Dales and South Pennine Moors European sites, there is no material change and the findings of the ACS HRA can be adopted.**

[Birklands and Bilhaugh SAC](#)

- 2.33. Birklands and Bilhaugh SAC was considered vulnerable to increased recreational pressure from growth in the ACS which identified the need to relocate the Visitor Centre to remove the potential for likely significant effects related to air quality, recreational pressure and proximity to urban areas;. The new Centre opened in August 2018 satisfying this requirement and removing the threat.
- 2.34. Whilst this approach was based on the original housing numbers of the ACS, the threat was posed not by development in Broxtowe but in other Council areas. Furthermore, as the SAC is 15km or more from the boundary of Broxtowe, distance again provides compelling evidence that harm would arise from the increased number of houses in Broxtowe. **Therefore, in terms of Birklands and Bilhaugh SAC, there is no material change and the findings of the ACS HRA can be adopted.**

[Sherwood Forest prospective SPA](#)

- 2.35. The Sherwood Forest prospective SPA was considered vulnerable to increases in recreational pressure from new housing. Although no formal boundary has been identified, it extends over a wide area of land to the north of the Borough; it attracts visitors from all part of the ACS area and the closest land parcel lies only a few kilometres from the Borough boundary. However, the ACS HRA was, again on the basis of thorough research, able to conclude that:

On the basis of objective information it is concluded that the bodies managing the prospective SPA would be likely to cooperate and take whatever minor access and habitat measures were necessary to avoid any significant effect on the prospective SPA.

- 2.36. Despite this, the 18% increase in housing numbers can be anticipated to increase visitor numbers and pressure. Since the ACS HRA was prepared, NE has issued bespoke advice²⁰ to local councils regarding the status of the Forest and how it can best be managed and safeguarded in planning. It advocates a *risk-based approach* to inform future decision-making and requests that particular attention is given to evaluating recreational impacts (amongst others) on the site when development proposals are submitted.
- 2.37. This included a map (Appendix 2) put forward by the Nottinghamshire Wildlife Trust that identified a 5km buffer around the RSPBs Important Bird Area (IBA) boundary. The southern part of the buffer includes land within the northern part of Broxtowe. This suggests that allocations within the buffer should be subject to the scrutiny suggested by NE and consequently, any such allocations will be considered further in this document in sections 3 and 4. It follows though, that allocations outside the buffer (for example those in the south of the Borough) are excluded from scrutiny and, consequently, they are not considered further in this HRA.
- 2.38. **Given the increase in housing proposed it would not be safe to simply adopt the conclusions of the ACS HRA. Building on NEs advice though, allocations within the buffer will be subject to further scrutiny in this HRA; those outside the buffer will not.**

²⁰ Advice Note to Local Planning Authorities regarding the consideration of likely effects on the breeding population of nightjar and woodlark in the Sherwood Forest region. March 2014

- 2.39. Again, though, it is important to realise that the original target was a *minimum* of 6,150 new houses whereas the new target is for a *maximum* of 7,249. Whilst there are good reasons to believe that the full allocation of new dwelling is not expected to be built out in full, as a precautionary measure, this HRA assumes that they will. It therefore represents a worst case scenario and there can be some confidence that the scale of any negative outcomes will actually be considerably less in reality

Re-assessment of air pollution issues

- 2.40. Development is typically associated with increased road traffic and emissions which can increase the airborne concentration of nitrogen oxides (NO_x) and the rate of nitrogen deposition from the atmosphere. Impacts are typically assessed by calculating the relative contribution of the Plan in relation to the relevant critical level for NO_x and the critical loads for nitrogen deposition. The 18% increase in housing can reasonably be expected to also increase road traffic emissions.
- 2.41. Both NO_x and nitrogen deposition are associated with impacts on vegetation even though levels fall quickly in the first few metres from a road before gradually levelling out until, beyond 200m, it becomes difficult to distinguish from background levels.
- 2.42. The increase in traffic has to pose a credible risk. However, a few tens of additional vehicle movements on quiet, rural roads are unlikely to result in a measurable effect even if it lies in close proximity to a European site.
- 2.43. The long-term environmental standard or critical level for NO_x is 30 µg m⁻³. It is a precautionary threshold below which there is confidence that adverse effects on vegetation will not arise. The critical loads for nitrogen deposition are specific to each individual feature. These are presented as a range of values and, as a precautionary approach, only the lower values are used as these will highlight any negative outcomes.
- 2.44. Consequently, the additional contributions that might arise from increased traffic are only likely to be significant where the qualifying features of a European site lies within 200m of a road, are known to be sensitive to such effects and where the appropriate critical loads and levels are either exceeded or approaching exceedance. This approach is confirmed by NE.²¹
- 2.45. However, this is not a simple mathematical relationship. Account must be taken of the type of habitats (some are more resilient than others) and the distribution of the designated features (not all are distributed evenly across all sites). Furthermore, roadside communities are often highly modified from roadworks, informal footpaths, boundary features, salt spreading in winter and the need for roadside management such as the regular cutting of vegetation. This means that the conservation objectives of a European site may not apply to land in close proximity to a road where the greatest impact from vehicle emissions is likely to be experienced, and where there is little realistic prospect of successfully restoring the site to a favourable condition.

