

Technical Note

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| Project | Arun Local Plan Habitats Regulations Assessment | Date | June 2018 |
| Note | Arun Local Plan Examination – Court of Justice of the European Union <i>People over Wind</i> ruling | Ref | UE0194 |
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| Status | Final | | |

1. Introduction

This note has been prepared to accompany the Habitats Regulations Assessment¹ (HRA) for the Arun Local Plan (ALP), which is currently undergoing Examination in Public, and in response to a recent ruling from the Court of Justice of the European Union² (CJEU) known as the *People Over Wind* ruling.

2. HRA for the Arun Local Plan

To date the HRA for the ALP (and its forerunner, the Core Strategy) has been comprised of the following documents:

- ▶ Arun District Council (December 2007): *HRA Screening Exercise for the Arun District Local Development Framework Core Strategy: Final Report*;
- ▶ EDAW/AECOM (November 2008): *Arun District Local Development Framework Core Strategy: Appropriate Assessment Report*;
- ▶ AECOM (January 2010): *Arun District Local Development Framework Core Strategy: Habitat Regulation Assessment of Options for Growth*;
- ▶ UE Associates (April 2010): *Habitats Regulations Assessment for the Arun District Core Strategy: Appropriate Assessment Report*;
- ▶ Urban Edge Environmental Consulting (UEEC) (March 2013): *Habitats Regulations Assessment for the Arun District Local Plan*;
- ▶ UEEC (April 2016): *Habitats Regulations Assessment for the Arun Local Plan: Supplementary Work. Stage 1 Report: Baseline Data for Site Evaluations*;

¹ Assessment pursuant to Regulation 105 of the Conservation of Habitats and Species Regulations 2017.

² Case C 323/17 Court of Justice of the European Union (2018): *People Over Wind, Peter Sweetman v Coillte Teoranta*.

- ▶ UEEC (June 2016): *Habitats Regulations Assessment for the Arun Local Plan: Supplementary Work. Stage 2 Report: Screening for Likely Significant Effects;*
- ▶ UEEC (February 2017): *Habitats Regulations Assessment for the Arun Local Plan: Supplementary Work. Stage 3 Report: Appropriate Assessment;* and
- ▶ UEEC (September 2017): *Habitats Regulations Assessment for the Arun Local Plan: Analysis of new overwintering bird data and its implications for the conclusions of the HRA.* [Technical Note submitted as part of the Examination in Public.]

3. The CJEU *People Over Wind* Ruling

The request for a ruling from the CJEU posed the question:

'Whether, or in what circumstances, mitigation measures can be considered when carrying out screening for appropriate assessment under Article 6(3) of the Habitats Directive?'

The CJEU ruling was:

'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.'

In effect the *People Over Wind* ruling introduces a distinction between the essential features and characteristics of a plan or project (e.g. its location) and protective measures intended solely by the plan maker or project proposer to avoid or reduce adverse effects. The court ruled that protective measures are not essential features and characteristics of the plan or project, in that it could be carried out without these measures if they were not required specifically to protect a European site. As such the court ruled that protective measures should not be taken into account at the screening stage.

Where protective measures are incorporated into the plan or project, are effective, reliable, timely, guaranteed and of sufficient duration, they should instead be taken into account at the integrity test stage (Stage 2 Appropriate Assessment). A competent authority can impose 'additional mitigation measures' over and above incorporated mitigation, if necessary, so as to ensure that a plan or project would not adversely affect the integrity of a European site, either alone or in combination with other plans and projects. Additional mitigation measures should also be considered at the integrity test stage.

4. Questions from the Inspector

In a letter dated 31 May 2018, the Inspector presiding over the ALP Examination asked the following questions of the Council:

Do you consider that your Habitats Regulations Assessment (HRA) report is legally compliant in light of the judgment? You should re-visit the screening assessment in considering whether the HRA is

legally compliant. If the revised screening assessment concludes that an Appropriate Assessment (AA) is required this should be carried out.

Does any AA necessitate any main modifications (MM) to the plan or are there adequate avoidance and reduction measures already identified and secured?

5. Compliance of the HRA with the *People Over Wind* ruling

Summary of HRA screening assessment

The HRA screening exercise (ADC, 2007) for the Arun District Core Strategy identified the following European sites for consideration³:

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|--------------------------------------|--|
| ▶ Castle Hill SAC | ▶ Arun Valley SPA |
| ▶ Duncton to Bignor Escarpment SAC | ▶ Chichester & Langstone Harbours SPA |
| ▶ Ebernoe Common SAC | ▶ Pagham Harbour SPA |
| ▶ Kingley Vale SAC | ▶ Portsmouth Harbour SPA |
| ▶ The Mens SAC | ▶ Arun Valley Ramsar |
| ▶ Rook Clift SAC | ▶ Chichester & Langstone Harbours Ramsar |
| ▶ Singleton and Cocking Tunnels SAC | ▶ Pagham Harbour Ramsar |
| ▶ Solent & Isle of Wight Lagoons SAC | ▶ Portsmouth Harbour Ramsar |
| ▶ Solent Maritime SAC | |

Acknowledging that the ALP is not directly connected with or necessary to management of the sites for nature conservation, the HRA (March 2013) concluded that the ALP was unlikely to have a significant effect on any of the above sites, with the exception of Pagham Harbour SPA/Ramsar. The HRA dismissed all other European sites at the screening stage and did not rely upon “*measures intended to avoid or reduce the harmful effects of the plan... on [each] site*” in doing so. The reasons for concluding no likely significant effect (reproduced at Appendix 1 for reference) were still considered to be valid in the HRA Appropriate Assessment (February 2017) and are still considered to be valid now. No further Appropriate Assessment is required for these sites.

