

HABITAT REGULATIONS ASSESSMENT FOR THE ARUN LOCAL PLAN

IMPACT OF THE COURT OF JUSTICE OF THE EUROPEAN UNION CASE, “PEOPLE OVER WIND”



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1. Background

- 1.1 The question at issue is whether the Habitats Regulations Assessments for the Arun Local Plan comply with the recent Court of Justice of the European Union determination referred to as “People Over Wind”. The issue considered by that European Court of Justice case is whether, at the Screening stage, when considering whether a proposal needs to be subjected to Appropriate Assessment under Article 6(3) of the Habitats Directive, account can be taken in the screening process of proposed mitigation measures.
- 1.2 Prior to the CJEU Case, the law in the UK had been clearly set out in the case of R. (on the application of Hart DC) v. the Secretary of State for Communities and Local Government (2008) EWHC 1204.
- 1.3 That case set out clearly that proposed mitigation measures could be taken into account when determining whether Appropriate Assessment was necessary and that it was clearly a matter of good sense to do so.
- 1.4 The issue is, of course, that if mitigation measures cannot be taken into account at the screening stage then potentially a lot more cases are going to have to be referred for Appropriate Assessment, at which stage mitigation measures proposed can be taken into account.
- 1.5 The “People Over Wind” case in the CJEU took the directly opposite view to that of the High Court in the Hart Case of 2008. The European Court determined that no account could be taken of proposed mitigation measures as part of the screening process.
- 1.6 In a letter dated the 31st May 2018 the Inspector examining the Arun Local Plan has asked the Council to consider, in the light of the “People over Wind” European Judgement, whether the Council’s Habitats Regulations Assessment Report is legally compliant.

2. Opinion

- 2.1 In response to the Inspectors request the Council's consultants, Urban Edge Environmental Consulting, have prepared a technical note dated June 2018 (ref: UEO194). This Opinion needs to be read in conjunction with that technical note a copy of which is appended.
- 2.2 Briefly stated, the issue is whether the Council in its HRA has taken into account at the screening stage of the process proposed mitigation measures, and in taking into account any such mitigation measures has determined that Appropriate Assessment is unnecessary.
- 2.3 If that were the case, then in each of the cases where that had happened it would be necessary to prepare appropriate assessments where mitigation measures could properly be taken into account, rather than the previous reliance on mitigating measures at the screening stage of the process, which would contravene the "People over Wind" judgment of the European Court.
- 2.4 Section 5, commencing on page 3 of the Consultants Technical Report summarises the HRA screening assessment.
- Paragraph 5 of the Technical Note starts by setting out the European Sites for consideration in the HRA screening exercise for the Arun Local Plan.
- 2.5 For the majority of those sites, the HRA concluded that the Arun Local Plan was unlikely to have a significant effect; there was no reliance on measures intended to avoid or reduce the harmful effects of the Plan on each site in reaching the conclusion that the Arun Local Plan was unlikely to have a significant effect.
- 2.6 The initial assessment was made in March 2013, validated in February 2017 and still considered by the Consultants to be valid now.

2.7 In that situation, no further Appropriate Assessment is necessary for those sites because no reliance was placed during the screening process on proposed mitigation measures.

2.8 In relation to the remaining sites, namely:-

1) Arun Valley SPA / Ramsar

2) Paghan Harbour SPA / Ramsar

3) potential Solent and Dorset Coast SPA,

the conclusion at the screening stage was that there could be significant impacts and in each case Appropriate Assessments were then undertaken.

3. Conclusion

3.1 In no case has the HRA for the Arun Local Plan relied on proposed mitigation at the screening stage and thus avoided Appropriate Assessment which would be necessary under the judgment in the “People Over Wind” European Court decision.

3.2 As a result the HRA is legally compliant and no further Appropriate Assessments are required.

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