

Date: 30 November 2018
Our ref: 266677
Your ref: 3448



Amanda Vernon
Team Leader (Planning Information)
Broxtowe Borough Council



BY EMAIL ONLY

Dear Amanda,

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

Thank you for your consultation on the above dated 13 November 2018 which was received by Natural England on the same date.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Natural England notes that the Broxtowe Local Plan Part 2 identifies the detailed allocations and policies which will deliver the strategic policies already adopted in the Greater Nottingham Aligned Core Strategy (ACS). This Draft HRA report evaluates the HRA of the ACS carried out in 2010/12 to conclude if it could be adopted or where there was any uncertainty to identify policies or allocations which would require further scrutiny.

We have reviewed the report and have made particular comments in respect of the effects of new allocations and recent legal judgements:

Sherwood Forest

We are satisfied with the report's assessment that the ACS HRA can be considered to remain up to date except for recreational issues potentially affecting areas identified within the Sherwood Forest possible potential Special Protection Area (ppSPA) which required further scrutiny. The report therefore sets out further assessment of the potential recreational pressure of the new allocations within the 5km buffer zone of the Sherwood Forest ppSPA which had not previously been considered. Natural England welcomes this further assessment and agrees with its conclusions that there would be no likely significant effect on Sherwood Forest.

Wealden Judgment 2017

We note that the implications of the Wealden Judgement have been considered at paragraphs 2.56 and 2.57 of the document. Natural England acknowledges that the HRA for the ACS justified the conclusions reached in respect of air quality on the basis of the distances involved rather than thresholds. We agree therefore that the reasoning and conclusions of the ACS HRA would still apply in respect of air quality.

People Over Wind and Sweetman vs Coillte Teoranta (ref: C 323/17)

We acknowledge the approach that you have set out in the document (paragraphs 1.26 and 2.25) regarding the above judgement from the Court of Justice of the European Union (CJEU). Our current advice on this ruling is set out below:

“Competent authorities undertaking HRAs should be aware of a recent ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of People Over Wind and Sweetman vs Coillte Teoranta (ref: C 323/17). The case relates to the treatment of mitigation measures at the screening stage of a HRA when deciding whether an appropriate assessment of a plan/project is required. The Court’s Ruling goes against established practice in the UK that mitigation measures can, to a certain degree, be taken into account at the screening stage.

As a result, Natural England advises that any “embedded” mitigation relating to protected sites under the Habitat Regulations 2017 Regulation 63 (1) should no longer be considered at the screening stage, but taken forward and considered at the appropriate assessment stage to inform a decision as whether no adverse effect on site integrity can be ascertained. In light of the recent case law, any reliance on measures intended to avoid or reduce harmful effects at the likely significant stage is vulnerable to legal challenge. You may also want to seek your own legal advice on any implications of this recent ruling for your decisions.”

Natural England therefore agrees with the Report’s conclusions that the Broxtowe Local Plan (part 2) would not be likely to have a significant effect on a European Site either alone or in combination with other plans or projects, and no further assessment work is required. Furthermore we agree with the report’s conclusions in respect of the Sherwood Forest ppSPA that the Local Plan would be unlikely to result in a significant effect and that no further assessment work is required

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries relating to the specific advice in this letter only please contact Roslyn Deeming on [REDACTED] For any new consultations, or to provide further information on this consultation please send your correspondences to [REDACTED]

Yours sincerely

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