The HRA Screening Report (June 2016) concluded no likely significant effect on Arun Valley SAC because there are no waste water discharges into Arun Valley from treatment works serving Arun district, and development within the district is not likely to be supplied by abstractions from Arun Valley or related resources. The reasons for concluding no likely significant effect are still considered to be valid now. No further Appropriate Assessment is required for this site.

The HRA Appropriate Assessment (February 2017) reintroduced Arun Valley SPA/Ramsar, and also considered (then) recently published proposals for a new Solent and Dorset Coast potential SPA (pSPA). These sites are considered in further detail below together with Pagham Harbour SPA/Ramsar.

³ Nationally and locally designated sites are not required to be assessed under the Habitats Regulations or Habitats Directive.

Arun Valley SPA/Ramsar

The HRA Appropriate Assessment (February 2017) concluded that the ALP would be likely to have a significant effect on the Arun Valley SPA/Ramsar via impacts on supporting habitats. The assessment centred on whether development proposed by the ALP fell within Functionally Connected Land (FCL) Impact Risk Zones (IRZ) surrounding Arun Valley SPA. The HRA set out a series of requirements for ecological survey, impact assessment and mitigation to be considered at the planning application stage for relevant sites, as had been agreed with Natural England, and stated that these measures had been incorporated into the ALP. The HRA then carried the Arun Valley SPA/Ramsar forward to undertake Appropriate Assessment in view of the sites' conservation objectives and applied the test for adverse effects on integrity. It concluded that there will be no adverse effects on the integrity of the Arun Valley SPA/Ramsar. Appropriate Assessment has already been applied to these sites and no further work is required.

Pagham Harbour SPA/Ramsar

The HRA Appropriate Assessment (February 2017) concluded that the ALP could be likely to have a significant effect on the Pagham Harbour SPA/Ramsar via disturbance, invasive non-native species, impacts on supporting habitats, water abstraction and water pollution.

Disturbance

The assessment considered that development proposed by the ALP would be likely to increase recreational visits to the SPA/Ramsar. The resultant increase in disturbance from people and their dogs is likely to adversely affect populations of breeding terns (by reducing breeding success) and overwintering Brent goose, black-tailed godwit, ruff and pintail (by reducing winter survival rates), thereby undermining the integrity of the SPA/Ramsar. The HRA reviewed the avoidance and mitigation measures already included in the ALP (policy ENV DM2) to prevent such effects from occurring, alongside the interim strategic framework and tariff based system which was already in operation to implement the policy. It concluded that additional mitigation was required to account for the additional impact of new development sites at the Proposed Modifications stage. The HRA then carried forward the impact of disturbance to undertake Appropriate Assessment in view of the Pagham Harbour SPA/Ramsar conservation objectives and applied the test for adverse effects on integrity. It concluded that there will be no adverse effects on the integrity of the Pagham Harbour SPA/Ramsar. Appropriate Assessment has already been applied to these sites and no further work is required.

Invasive non-native species

The assessment considered that development proposed by the ALP would be likely to increase the risk of invasive non-native species spreading within the SPA/Ramsar. The HRA reviewed the avoidance and mitigation measures already included in the ALP (policy ENV DM2) to prevent such effects from occurring, and considered that they were the most effective and proportionate planning response available to deal with such effects. The HRA then carried forward the impact of invasive non-native species to undertake Appropriate Assessment in view of the Pagham Harbour SPA/Ramsar conservation objectives and applied the test for adverse effects on integrity. It concluded that there will be no adverse effects on the integrity of the Pagham Harbour SPA/Ramsar. Appropriate Assessment has already been applied to these sites and no further work is required.

Impacts on supporting habitats

The assessment centred on whether development proposed by the ALP could impact on supporting habitats used by species from the SPA/Ramsar, principally dark-bellied Brent goose. The HRA set out a series of requirements for ecological survey, impact assessment and mitigation to be considered at the planning application stage for relevant sites, as had been agreed with Natural England, and stated that these measures had been incorporated into the ALP. The HRA then carried forward the impact on supporting habitats to undertake Appropriate Assessment in view of the Pagham Harbour SPA/Ramsar conservation objectives and applied the test for adverse effects on integrity. It concluded that there will be no adverse effects on the integrity of the Pagham Harbour SPA/Ramsar. Appropriate Assessment has already been applied to these sites and no further work is required.

