

Addendum to the Strategic Environmental Assessment (SEA) and Habitats Regulations Assessment (HRA) Screening Report:

Linby Neighbourhood Development Plan

(19.12.2018)

1. Reason for Addendum

This addendum has been prepared by Gedling Borough Council on behalf of the Linby Neighbourhood Plan Steering Group.

The Strategic Environmental Assessment (SEA) Screening Report¹ on the draft Linby Neighbourhood Plan includes conclusions relating to Habitats Regulation Assessment (HRA). The SEA Screening Report is dated February 2018 with consultation with statutory bodies having taken place on 22nd December 2017. Given the timing, the report and consultation did not take account of the below court rulings:

- *Court of Justice ruling in People Over Wind and Sweetman v Coillte Teoranta. (Judgement of the Court Seventh Chamber 12 April 2018)*
- *Court of Justice (Second Chamber) judgement of 25 July 2018 Grace, Sweetman, and National Planning Appeals Board Ireland (ECLI:EU:C2018:593).*

Prior to the above rulings it was established practice that mitigation measures incorporated into a plan or project should be taken account when deciding whether it would have a likely significant effect in relation to HRA. The rulings establish that it is not appropriate to take account of mitigation measures at the screening stage of a HRA when deciding whether an appropriate assessment of a plan/project is required.

Nationally, local and neighbourhood plans as part of their examination have been required to review their conclusions in relation to HRA in light of the above rulings. This addendum reviews the SEA Screening Report, in particular its conclusions in relation to HRA, in consultation with Natural England as the relevant statutory body.

¹ Gedling Borough Council (February 2018). SEA Screening Report Linby Neighbourhood Development Plan. Available [online] at: www.gedling.gov.uk/linbyplan

2. Gedling Borough Council Response

The SEA Screening (February 2018) concluded in relation to HRA about the draft Linby Neighbourhood Plan:-

“The Aligned Core Strategy (Part 1 Local Plan) and emerging Local Planning Document (Part 2 Local Plan) have been subject to a Habitats Regulations Assessment (HRA). Given that the Part 2 Plan is in general conformity with the Part 1 Plan, no significant effect was revealed.

Similarly, the draft NP has been written to be in general conformity with the Local Plan. The draft NP does not promote more development than the Local Plan and, as a result, the conclusions of ‘no likely significant effect’ of the Local Plan HRA are applicable to the neighbourhood area. Therefore, it is considered that a separate HRA is not required for the draft NP”.

The Linby Neighbourhood Area is within the in combination assessment area for the Sherwood Forest Prospective Special Protection Area (pSPA)². The boundary of the Neighbourhood Area (conterminous with Linby Parish) is proximal to core areas identified in the pSPA. Although the pSPA is not a formal designation, the Part 1 Local Plan at paragraph 3.17.3 confirms that a precautionary approach is taken and the pSPA is treated as if it were a confirmed European site.

The draft Linby Neighbourhood Plan does not allocate land for development. The Gedling Borough Part 1 and the Part 2 Local Plans allocate land for development in the Neighbourhood Area and were subject to appropriate HRA and no significant effect was revealed. The Linby Neighbourhood Plan has been prepared to be in general conformity with the Local Plan Parts 1 and 2 and as a result the conclusion of “no likely significant effect” for the Local Plan HRA is applicable to the Linby Neighbourhood Area. The Linby Neighbourhood Plan policies relate to the design and other details of development, rather than establishing the principle of specific development sites, and also includes protective policies.

It is noted that Nottingham City Council, a strategic planning partner with whom the Part 1 Local Plan and HRA was jointly produced, have prepared a similar screening for the examination of their emerging Local Plan. The scope of this assessment was limited to any ‘new’ effects which might arise as part of their plan given the conclusions of the Part 1 Local Plan HRA³. Where an effect from the Local Plan has already been subject to assessment as part of the HRA for the Part 1 Local Plan, in

² Natural England (March 2014). Advice Note. Available [online] at: <http://www.mansfield.gov.uk/CHttpHandler.ashx?id=7529&p=0>

³ Nottingham City Council (September 2018). Shadow Habitats Regulations Assessment to inform the assessment of the Local Plan Part 2 (Submission Version) by Nottingham City Council. Available [online] at: <https://www.nottinghamcity.gov.uk/planning-and-building-control/planning-policy/the-local-plan-and-planning-policy/lapp-local-plan-part-2-examination/latest-news/> (Reference LAPP.NCC18 4.10.18).

accordance with DEFRA guidance⁴, the Council should seek to adopt all parts of that assessment if satisfied that it remains robust and not become outdated. Duplicating assessment already undertaken is considered by the DEFRA guidance to be inefficient and unnecessary. Natural England agreed with Nottingham City Council's conclusion/ methodology.

