

Brigstock Neighbourhood Development Plan

Further comments of Independent Examiner relating to HRA issues

Prepared by

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Response prepared by officer of East Northamptonshire Council

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Introduction

- 1) As you will know, I am carrying out this examination of this neighbourhood plan.
- 2) A recent judgment from the Court of Justice of the European Union ‘People over Wind, Peter Sweetman v Coillte Teoranta (Case C-323/17)’ ruled that Article 6(3) of the Habitats Directive should be interpreted as meaning that mitigation measures should be assessed as part of an Appropriate Assessment, and should not be taken into account at the screening stage.
- 3) The precise wording of the ruling is as follows:

“Article 6(3)must be interpreted as meaning that, in order to determine whether it is necessary to carry out, subsequently, an appropriate assessment of the implications, for a site concerned, of a plan or project, it is not appropriate, at the screening stage, to take account of measures intended to avoid or reduce the harmful effects of the plan or project on that site.”
- 4) I am therefore inviting the Council to consider whether the HRA Screening Statement dated October 2017 needs to be updated in the light of the Sweetman judgement. I have noted in relation to one policy, Policy B3 that the screening assessment relies, in that instance, on assumptions related to sustainable drainage systems being provided.
- 5) Once the screening has been reassessed in the light of this judgement, please could you inform me whether you feel there is a need to update the screening and provide me with the updated document.
- 6) I am copying this to the Parish Council and would ask that this note and your response is put on to the relevant website.

John Slater BA(Hons), DMS, MRTPI

John Slater Planning Ltd

16th August 2018

Response

Principal Planning Policy Officer, East Northamptonshire Council, 17th September 2018

I have reviewed and note the Sweetman ruling (EU Court of Justice, Case C-323/17). I have checked this decision against our bespoke Habitat Regulations Assessment (HRA) screening pro-forma (https://www.east-northamptonshire.gov.uk/downloads/file/7169/habitat_regulations_assessment_hra_screening_for_neighbourhood_plans), which we prepared in 2014 to assist Qualifying Bodies and Neighbourhood Planning groups in the preparation of Neighbourhood Plans.

I draw attention to the following guidance note from our HRA screening pro-forma, with particular reference to the text highlighted in **bold**:

HRA Screening stages

A review of the various guidance documents has found that David Tyldesley and Associates' (DTA) Scottish guidance provides the most up to date and systematic guidance currently available for undertaking HRA Screening. Reference to the DTA and other guidance has identified the following stages:

- *Preliminary HRA stages:*
 - *Stage 1: Deciding whether a Neighbourhood Plan should be subject to HRA;*
 - *Stage 2: Identifying the European sites that should be considered;*
 - *Stage 3: Gathering information about the European sites;*
 - *Stage 4: Initial discussions on the method and scope of the appraisal.*
- *HRA Screening – testing whether a Neighbourhood Plan is 'likely to have a significant effect' on a European ("Natura 2000") site (DTA Stage 5):*
 - *Step 1: Neighbourhood Plan vision and outcomes;*
 - *Step 2: Policies, proposals and projects referred to in, but not proposed by, the Neighbourhood Plan;*
 - *Step 3: Typologies of policies in Neighbourhood Plans – identifying if any are likely to have significant effects on any European site.*
- ***Where any possible 'likely significant effects' of a Neighbourhood Plan are identified through the initial HRA Screening exercise, additional stages in the process are:***
 - *Applying mitigation measures at screening stage to avoid likely significant effects (DTA Stage 6);*
 - *Rescreening the Neighbourhood Plan and deciding upon on the need for appropriate assessment (i.e. full HRA)."*

In this case "Stage 6" is incorporated into our pro-forma. However, it is emphasised that this has been done to assist the user in understanding the HRA process as a whole. I consider that the pro-forma clearly distinguishes between initial HRA

Screening (i.e. the legal minimum requirements, as referred to in the Sweetman ruling) and Stage 6 of the process which goes on to consider the mitigation measures identified through the initial screening process.

The North Northamptonshire Joint Core Strategy (JCS) 2011-2031 (Local Plan Part 1) has, in practice, already addressed this issue through the designation of 3km and 4km buffer zones by way of paragraph 3.41 and Policy 4, and the preparation of a Mitigation Strategy to address the impact of development upon the Upper Nene Valley Gravel Pits Special Protection Area (SPA)/ Ramsar site. In this case, the Neighbourhood Plan area (Brigstock Parish) lies wholly beyond the buffer zones.

The buffer zones were developed as the result of extensive working between representatives of Natural England, the County Council, North Northamptonshire Joint Planning and Delivery Unit, East Northamptonshire Council and the Borough Council of Wellingborough in preparing the JCS. The 3km and 4km zones indicate the extent of the area within which new development (i.e. plans, policies or programmes) could be considered to have a potentially significant effect on the SPA/ Ramsar site, either individually or in combination with other plans or projects. Beyond the buffer zones it is not considered that it could reasonably be argued that any Neighbourhood Plan policies or proposals would have any effect upon the SPA/ Ramsar site; otherwise the defined buffer zones would be broader.

Conclusion

As requested, I have considered the implications of the Sweetman ruling for the Brigstock HRA screening assessment. I consider that the guidance we have prepared is in general accordance with the Sweetman ruling (EU Court of Justice, Case C-323/17).

Notwithstanding this, I consider that the implications of the Sweetman ruling are academic in the case of the Brigstock Neighbourhood Plan, given that the Plan area lies wholly beyond the 3km and 4km buffer zones for the SPA/ Ramsar site. Therefore I do not feel that there is any need to update the HRA screening, beyond placing this response on the website and informing the appropriate stakeholders.