Birklands and Bilhaugh SAC and the South Pennine Moors SAC

- 2.46. One of the main reasons why air pollution was initially regarded as a threat in the ACS HRA was that for all but one of the qualifying features at Birklands and Bilhaugh SAC and the South Pennine Moors SAC that critical loads were already exceeded – making the risk of harm from additional pollution more likely.
- 2.47. However, the ACS HRA was able to conclude that *effects arising (from air pollution) would not be likely to be significant*. This positive outcome was based on the simple, objective evidence that as both Birklands and Bilhaugh SAC and the South Pennine Moors SAC were greater than 15km from the nearest Council boundary, this allowed the HRA to claim:

None of the policies within the ACS are considered to represent a significant increase in traffic on roads in close proximity to the sites. At these distances the dispersion properties of NO_x means that

²¹ Advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations. June 2018.

any contribution to N deposition at the sites as a result of the ACS can be considered to be negligible (even from an in-combination perspective). **There will be no likely significant effect, either alone or in combination with other plans or projects, as a result of N deposition on the South Pennine Moors and Birklands and Bilhaugh SACs.**

- 2.48. The ACS HRA was able to draw on further, widely available data relating to the behaviour of airborne NO_x pollution to support this opinion alongside evidence relating to deposition rates of airborne nitrogen at both European sites. These arguments remain valid today and will not be affected by increased housing in the Borough.
- 2.49. For the avoidance of doubt, there is, a need to consider the impact of the outline planning consent for the large residential and employment development at the former Thoresby Colliery site in Gedling Borough Council. This lies in close proximity to the Birklands and Bilhaugh SAC and could be considered to have a clear potential to increase levels of pollution within the European site. However, this proposal has been subject to air quality analysis which concluded that effects on the SAC would be 'negligible' and that LSE could be ruled out either alone or in combination with the anticipated effects of the ACS. These assessments follow contemporary guidance and are robust and up to date. Therefore, their findings can be relied upon and no further assessment is required.

Sherwood Forest prospective SPA

- 2.50. The same reasons cannot be applied to Sherwood Forest. This assemblage of discrete land parcels lies much closer, with the nearest allocation (at Brinsley) just 3km distant as the crow flies although it is more like 8km by road; other parcels lie much more distant. This means that other allocations apart from Brinsley could also fall within the 5km buffer; this encourages pollution effects to be considered further.
- 2.51. Paragraph 2.43 reminds us that *additional contributions that might arise from increased traffic are only likely to be significant where the European site lies within 200m of a road, is known to be sensitive to such effects* is relevant. Of great importance, therefore, is the data retrieved from the APIS²² database. This confirms that the coniferous forest habitat that supports the qualifying features of breeding birds is not sensitive to nitrogen deposition. This provides compelling evidence to support the opinion that despite the proximity of allocations in Broxtowe and elsewhere, any increases in pollution will not adversely affect the forest or its breeding bird populations. Importantly, this conclusion is not affected by the volume of traffic.
- 2.52. Further confidence can be drawn from the fact that housing numbers in the three closest allocations at Brinsley, Eastwood and Kimberley, will actually fall by 15% (see section 3) so reducing traffic from those locations below those considered in the ACS HRA. Those allocations towards the south of the Borough where housing numbers will increase are 10km from the nearest parcel of the prospective SPA as the crow flies and further by road; other 'southern' allocations and parcels lie further apart still.
- 2.53. Given the resilience of the forest habitat and the distance from increased housing numbers provides strong evidence to dismiss any conceivable threat from air pollution.
- 2.54. For the avoidance of doubt, the ACS HRA identified that the prospective Sherwood Forest SPA was at risk from development in Gedling District Borough at Top Wighay Farm. Subsequent evaluation by Gedling Council in the 2012 HRA confirmed that harmful effects from increases (in noise and) increases in nitrogen deposition could be ruled out. This conclusion was subject to consultation with Natural England and it was agreed that likely significant effects could be ruled out.
- 2.55. Therefore, harmful effects from air pollution can be ruled out **and so the conclusions of the 2012 ACS HRA can be safely adopted.**

