

External Memo: **technical advice note**

To	Newark & Sherwood District Council
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Subject	Newark & Sherwood Allocations and Development Management DPD Examination Response to Inspector’s Matters, Issues and Questions (MIQs) concerning the Habitats Regulations Assessment process
Matter	Matter 1: Duty to cooperate and other legal requirements
Issue	Issue 3: Whether the Plan has been prepared in compliance with other legal requirements
Date	11 th October 2024

Summary

This note has been prepared in response to Question 1.10 raised by the Inspector as part of the forthcoming Examination Hearings for the Newark & Sherwood Allocations and Development Management Development Plan Document (DPD). This question concerns the Habitats Regulations Assessment which was prepared by Lepus Consulting in September 2023 to inform the Newark and Sherwood District Council Second Publication Amended Allocations & Development Management DPD.

The purpose of this note is to provide an answer to Question 1.10 which has been raised under Matter 1, Issue 3 of the MIQs.

Response to Question 1.10

1.10: Is the Habitats Regulations Assessment (CD04) robust and have the requirements of the Conservation of Habitats and Species Regulations 2017 been met? Are any modifications necessary for legal compliance with the Regulations?

1. A full assessment of the effects of the Newark and Sherwood District Council Second Publication Amended Allocations & Development Management Development Plan Document (DPD) pursuant to Regulation 105 of the Conservation of Habitats and Species Regulations 2017 is recorded in the 'Newark and Sherwood District Council Second Publication Amended Allocations & Development Management DPD Habitats Regulations Assessment (September 2023)' (CD04). This document is referred to in this note as the '2023 HRA'.
2. The assessment methodology follows the Habitats Regulations Assessment Handbook, produced by David Tyldesley Associates¹. This methodology is widely accepted as the most appropriate to use and is designed to meet the requirements of relevant HRA legislation: The Conservation of Habitats and Species Regulations 2017, as amended².
3. The HRA was prepared through two distinct processes known as screening and appropriate assessment.

¹ Tyldesley, D., & Chapman, C. (2021). The Habitats Regulations Handbook. DTA Publications. <https://www.dtapublications.co.uk/handbook/>

² The Conservation of Habitats and Species Regulations 2017 SI No. 2017/1012, TSO (The Stationery Office), London. Available at: <https://www.legislation.gov.uk/ukksi/2017/1012> contents, as amended by The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019. Available at: <https://www.legislation.gov.uk/ukdsi/2019/9780111176573>

Screening

4. The screening assessment identified Likely Significant Effects (LSEs), alone or in-combination with other plans/projects, at the following European sites:
 - Birklands and Bilhaugh SAC
 - Humber Estuary SPA
 - Humber Estuary SAC
 - Humber Estuary Ramsar
5. An additional site, known as the Sherwood Forest ppSPA was also included in the HRA. This site is not a European site but Natural England provided advice to all affected Local Planning Authorities in 2014 in relation to the Sherwood Forest ppSPA³. This advice recommends a precautionary approach be adopted which ensures reasonable and proportionate steps are taken to avoid or minimise, as far as possible, any potential adverse effects from development on the breeding populations of Nightjar (*Caprimulgus europaeus*) and Woodlark (*Lullula arborea*) in the Sherwood Forest area.
6. LSEs identified through the screening process included a change in air quality and increased recreational pressure at the Birkland and Bilhaugh SAC and a change in water quality at the Humber Estuary SPA, the Humber Estuary SAC and the Humber Estuary Ramsar. LSEs identified at the Sherwood Forest ppSPA included a change in air quality, increased recreational pressure, urbanisation effects and effects upon areas of functionally linked land.
7. Screening did not take account of the effects of any measures intended to avoid or reduce the harmful effects on a European site or the Sherwood Forest ppSPA.

³ Natural England (2014) 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.

