



Environmental Planning
Design & Management

FAO: Ms K Child

Dear Ms Child,

This letter is in response to your request that the Council revisits the Habitats Regulations Assessment (HRA) of the Kirklees Local Plan and confirms the extent to which we consider it to be legally compliant in light of the recent judgement 'People over Wind, Peter Sweetman v Coillte Teoranta (Case C-323/17)'. This judgement ruled that Article 6(3) of the Habitats Directive should be interpreted as meaning that mitigation measures should be assessed within the framework of an Appropriate Assessment, 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.

The HRA of the Local Plan was undertaken by independent environmental planning consultants (LUC) on behalf of the Council. LUC has provided an opinion on the compliance of the HRA work undertaken to date based on professional expertise.

Approach to the Screening stage

The HRA Report for the Publication Draft Local Plan (March 2017) which was submitted alongside the Kirklees Local Plan sets out the findings of the screening stage in Chapter 4 and the detailed screening matrix is presented in Appendix 3. The approach taken to screening the policies and proposals in the Local Plan is explained in Chapter 3. As described in paragraph 3.45, during the screening stage consideration was given to mitigation measures that could be implemented in order to avoid likely significant effects, in line with the relevant case-law prevailing at the time of preparation¹. This information is recorded in the fifth column of the screening matrix in Appendix 3. Mitigation measures considered included measures within Local Plan policies as well as general mitigation measures that could be implemented, such as the use of good practice construction techniques. Thirty-four of the policies in the Local Plan were screened out because they would not result in development; therefore consideration of mitigation measures did not influence the screening conclusions for those policies (summarised in paragraph 4.4).

As explained in paragraph 4.8, 21 policies were screened out on the basis that, while they could potentially result in development in any part of Kirklees which could therefore be located within close proximity of the Natura 2000 sites and/or could result in an increase in traffic generation or demand for recreation pressure, there is no detail available at this stage about the location of the development that could result from these policies (or in several cases the nature of the development). The areas of Kirklees in which development would need to be located to affect sites through physical loss of habitat or direct disturbance are very small, and are located away from the main urban areas of the District where the spatial strategy directs the majority of development. In addition, policy PLP30: Biodiversity and Geodiversity was considered to provide robust mitigation for potential effects on Natura 2000 sites that may arise from development applications coming forward under any of those 21 policies. A further three policies were screened out on the basis that they could themselves help to mitigate the potential effects of development proposed elsewhere in the Publication Draft Local Plan. Therefore, consideration of

¹ Judgment of Sullivan J in Dilly Lane litigation (CO/7623/2007) handed down 1 May 2008 and issued 2 June 2008.

mitigation measures did influence the conclusions of the screening stage of the HRA for the 24 policies referred to in paragraphs 4.8 and 4.9.

Paragraph 4.14 explains that the specific site allocations for residential development (208 sites), employment development (14 sites), mixed use development (13 sites) and minerals site allocations (35 sites) were also not able to be screened out, as all were identified as having potential in-combination air pollution impacts. Mitigation measures did not influence this screening conclusion. However, it was possible to screen out some types of site allocation and specific site allocations, in relation to other impacts as described in paragraphs 4.15 to 4.24. Mitigation measures did not influence the screening conclusions for physical loss of habitat and non-physical disturbance or air pollution. Mitigation was referred to in relation to screening out recreation impacts on Denby Grange Colliery Ponds SAC; however it was not the only reason for reaching that conclusion. Paragraph 4.22 states *“the site is not known to be widely used for recreation activities and Natural England’s Site Improvement Plan does not identify recreation-related issues or disturbance as a priority issue for the site. Therefore, particularly in light of the mitigation provided through the open space allocations and green infrastructure provisions in the Publication Draft Local Plan, recreational pressure impacts on Denby Grange Colliery Ponds SAC can be screened out”*.

Approach to the Appropriate Assessment stage

For the policies and site allocations that were not able to be screened out, Appropriate Assessment was undertaken in relation to the types of likely significant effect identified and those Natura 2000 sites that could be affected (as summarised in Table 4.3 in the HRA report). The process undertaken and conclusions reached are described in Chapter 5 of the HRA report. The Appropriate Assessment was undertaken in relation to each Natura 2000 site and type of effect identified for which likely significant effects could not be ruled out at the screening stage.

Compliance with the People over Wind judgement

If the HRA process were to be undertaken again following the recent People over Wind judgement, then mitigation measures provided by other policies within the Publication Draft Kirklees Local Plan would not be taken into account at the screening stage. However, consideration has been given to whether the types of likely significant effects, and the Natura 2000 sites that were included in the Appropriate Assessment would have been different had mitigation considerations not influenced the screening conclusions.

The 24 policies that were screened out on the basis of mitigation considerations could have a range of potential likely significant effects on European sites, as identified in the screening matrix in Appendix 3 of the HRA Report:

- Physical damage/loss of habitat.
- Non-physical disturbance such as noise/vibration and light pollution.
- Air pollution.
- Disturbance from recreation.

These effects could be experienced at the following Natura 2000 sites:

- South Pennine Moors SAC
- South Pennine Moors SPA (Phases 1 and 2)
- Rochdale Canal SAC

All of the above Natura 2000 sites and potential likely significant effects were still included and considered in the Appropriate Assessment because of likely significant effects identified for other policies that could not be screened out.

The screening conclusion reached in relation to Denby Grange Colliery Ponds SAC, i.e. that likely significant effects relating to air pollution and recreational impacts could be screened out for all policies (paragraphs 4.19 and 4.22), would have been the same even without taking into account the mitigation provided through the open space allocations and green infrastructure provisions in the Publication Draft Local Plan.

Therefore, the same process for the Appropriate Assessment was undertaken as would have been if mitigation had not been considered at screening stage. It is LUC's professional opinion that the conclusions of the HRA for the Kirklees Local Plan are robust and would not have been different had the screening assessment been undertaken without any consideration of mitigation measures.

Yours faithfully



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