²² <http://www.apis.ac.uk/> (accessed 4 November 2018)

Wealden Judgement

- 2.56. Uncertainty regarding recent case law could cast doubt on these opinions however. In the Wealden Judgement of 2017²³, the High Court, whilst exploring the use of established, but generic screening thresholds (depending on average traffic flows) to evaluate the effects of air pollution, ruled that it was not appropriate to exclude other development plans from the need for assessment ‘in combination with other plans ...’. In other words, it became necessary for the HRA of the local plan in question to carry out an in-combination assessment of air pollution with neighbouring authorities which it had previously ignored.
- 2.57. In contrast with Wealden though, it should be noted that the ACS HRA did not rely on the use of thresholds to justify its decision; it relied on distance and the ecological characteristics of Sherwood Forest to arrive at its conclusion. In this instance, **therefore, the Wealden Judgement does not apply, there is no need for an in combination assessment and the outcome of the original HRA can be adopted in terms of air pollution.**

CONCLUSION

- 2.58. Therefore, in terms of air quality, the ACS HRA can also be considered to be robust and up to date even when considering the 18% increase in housing numbers. Therefore, the **outcome of the original HRA can be adopted in terms of air pollution.**
- 2.59. **However, the conclusions of the ACS HRA cannot be adopted in terms of recreational pressure.** For reasons explained above, all allocations that lie within the 5km buffer of Sherwood Forest will be subject to further scrutiny in this HRA in the following sections.
- 2.60. Again, though, it is important to realise that the original target was a *minimum* of 6,150 new houses whereas the new target is for a *maximum* of 7,249. Whilst there are good reasons to believe that the full allocation of new dwelling is not expected to be built out in full, as a precautionary measure, this HRA assumes that they will. It therefore represents a worst case scenario and there can be some confidence that the scale of any negative outcomes will actually be considerably less in reality.
- 2.61. In summary, at this stage of the HRA, with the sole exception of recreational issues potentially affecting Sherwood Forest, **the ACS can be considered to remain up to date and the assessment has been shown to be rigorous and robust and the ACS HRA can be adopted.** This is reflected in Table 4 below.

Table 4: Summary of re-assessment exercise

| Potential threat | European sites | Is the ACS robust and up to date? |
|--------------------------|---|---|
| Recreational pressure | Birklands and Bilhaugh SAC Sherwood Forest (prospective) SPA Peak District Dales SAC South Pennine Moors SAC/SPA | In terms of the impacts associated with recreational pressure on Birklands and Bilhaugh, Peak District Dales and the South Pennine Moors European sites, the ACS HRA can be considered robust and up to date and can be adopted by the HRA of the Plan However, further scrutiny is required of all allocations within 5km buffer of Sherwood Forest and the findings of ACS HRA cannot, yet, be adopted |
| Proximity to urban areas | Sherwood Forest (prospective) SPA | In terms of the impacts associated with proximity to urban areas, the ACS HRA can be considered robust and up to date and can be adopted by the HRA of the Plan |

²³ Wealden DC v SSCLG [2017] EWHC 351 Admin

| Potential threat | European sites | Is the ACS robust and up to date? |
|-------------------|--|---|
| Air quality | Birklands and Bilhaugh SAC Sherwood Forest (prospective) SPA South Pennine Moors SAC | In terms of the impact of air quality pressure, the ACS HRA can be considered robust and up to date and can be adopted by the HRA of the Plan |
| Water abstraction | South Pennine Moors SAC/SPA | In terms of the impact of water abstraction, the ACS HRA can be considered robust and up to date and can be adopted by the HRA of the Plan |