Appropriate Assessment

8. The appropriate assessment provided a scientific evaluation of the following potential impacts:
 - Air quality impacts and recreational pressures at Birkland and Bilhaugh SAC;
 - Water quality impacts at the Humber Estuary SPA, Humber Estuary Ramsar and Humber Estuary SAC;
 - Air quality impacts, increased recreational pressure, urbanisation impacts and impacts upon functionally linked land at the Sherwood Forest ppSPA.

Birkland and Bilhaugh SAC

Air Quality

9. Given that there are no new housing or employment allocations included in the Second Publication Amended Allocations and Development Management DPD (CD01a), but instead a reduction in allocations to reflect completions and deallocations, the 2023 HRA considered that traffic and air quality work provided in support of the Amended Core Strategy HRA (CD16) represents a worst-case air quality assessment and therefore the conclusions from this were applied to the appropriate assessment of air quality impacts at the Birklands and Bilhaugh SAC. The appropriate assessment also included a detailed analysis of baseline conditions, future trends and other sources of pollution.
10. Taking into consideration this information, a conclusion of no adverse impact on site integrity as a result of a change in air quality (alone or in-combination) was recorded in the HRA.

Increased recreational pressure

11. The 2023 HRA drew on a Recreational Impact Assessment (RIA) prepared for the Birklands and Bilhaugh SAC in support of the Bassetlaw Local Plan Review⁴. The RIA provided useful baseline

⁴ Saunders, P., Lake, S. & Liley, D. (2021). Birklands & Bilhaugh SAC Recreation Impact Assessment Report- a report prepared for Bassetlaw District Council in conjunction with Newark and Sherwood District Council. Available at: <https://www.bassetlaw.gov.uk/media/6691/cd-016-birklandsbilhaugh-sac-draft-recreation-impact-assessment-report.pdf>

information in relation to the SAC regarding habitats present, bird survey results, recreational impacts and outputs from a visitor survey. Analysis of visitor postcode data in the RIA, when looking at only the two most frequent activity types undertaken on site (walkers and dog walkers), and those who visit at least once a month, suggested a recreational Zone of Influence (ZOI) of 8.9km i.e. the area over which new residential development is expected to contribute to recreational impacts at the SAC. Based on this evidence, the RIA sets out a suggested strategic approach to mitigation which comprises a mixture of Strategic Access Management and Monitoring (SAMM⁵) at the SAC and also provision of alternative Suitable Alternative Natural Greenspace (SANG⁶) away from the SAC.

12. Policy DM7 of the Second Publication Amended Allocations and Development Management DPD will specifically ensure SANG is provided for new development (which results in a net increase in dwellings) where it is located within 8.9km of the SAC (in accordance with the Planning Obligations & Developer Contributions SPD).
13. Section 9.3 of the 2023 HRA report identifies all allocations which are located within the 8.9km recreational ZOI established for the Birklands and Bilhaugh SAC. Taking into consideration recreational mitigation requirements secured through Policy DM7, a conclusion of no adverse public access and disturbance impacts from development, either alone or in-combination, on the Birklands & Bilhaugh SAC was recorded in the 2023 HRA.

Impact on water quality at the Humber Estuary SAC, Humber Estuary SPA and Humber Estuary Ramsar

14. In terms of water quality, the appropriate assessment drew on the regulatory framework which governs water quality through a national licensing process administered by the Environment Agency. The objective of this system is to ensure that receiving watercourses are not prevented

⁵ The aim of Strategic Access Management and Monitoring (SAMM) measures is to protect European sites from recreational pressures associated with new housing development. SAMM measures achieve this through education, guidance and raising awareness of the sensitivities of the sites, access management, on-site management and ongoing monitoring projects.

⁶ Suitable Alternative Natural Greenspace (SANG) is the name given to greenspace that is of a quality and type suitable to be used as mitigation to avoid impacts at European sites by providing alternative recreational space for new residents away from a European site.

from meeting their environmental objectives, with specific regard to the physico-chemical Status element of the Water Framework Directive (WFD) classification.