Given the above, the policies of the draft Linby Neighbourhood Plan have been screened to consider their likely 'new' effect with respect of HRA (note the initial screening was undertaken on the December 2017 draft of the plan whereas this addendum screening is undertaken on the June 2018 draft of the plan):-

- **HSG1 (Housing Mix)** – Consistent with Part 1 and Part 2 Local Plans. Relates to development details rather than establishing the principle of development. No significant 'new' effect.
- **DES1 (Design)** – Consistent with Part 1 and Part 2 Local Plans. Includes design principles rather than establishing the principle of development. No significant 'new' effect.
- **CBH1 (Heritage and Local Green Space)** – Consistent with Part 1 and Part 2 Local Plans. Includes protective designations so does not promote development. No significant 'new' effect.
- **CBH2 (Historic Character)** – Consistent with Part 1 and Part 2 Local Plans. Protective policy to ensure development responds to the Linby Conservation Area so would not support development that is out of context to the area. No significant 'new' effect.
- **NE1 (Habitats, Trees and Hedgerows)** – Consistent with Part 1 and Part 2 Local Plans. Protective policy to retain wildlife habitats trees and hedgerows. No significant 'new' effect.
- **NE2 (Landscape and Rural Character)** – Consistent with Part 1 and Part 2 Local Plans. Relates to development details and seeks to ensure proposals are sensitive to the landscape, rather than establishing the principle of development. No significant 'new' effect.
- **TRA1 (Traffic and Transport)** – Consistent with Part 1 and Part 2 Local Plans. Relates to development details rather than establishing the principle of development. No significant 'new' effect.
- **EMP1 (High Speed Connectivity)** – Consistent with Part 1 and Part 2 Local Plans. Relates to development details rather than establishing the principle of development. No significant 'new' effect.

⁴ DEFRA (July 2012). Guidance on competent authority coordination under the Habitats Regulations. Available [online] at: <https://www.gov.uk/government/publications/guidance-on-competent-authority-coordination-under-the-habitats-regulations>

- **EMP2 (Employment)** – Consistent with Part 1 and Part 2 Local Plans. Relates to development details including at the allocated employment site in the Neighbourhood Area. The principle of this allocation has been established in the Local Plan which was subject to appropriate HRA. No significant ‘new’ effect.
- **COM1 (Community Facilities)** – Consistent with Part 1 and Part 2 Local Plans. Seeks to protect existing and support new community facilities, but does not allocate new facilities. No significant ‘new’ effect.
- **DC1 (Developer Contributions)** – Consistent with Part 1 and Part 2 Local Plans. Relates to developer financial contributions. No significant ‘new’ effect.
- **STP1 (Sustainable Housing Development TWF Safeguarded Land)** – This policy has been deleted from the draft plan since the previous screening. No assessment necessary.

To summarise the above, it is concluded that there is no need to further review the HRA of the draft Linby Neighbourhood Plan. The plan does not allocate land for development and the draft policies generally relate to design and development details or include additional protective measures. The draft policies are broadly consistent with the Part 1 and Part 2 Local Plan, both of which have been subject to appropriate HRA. In addition, the Council is satisfied that no material information has emerged that means it has become out of date and that the analysis underpinning the assessment remains sufficiently rigorous and robust.

3. Proposed Action

Publish this document as an addendum to the Screening Report, concluding that the draft Linby Neighbourhood Plan will have no significant ‘new’ effects in relation to HRA considering that the Part 1 and Part 2 Local Plan, both of which establish the principle of allocating sites, has been subject to appropriate HRA. The Linby Neighbourhood Plan is therefore acceptable considering the court rulings listed in section 1.

It is viewed that the judgements do not alter the conclusion of no likely significant effect on European Sites either alone or in combination with other plans or projects. It is considered that the conclusions of the HRA remain robust in the light of the recent case law and that no further screening assessment is required.

4. Consultation and Conclusion

Natural England has been consulted on this addendum and their response was as follows.

Strategic Environmental Assessment Screening

We welcome the production of the draft addendum to the SEA Screening report. Natural England notes and concurs with the outcome i.e. that no further screening assessment is required.

Further guidance on deciding whether the proposals are likely to have significant environmental effects and the requirements for consulting Natural England on SEA are set out in the National Planning Practice Guidance.

Habitats Regulations Assessment Screening

Natural England notes the screening process applied to this Neighbourhood plan. We agree with the Council's conclusion of no likely significant effect upon the named European designated sites:

- Sherwood Forest Possible Potential Special Protection Area (ppSPA)

Sweetman II Judgement

Although an official position from Natural England has yet to be released, the following advice has been formulated through conversations with our legal and policy team.

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.

In this case as no Likely Significant Effect has been identified and therefore no mitigation proposed this ruling would not affect the screening decision for this neighbourhood plan.

It is therefore concluded in consultation with Natural England, that this addendum should be published confirming that the HRA Screening and addendum of the draft Linby Neighbourhood Plan takes appropriate account of the need for HRA when considering the rulings listed in section 1. The reasons for this conclusion are set out in section 2 and section 3 of this addendum.