3. New Effects of the Part 2 Local Plan

- 3.1. In almost all circumstances, except recreational pressure on the Sherwood Forest prospective SPA, it has been found that the original ACS HRA can be adopted.
- 3.2. 'New' effects relate to issues raised by the identification of the specific allocations and related policies that were not considered in the original ACS HRA and so are unable to be adopted or otherwise. Evaluation of these is necessary to ensure this HRA takes account of all potential impacts on the European sites in question. Consequently, all 32 policies in the Plan will still need to be screened to evaluate if any could lead to adverse 'new' effects not previously anticipated.
- 3.3. Although the original allocation of 6,150 new dwellings in Broxtowe was assessed as part of the ACS HRA, the new total of 7,249 was not. The primary factor under consideration, therefore, is the 18% increase in housing numbers. Importantly, this increase has already been evaluated in this HRA and (apart from recreational pressure on Sherwood Forest) it has been found to not lead to new impacts allowing the original findings to be adopted. Consequently, further consideration of those issues is not required.
- 3.4. However, the findings could not be adopted in terms of those residential allocations in the north of the Borough that fall within the 5km buffer of Sherwood Forest. Notwithstanding the increase in housing numbers, the original ACS HRA did not assess the specific location of proposed development because this information was simply not available at that time. This HRA must also therefore explore whether development in the proposed locations in the Plan would have a likely significant effect on any European sites as a result of its scale and location. Other factors that may arise, if any, will also be considered, of course. A summary of the current state of play is provided in Table 5 below.
- 3.5. Again, though, it is important to realise that the original target was a *minimum* of 6,150 new houses whereas the new target is for a *maximum* of 7,249. Whilst there are good reasons to believe that the full allocation of new dwelling is not expected to be built out in full, as a precautionary measure, this HRA assumes that they will. It therefore represents a worst case scenario and there can be some confidence that the scale of any negative outcomes will actually be considerably less in reality.

Table 5: Summary of assessment of ACS HRA prior to consideration of new effects

| European sites | Potential threats | Assessment |
|--|---|--|
| Birklands and Bilhaugh SAC Humber Estuary SPA/SAC Peak District Dales SAC River Mease SAC Rutland Water SPA South Pennine Moors SAC/SPA | Air quality Proximity to urban areas Waste water discharge Water abstraction | In terms of all the European sites and the potential threats listed, the findings of the ACS HRA can be adopted for the reasons described in Section 2. The increase in housing numbers makes no difference to this outcome. No other 'new effects' have been identified. |
| Sherwood Forest (prospective) SPA | Air quality Proximity to urban areas | In terms of Sherwood Forest and the potential threats listed, the findings of the ACS HRA can be adopted for the reasons described in Section 2. The increase in housing numbers makes no difference to this outcome. No other 'new effects' have been identified. |
| Sherwood Forest (prospective) SPA | Recreational pressure | The impact of recreational pressure from allocations within the 5km buffer zone cannot be ruled out and require further scrutiny |

- 3.5. The outcome of this exercise, therefore, is that for Rows 1 and 2 above, the findings of the ACS HRA can be adopted in full and that likely significant effects either alone or in combination on the European sites listed can be ruled out for potential impacts associated with air quality, proximity to urban areas, waste water discharge and water abstraction.
- 3.6. This is not the case in terms of recreational pressure on Sherwood Forest where adverse effects from allocations within the 5km buffer zone cannot be ruled out. Returning to NEs advice note, this referred to the buffer zone as extending 5km from the boundary of the RSPBs IBA boundary. However, the boundary line paid no regard to NEs own 'core areas' which differed in places from the IBA. One of these inconsistencies occurs in the far south-west of the prospective SPA in closest proximity to Broxtowe's northern boundary. Because of the rationale for the boundary it doesn't take account of the NE core area (which lies closest of all the land parcels to Broxtowe) with the result that the boundary here only extends beyond the site by 3km or so.
- 3.7. If the boundary is used by NE, this would exclude all the proposed allocations in Broxtowe meaning that none would need to be assessed here. So, in a precautionary move, a new boundary line is adopted (Appendix 3) that extends 5km from the core area. This now incorporates the allocations at Brinsley, Eastwood and Kimberley. As recommended by NE, these allocations require further

scr

utiny in terms of their impact on Sherwood Forest in terms of their potential to increase recreational pressure on the Forest. Importantly, sites outside the buffer do not require the same level of scrutiny. This is taken to mean that recreational pressures (and other impacts) are not considered to be a threat from these more distant allocations.