15. The Amended Core Strategy DPD and the Second Publication Amended Allocations and Development Management DPD contain policies which will have a positive impact and contribute towards the management of water quality from surface water run-off and the positive management of surface water discharges (Amended Core Strategy DPD: Core Policy 9 and Core Policy 10. Second Publication Amended Allocations and Development Management DPD: Policy DM5b, Policy DM10, Policy DM2 and Policy DM3).
16. Together, the national framework for the protection of water quality and local policy will maintain water quality at European sites. A conclusion of no adverse impact on site integrity at the Humber Estuary SPA, Humber Estuary SAC and Humber Estuary Ramsar due to a change in water quality was recorded in the HRA.

Impact of a change in air quality, increased recreational pressure, urbanisation impacts and impacts upon areas of functionally linked land upon the Sherwood Forest ppSPA.

Air Quality

17. Section 11.2 of the 2023 HRA report provides a step-wise assessment of air quality impacts at the ppSPA. This includes a detailed analysis of baseline conditions and habitat types and their management within 200m of strategic road links, alongside a review of future air quality trends and other sources of air pollution. This assessment also takes into consideration the reduction in allocations compared to the Amended Core Strategy HRA (see **paragraph 9**). Taking these factors into consideration alongside policy requirements, a conclusion of no adverse impact on site integrity as a result of a change in air quality (alone or in-combination) was recorded in the HRA.

Increased recreational pressure

18. As set out in **paragraph 12**, the Amended Core Strategy DPD and the Second Publication Amended Allocations and Development Management DPD contain policies which will have a

positive impact and contribute towards the mitigation of recreational impacts from population growth at the ppSPA.

19. Policy DM7 will specifically ensure that a precautionary risk-based approach is taken to any development with a potential adverse impact upon the ppSPA as per Natural England's guidance⁷.
20. Clumber Park SSSI and the Birkland and Bilhaugh SAC coincide with a small part of the total area covered by the Sherwood Forest ppSPA designation. The 2023 HRA drew on the RIA prepared for the Birkland and Bilhaugh SAC (**paragraph 11**) and an RIA prepared for the Clumber Park SSSI⁸ in support of the Bassetlaw Local Plan Review. These RIAs provided useful baseline information in relation to the area of the SAC and SSSI which coincide with the ppSPA designation, regarding habitats present, bird survey results, recreational impacts and outputs from a visitor survey. Analysis of visitor postcode data in the RIA, when looking at only the two most frequent activity types undertaken on site (walkers and dog walkers), and those who visit at least once a month, suggested a recreational ZOI of 8.9km for the SAC and 24.7km for Clumber Park SSSI. Consultation with Natural England indicated that development within only 10km of the Clumber Park SSSI must be consulted upon where it triggers 50 new dwellings or more⁹. This 10km buffer zones was therefore applied in the appropriate assessment to identify allocations with potential recreational impacts upon the ppSPA at the location of Clumber Park SSSI alongside the ZOI for the Birklands and Bilhaugh SAC.
21. There is currently no requirement for SANG provision for new development which may increase recreational pressures upon areas of the ppPSA. However, Policy DM7 will ensure that a precautionary risk-based approach is taken to any development as per Natural England's

⁷ Natural England (2014) 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.

⁸ Saunders, P., Lake, S. & Liley, D. (2021). Clumber Park SSSI Recreation Impact Assessment Report- a report prepared for Bassetlaw District Council in conjunction with Newark and Sherwood District Council. Available at: https://www.bassetlaw.gov.uk/media/6838/622_clumber_park_recreation_impact_assessment_report_080322_final.pdf

⁹ Natural England. February 2023. Letter to affected LPAs. Subject: Update to Natural England's advice to ensure appropriate consideration of recreational pressure impacts to Clumber Park Site of Special Scientific Interest (SSSI) from relevant residential development.

guidance. This will reflect the nature, scale and proximity of development to the ppSPA and levels of accessibility at the ppSPA itself.

