

Without Prejudice to the Inspector's Report – Further Note to Council

Habitats Regulation Assessment

On 12 April 2018, the Court of Justice of the European Union (CJEU) issued a judgment (People over Wind, Peter Sweetman v Coillte Teoranta) which ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of an appropriate assessment (AA) and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage. Prior to this judgment, case law in England and Wales had established that avoidance or reduction measures that form part of a proposal could be taken into account when considering whether the plan or project would be likely to have a significant effect on a European site. If the risk of a significant effect could be excluded on the basis of objective information, there was no need to undertake an AA.

The CJEU reasoned that: *“Taking account of such measures at the screening stage would be liable to compromise the practical effect of the Habitats Directive in general, and the assessment stage in particular, as the latter stage would be deprived of its purpose and there would be a risk of circumvention of that stage, which constitutes, however, an essential safeguard provided for by the directive.”* (Paragraph 37 of the judgment).

The implication of the CJEU judgment is that competent authorities cannot take account of any integrated or additional avoidance or reduction measures when considering at the HRA screening stage whether the plan or project is likely to have an adverse effect on a European Site.

The screening stage must be undertaken on a precautionary basis without regard to any proposed integrated or additional avoidance or reduction measures. Where the likelihood of significant effects cannot be excluded, on the basis of objective information the competent authority must proceed to carry out an AA to establish whether the plan or project will affect the integrity of the European site, which can include at that stage consideration of the effectiveness of the proposed avoidance or reduction measures.

The Inspector notes that the screening stage set out in the HRA at section 3 finds that the impacts of increased recreation pressure need to be considered further in relation to Rutland Water SPA and

Rutland Water Ramsar site (3.26). It suggests that some of the potential effects of the Local Plan could be mitigated through the implementation of other policies within the Local Plan (3.34 & 3.35) and considers this further in Chapter 4. The screening conclusions have regard to the emphasis of the Local Plan on maintaining and enhancing recreational and green space, and existing plans and mitigation before concluding that the impact of some increase in visitors to Rutland Water SPA and Ramsar site is unlikely to be significant (4.9).

Could the LPA please re-visit the screening assessment and confirm the extent to which it considers that the HRA report is legally compliant in light of the judgment? In particular, the Council should consider if likely significant effects have been screened out on the grounds of avoidance or reduction measures and what, if any, further action needs to be taken. Please advise the Inspector of the outcome of the revised screening assessment.

Council's response;

The Council has instructed Land Use Consultants (LUC), the authors of the existing Habitat Regulations Assessment (HRA), to prepare a response to the Inspector. This response will be sent to the Inspector on Friday 10th August 2018.

If the revised screening assessment concludes that an AA is required this should be carried out and consideration given to whether the AA necessitates any main modifications (MM) to the plan. The extent to which MM are likely will decrease where adequate avoidance and reduction measures were already identified and secured. If the avoidance and reduction measures are adequate to exclude adverse effects on European site(s) integrity, the approach required is primarily a procedural one ensuring that the AA has been undertaken where required.

Further consultation may be required on any revised screening assessment or AA. The Habitats Regulations require the competent authority (the LPA) to consult the appropriate statutory nature conservation body (SNCB) and have regard to any representations made by that body.

Council's response;

From discussions that have taken place between the Council and LUC, the outcomes of the HRA will not change as a result of the recent judgement relating to

HRA. However, in order to be legally compliant, the HRA will need to be revised and an Appropriate Assessment carried out. On this basis the Council has instructed LUC to carry out the necessary work to ensure its legal compliance. This will be sent to the Inspector on or before the 31st August 2018.

Local Green Space

Policy 45

In light of discussions at the relevant hearing session, the Council has suggested modifications to Policy 45 (Ma10) to better reflect the wording set out in the National Planning Policy Framework (NPPF) (March 2012).

On reflection the Inspector would like the Council to consider whether the suggested modification is consistent with NPPF in that, unlike Green Belt policy, it permits no 'appropriate' development.

The Council may wish to consider a main modification along the following lines:

In areas designated as Local Green Space, new development that would cause harm to the local significance of the Local Green Space will not be permitted except in very special circumstances.

Very special circumstances will not exist unless it can be demonstrated that the harm to the local significance of the Local Green Space is clearly outweighed by other considerations.

Please update the Schedule of Main Modifications accordingly.

Council's response;

The Council are content with the wording proposed by the Inspector and will amend Ma10 as illustrated below. The wording has been based on the most recent wording set out in the draft Main Modifications paper that was sent to the Inspector on the 17th May 2018.

~~*'Any development proposal which will result in the loss of a site designated as Local Green Space on the Adopted Policies Map will not be permitted, unless the harm of losing the asset is significantly outweighed by the benefits of the proposed development.'*~~

In areas designated as Local Green Space, new development that would cause harm to the local significance of the Local Green Space will not be permitted except in very special circumstances. Very special circumstances will not exist unless it can be demonstrated that the harm to the local significance of the Local Green Space is clearly outweighed by other considerations.

Proposals put forward to the Council for Local Green Space designation will be assessed against the criteria set out within national planning policy'.

SW2 Land rear of 11-35 Marstown Avenue

The Inspector has some concerns in relation to the justification for this site as Local Green Space. Its use is described as supplementary garden space by the houses backing on to it. Its suggested recreational value in the context of paragraph 77 of the NPPF (March 2012) is not apparent to the Inspector from the evidence provided.

Without prejudice to her report, on the basis of the evidence submitted the Inspector has concerns about whether the identification of this site is justified. The Council may wish to consider deleting the site from the Policies Map through a Main Modification or provide further justification for its continued inclusion in the Local Plan.

Council's response;

The Council will propose to remove SW2 from the Adopted Policies Map through the Main Modification consultation. Should the land area not be designated as a Local Green Space it will not be subject to the Local Green Space Policy contained within the new Local Plan.

Please advise how the Council wish to proceed?

Claire Sherratt DipURP MRTPI

25 July 2018