- 3.8. The ACS HRA assessed the original housing figures and concluded that likely significant effects could be ruled out subject to measures required to accommodate developments in neighbouring council areas. This conclusion (if not the measures) included all the allocations in Broxtowe considered here and included in the Plan.
- 3.9. Broxtowe Borough Council has subsequently increased its housing figures by 1,099 dwellings or 18%. However, the majority of these are allocated in the south of the Borough, far beyond the furthest extent of even the extended boundary utilised here. In contrast, the allocations of the three allocations within the (extended) buffer have actually, overall, been reduced from 2,000 to 1,708, a reduction of 292 or almost 15% as shown below along with all other allocations:

Table 6: Housing numbers in Broxtowe

| Allocation | ACS figures | Part 2 Local Plan figures |
|----------------------------------|---------------|---------------------------|
| Awsorth | Up to 350 | 355 |
| Brinsley | Up to 150 | 153 |
| Eastwood | Up to 1,250 | 1023 |
| Kimberley | Up to 600 | 532 |
| Main built-up area of Nottingham | Minimum 3,800 | 4829 |
| Totals | 6,150 | 6,892* |

* This total does not add up to 7,249 as it does not include those houses already built

- 3.10. Consequently, any potential effects can be considered to be of a lesser magnitude than that assessed in the ACS HRA. Returning to the tests in screening (as elaborated by the Waddenzee ruling) effects are only *likely* if they undermine the conservation objectives and *significant* if they cannot be excluded on the basis of objective information.
- 3.11. **Given that the former and larger allocations at Brinsley, Eastwood and Kimberley have already been assessed by the ACS HRA and found to not lead to likely significant effects, it is concluded that the now smaller allocations within the extended buffer zone of Sherwood Forest will have no conceivable effect on the prospective SPA.**
- 3.12. This objective information is taken into the formal screening exercise in Section 4.

4. Screening the Policies – process and outcomes

Methodology

- 4.1. The methodology for this task is laid out in Figures 1 and 2 in Section 1 of this HRA. These two diagrams set out the process for evaluating a fully independent plan and so certain steps, such as the identification of European sites and potential impacts can be dismissed as these have already been identified and adopted.
- 4.2. However, Stage 1 of Figure.2 (elaborated in F3.2 – F3.4 of the Handbook) requires that the first step of the screening exercise is to conduct a brief review of the Plan to explore if it can be:
 - 4.3. **Excluded** from the HRA because 'it is not a plan within the meaning and scope of the Habitats Directive', or
 - 4.4. **Eliminated** from the HRA because it can easily be shown that although 'it is a plan ... it could not have any conceivable effect on any European site', or
 - 4.5. **Exempted** from the HRA because it is '... directly connected with or necessary to the management of the ... European site' (ie the first formal stage of the HRA - Figure 1).
- 4.6. Taking these in turn, **it is clear that the Plan represents a real plan with the potential to harm European sites and so can neither be excluded nor eliminated from the HRA. Likewise, the purpose of the Plan is not the nature conservation management of any European sites and so it cannot be made exempt from further assessment.**
- 4.7. Again, by drawing on the Handbook, the next step, encompassing the second formal test from Figure 1, is to identify if there is a credible risk that policies and allocations in the Plan may lead to a likely significant effect on the European site (by threatening to undermine its conservation objectives). It achieves this by evaluating the proposals in the Plan against the following criteria to see if they are:
 - Screened out from further scrutiny** (because the individual policies or allocations are considered not 'likely to have a significant effect on a European site, either alone or in combination with other plans and projects');
 - Screened in for further scrutiny** (because the individual policies or allocations are considered 'likely to have a significant effect on a European site, either alone or in combination with other plans and projects').
- 4.8. To achieve this, the Handbook provides a list of 'screening categories' (Table 5) designed to evaluate both policy and site-based allocations to provide a rigorous and transparent approach to the screening process.