22. Taking into consideration policy wording set out in the DPD, a conclusion of no adverse recreational impacts from development, either alone or in-combination, on the Sherwood Forest ppSPA was reached.

Urbanisation effects

23. Policy DM7 will specifically ensure that a precautionary risk-based approach is taken to any development with a potential adverse impact upon the ppSPA. Policy DM7 specifically requires development within 400m of the ppSPA to adopt a risk-based approach as set out in the Natural England Advice Note to Local Planning Authorities. A risk-based approach includes consideration of various mitigation measures such as best practice lighting and noise standards, quiet construction techniques, sensitive timing of works, incorporation of barriers to cat movements through the use of screens, bunds, cat deterrents and landscaping.

24. Taking into consideration policy wording set out in the DPD, a conclusion of no adverse urbanisation effects from development, either alone or in-combination, on the Sherwood Forest ppSPA was reached.

Functionally linked land

25. 'The term 'functional linkage' refers to the role or 'function' that land or sea beyond the boundary of a European site might fulfil in terms of ecologically supporting the populations for which the site was designated or classified. Such land is therefore 'linked' to the European site in question because it provides an important role in maintaining or restoring the population of qualifying species at favourable conservation status'¹⁰.

¹⁰ Source: Natural England. 2016. Commissioned Report. NECR207. Functional linkage: How areas that are functionally linked to European sites have been considered when they may be affected by plans and projects - a review of authoritative decisions.

26. Policy DM7 will specifically ensure that a precautionary risk-based approach is taken to any development with a potential adverse impact upon the ppSPA. This policy specifically requires development within 400m of the ppSPA to adopt a risk-based approach as set out in the Natural England Advice Note to Local Planning Authorities.
27. The appropriate assessment incorporated a review of habitat at allocation sites which may potentially be used by the qualifying bird species of the ppSPA Woodlark and Nightjar when located outside the designation boundary. This review looked at the following factors:
- Distance from the ppSPA (sites closer the ppSPA are more likely to provide roosting and /or foraging opportunities for birds)
 - Site characteristics including details on:
 - Habitat type / existing land use
 - Cropping regime if agricultural, potential to provide winter food resource
 - The size of the site
 - Details of any existing factors (where available) that may affect the habitat suitability, including:
 - Existing public rights of way and their usage, especially by users with dogs
 - Proximity to existing built up areas
 - Noise and visual disturbance such as road infrastructure
28. Two allocations were identified as being located within a parcel of land with the potential to provide habitat which could be defined as being functionally linked due to its importance to Woodlark and Nightjar
29. Policy wording for these allocations was strengthened (OB/E/3 and CL/MU/1) to ensure detailed project assessment is undertaken once site details and layout are known.
30. Taking into consideration policy wording set out in the DPD, a conclusion of no adverse effects upon areas of functionally linked land from development, either alone or in-combination, on the Sherwood Forest ppSPA was reached.

Consultation

31. Natural England (the Statutory Nature Conservation Body) was consulted on the conclusions of the assessment. Their response (013 HRA S 0019) indicates their agreement with the HRA conclusions stating: 'Natural England is satisfied that the HRA Report follows accepted methodology and is in line with appropriate legislation and guidance. We also acknowledge that policies that may have a Likely Significant Effect on a European Site have been identified and considered further through an Appropriate Assessment. We note that the HRA has made a series of recommendations aimed at strengthening the Plan's wording to ensure adequate policy protection is provided and that this additional wording has now been incorporated into the policies. With these recommendations now included Natural England agrees with the conclusion of the HRA that the Plan would have no adverse impact on site integrity at any Habitats site, or upon the Sherwood ppSPA either alone or in-combination'.

Conclusion

32. Based on the above it is concluded that the HRA is robust and meets the requirements of the Conservation of Habitats and Species Regulations 2017 (as amended) and no modifications are necessary to ensure legal compliance with the Regulations.