Table 7: List of screening categories

| Code | Category | Outcome |
|--|---|--------------|
| A | General statement of policy/general aspiration | Screened out |
| B | Policy listing general criteria for testing the acceptability/sustainability of the plan | Screened out |
| C | Proposal referred to but not proposed by the plan | Screened out |
| D | Environmental protection/site safeguarding policy | Screened out |
| E | Policies or proposals which steer change in such a way as to protect European sites from adverse effects | Screened out |
| F | Policy that cannot lead to development or other change | Screened out |
| G | Policy or proposal that could not have any conceivable effect on a site | Screened out |
| H | Policy or proposal the (actual or theoretical) effects of which cannot undermine the conservation objectives (either alone or in combination with other aspects of this or other plans or projects) | Screened out |
| I | Policy or proposal with a likely significant effect on a site alone | Screened in |
| J | Policy or proposal with an effect on a site but not likely to be significant alone, so need to check for likely significant effects in combination | Check |
| K | Policy or proposal not likely to have a significant effect either alone or in combination (screened out after the in combination test) | Check |
| L | Policy or proposal likely to have a significant effect in combination (screened in after the in combination test) | Check |
| Extract from <i>The Habitats Regulations Assessment Handbook</i> , www.dtapublications.co.uk © DTA Publications Limited (July) 2018 all rights reserved This work is registered with the UK Copyright Service | | |

4.9. The impact of each potential effect is evaluated against the conservation objectives of the relevant features of the European sites and screened according to categories in Table 5 for every policy and/or allocation in the Plan. This provides a bespoke screening opinion for each and every policy and/or allocation. The outcomes are summarised in Table 8 but given the large number of policies and allocations, the preliminary screening outcome for each policy and allocation is presented in Appendix A.

Screening

4.10. Drawing on the categories laid out in Table 5 and the discussion in Section 3, each policy in the Plan has been screened for likely significant effects. Other than any issues that may arise from the general development policies in the Plan, the sole remaining issue to consider is the impact of the three allocations at Brinsley, Eastwood and Kimberley. The full analysis is laid out in Appendix A and summarised in Table 8 below.

Table 8: Summary of the formal screening process

| Code | Screening outcome | Policies |
|--|-------------------|--|
| A - General statement of policy | Screened out | None |
| B - General criteria for testing acceptability of proposals | Screened out | 1, 8, 10, 13, 14, 15, 17, 18, 19, 20, 21, 23, 24, 26 |
| C - Proposal referred to but not proposed by the Plan | Screened out | None |
| D - Environmental protection policy | Screened out | 27, 28, 29, 30, 31, 32 |
| E - Policies or proposals which steer change in such a way as to protect European sites from adverse effects | Screened out | None |
| F - Policy that cannot lead to development or other change | Screened out | None |
| G - No conceivable effect on a European site | Screened out | 2, 3, 4, 5, 6, 7, 9, 11, 12, 16, 22, 25 |
| H - Policy or proposal which cannot undermine the conservation objectives alone or in combination | Screened out | None |
| I - LSE alone cannot be ruled out | Screened in | None |
| J - LSE in combination cannot be ruled out | Screened in | None |
| K - LSE in combination cannot be ruled out | Screened in | None |
| L - LSE in combination cannot be ruled out | Screened in | None |

Screening Conclusions

- 4.11. Reference to Table 8 and Appendix A confirms that this exercise found that all 32 policies of the Plan could be screened out of the need for further assessment in this HRA. This confirms that not only can the existing ACS HRA be adopted but that there are no new adverse effects provided for by the policies and proposals in the Plan either.
- 4.12. The Plan will not lead to any likely significant effects alone on the European sites; there are no residual effects and, therefore, no need for an in-combination assessment or, indeed, an appropriate assessment.

5. Conclusion

- 5.1. During October and November 2018, this HRA screened the 32 policies of the Broxtowe Borough Council Part 2 Local Plan according to the statutory procedures laid out in the Habitats Regulations and using the methodology laid out in the Habitats Regulations Assessment Handbook.
- 5.2. Overall, and despite an increase of 18% in the proposed housing numbers above and beyond that assessed in the ACS, it was found that likely significant effects and the need for further assessment could be ruled out alone for all 32 policies. There were no residual effects and, therefore, no need for an in-combination assessment. Consequently, there is no need for an appropriate assessment. The individual outcomes of the first exercise can be found in Table 8 and Appendix A.
- 5.3. The decision to adopt this HRA or otherwise now lies with the Council.

Bernard Fleming CEcol MCIEEM

Director, Fleming Ecology Ltd

7 November 2018

APPENDICES

A. Record of preliminary screening of the proposed policies

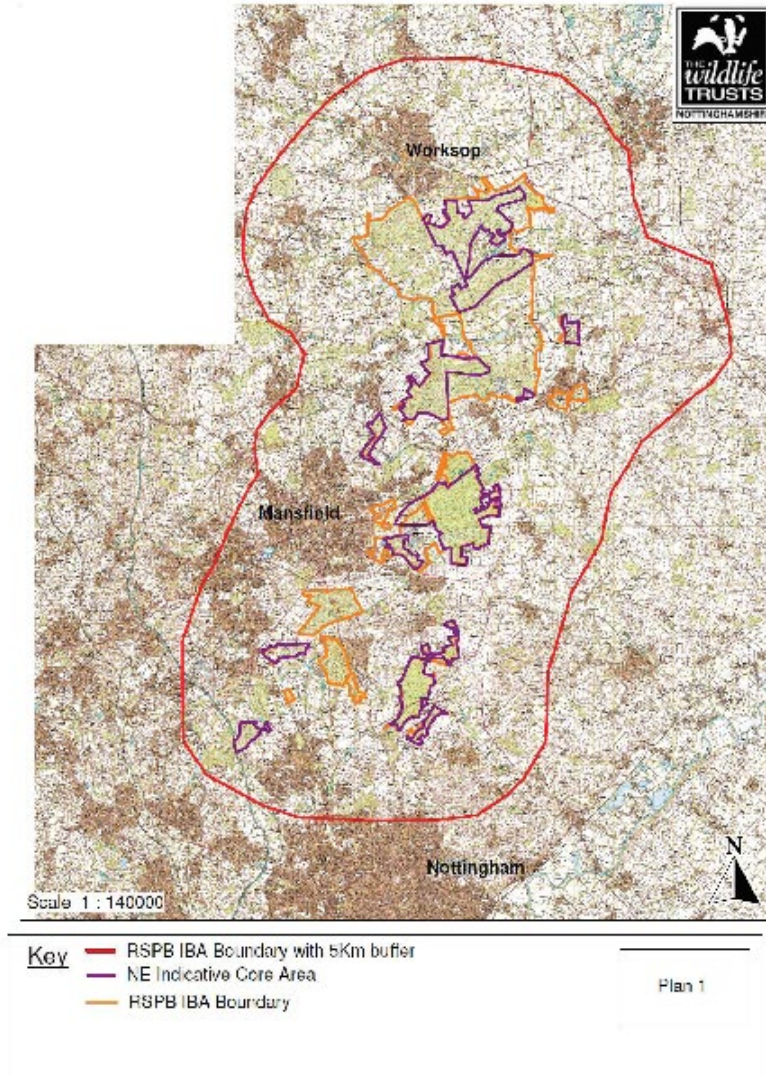
| Policy | Code | Rationale | Screening outcome |
|---|------|--|---------------------|
| Policy 1: Flood Risk | B | This policy establishes general criteria for testing the acceptability/sustainability of the plan. It cannot have any effect on a European site | Screened out of HRA |
| Policy 2: Site Allocations | G | This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the ACS | Screened out of HRA |
| Policy 3: Main Built-up Area Site Allocations | G | <p>A marked increase in this allocation will not affect any European sites due to a combination of distance, the ecological characteristics of the sites and visitor management measures. The marked increase in the allocation will not affect this.</p> <p>Therefore, this policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the ACS</p> | Screened out of HRA |
| Policy 4: Awworth Site Allocation | G | <p>This allocation will not affect any European sites due to a combination of the ecological characteristics of sites and it lies outside the Sherwood Forest buffer zone.</p> <p>Therefore, this policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the ACS</p> | Screened out of HRA |
| Policy 5: Brinsley Site Allocation | G | This allocation will not affect any European sites. Despite lying within the extended Sherwood Forest buffer zone, the number of dwellings has been reduced by 15% overall. The ecological characteristics of the Forest and distance from other sites provide further reassurance. | Screened out of HRA |
| Policy 6: Eastwood Site Allocation | G | <p>Therefore, this policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the ACS</p> | Screened out of HRA |
| Policy 7: Kimberley Site Allocation | G | Therefore, this policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the ACS | Screened out of HRA |
| Policy 8: Development in the Green Belt | B | This policy establishes general criteria for testing the acceptability/sustainability of the plan. It cannot have any effect on a European site | Screened out of HRA |

| Policy | Code | Rationale | Screening outcome |
|--|------|--|---------------------|
| Policy 9: Retention of good quality existing employment sites | G | This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the ACS | Screened out of HRA |
| Policy 10: Town Centre and District Centre Uses | B | This policy establishes general criteria for testing the acceptability/sustainability of the plan. It cannot have any effect on a European site | Screened out of HRA |
| Policy 11: The Square, Beeston | G | This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the ACS | Screened out of HRA |
| Policy 12: Edge-of-Centre A1 Retail in Eastwood | G | This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the ACS | Screened out of HRA |
| Policy 13: Proposals for main town centre uses in edge-of-centre and out-of-centre locations | B | This policy establishes general criteria for testing the acceptability/sustainability of the plan. It cannot have any effect on a European site | Screened out of HRA |
| Policy 14: Centre of Neighbourhood Importance (Chilwell Road/High Road) | B | This policy establishes general criteria for testing the acceptability/sustainability of the plan. It cannot have any effect on a European site | Screened out of HRA |
| Policy 15: Housing size, mix and Choice | B | This policy establishes general criteria for testing the acceptability/sustainability of the plan. It cannot have any effect on a European site | Screened out of HRA |
| Policy 16: Gypsies and Travellers | G | This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the ACS | Screened out of HRA |
| Policy 17: Place-making, design and amenity | B | This policy establishes general criteria for testing the acceptability/sustainability of the plan. It cannot have any effect on a European site | Screened out of HRA |
| Policy 18: Shopfronts, signage and security measures | B | This policy establishes general criteria for testing the acceptability/sustainability of the plan. It cannot have any effect on a European site | Screened out of HRA |
| Policy 19: Pollution, Hazardous Substances and Ground Conditions | B | This policy establishes general criteria for testing the acceptability/sustainability of the plan. It cannot have any effect on a European site | Screened out of HRA |
| Policy 20: Air Quality | B | This policy establishes general criteria for testing the acceptability/sustainability of the plan. It cannot have any effect on a European site | Screened out of HRA |

| Policy | Code | Rationale | Screening outcome |
|--|------|--|---------------------|
| Policy 21: Unstable Land | B | This policy establishes general criteria for testing the acceptability/sustainability of the plan. It cannot have any effect on a European site | Screened out of HRA |
| Policy 22: Minerals | D | Environmental protection / Site safeguarding policy | Screened out of HRA |
| Policy 23: Proposals affecting designated and non-designated heritage assets | B | This policy establishes general criteria for testing the acceptability/sustainability of the plan. It cannot have any effect on a European site | Screened out of HRA |
| Policy 24: The health and wellbeing impacts of development | B | This policy establishes general criteria for testing the acceptability/sustainability of the plan. It cannot have any effect on a European site | Screened out of HRA |
| Policy 25: Culture, Tourism and Sport | G | This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the ACS | Screened out of HRA |
| Policy 26: Travel Plans | B | This policy establishes general criteria for testing the acceptability/sustainability of the plan. It cannot have any effect on a European site | Screened out of HRA |
| Policy 27: Local Green Space | D | Environmental protection / Site safeguarding policy | Screened out of HRA |
| Policy 28: Green Infrastructure Assets | D | Environmental protection / Site safeguarding policy | Screened out of HRA |
| Policy 29: Cemetery Extensions | D | Environmental protection / Site safeguarding policy | Screened out of HRA |
| Policy 30: Landscape | D | Environmental protection / Site safeguarding policy | Screened out of HRA |
| Policy 31: Biodiversity Assets | D | Environmental protection / Site safeguarding policy | Screened out of HRA |
| Policy 32: Developer Contributions | D | Environmental protection / Site safeguarding policy | Screened out of HRA |

B. Sherwood Forest Buffer Zone

Map highlighting the areas of greatest ornithological interest for breeding nightjar and woodlark, submitted as evidence to the Rufford ERF Public Inquiry 2010



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C. Extended 5km Sherwood Forest Zone