Water abstraction

The HRA Appropriate Assessment (February 2017) examined the relevant Water Resource Management Plans and concluded that there is sufficient water available for use throughout the plan period without likely significant effects on European site integrity. In drawing this conclusion the HRA did not rely on upon measures proposed by the ALP which were “intended to avoid or reduce the harmful effects of the plan” on Pagham Harbour SPA/Ramsar. No further Appropriate Assessment is required for these sites.

Water pollution

The assessment considered that development proposed by the ALP would be likely to increase effluent flows to Pagham waste water treatment works (WWTW). Pagham WWTW serves a small part of Arun district as well as a number of settlements in Chichester district. The capacity of Pagham WWTW to receive new connections is approaching the environmental limit set by the Environment Agency to prevent impacts on the SPA/Ramsar. With planned residential developments in the Pagham works’ catchment exceeding estimated headroom by 779 dwellings over the plan period, it was not possible to rule out the risk of a significant deterioration in water quality and increased macroalgal growth. This would threaten the winter survival rates of Brent goose, black-tailed godwit, ruff and pintail by reducing food availability, thereby undermining the integrity of Pagham Harbour SPA/Ramsar. The HRA concluded that, in the absence of water company plans to upgrade the treatment infrastructure at Pagham WWTW, flows from residential developments which exceed the available headroom should be transferred to an alternative discharge location, and stated that this measure had been incorporated into the ALP. The HRA then carried forward the impact of water pollution to undertake Appropriate Assessment in view of the Pagham Harbour SPA/Ramsar conservation objectives and applied the test for adverse effects on integrity. It concluded that there will be no adverse effects on the integrity of the Pagham Harbour SPA/Ramsar. Appropriate Assessment has already been applied to these sites and no further work is required.

Other impact pathways

In addition the HRA Screening Report (June 2016) concluded that the ALP could have a likely significant effect on the Pagham Harbour SPA/Ramsar via land-take, noise, vibration and shortened view lines. These impacts were associated with the Pagham South site which, at the time, overlapped with the SPA/Ramsar by c. 37 ha. The site was subsequently reduced in size and is now more than 400m from the SPA/Ramsar. As a result the HRA Appropriate Assessment (February 2017) concluded no likely significant effect on the

SPA/Ramsar and did not continue with an impact assessment or test for adverse effects on integrity on the SPA/Ramsar in relation to land-take, noise, vibration and shortened view lines. The reduced size of the Pagham South is considered to be part of the essential features and characteristics of the ALP and Pagham South site (i.e. its location). No further Appropriate Assessment for these impact pathways is required.

Solent and Dorset Coast pSPA

The HRA Screening Report (June 2016) concluded that the ALP could have a likely significant effect on the Solent and Dorset Coast potential pSPA via disturbance, land-take, noise, vibration and shortened view lines. These impacts were associated with the Pagham South site which, at the time, overlapped with the pSPA by c.0.48ha. The site was subsequently reduced in size and is now more than 400m from the pSPA. As a result the HRA Appropriate Assessment (February 2017) concluded no likely significant effect on the pSPA and did not continue with an impact assessment or test for adverse effects on integrity on the pSPA. The reduced size of the Pagham South is considered to be part of the essential features and characteristics of the ALP and Pagham South site (i.e. its location). No further Appropriate Assessment is required for this site.

6. Adequacy of Avoidance and Reduction Measures

The HRA referred to “incorporated mitigation measures” which form an integral part of the ALP but would not be required other than specifically to protect a European site. It nonetheless proceeded to an assessment of effects on integrity for each site and impact pathway where likely significant effects were predicted. No site or impact requires further Appropriate Assessment, as described above. There are hence no further main modifications required to the plan to address impacts on European sites and the avoidance and reduction measures already identified and secured are adequate.

7. Conclusion

This note has reconsidered the Arun Local Plan Habitats Regulations Assessment in light of the recent CJEU *People Over Wind* ruling. It has examined every site and impact pathway addressed by the HRA and found that none requires further Appropriate Assessment. No additional modifications to the ALP are needed to make the plan compliant with the Habitats Regulations.

Appendix 1: Screening Conclusions from Earlier Stages of HRA

Table A1: Summary of likely significant effects of the Core Strategy (Source: AECOM, 2010)

| European Site | Summary of Features | Potential Effects of Arun Core Strategy | Significant Effect either alone or in combination? |
|--|--|--|---|
| Pagham Harbour SPA/Ramsar | Coastal wetlands, breeding, migratory and wintering birds | Recreational disturbance (including dogs); flood risk and coastal squeeze; water abstraction; water pollution; non-native species; loss of supporting habitats | Yes Recreational disturbance predicted to increase |
| Arun Valley SPA/Ramsar | Grazing marshes, breeding, migratory and wintering birds | Recreational disturbance (including dogs); water abstraction; water pollution | Yes; disturbance was subsequently screened-out by AECOM (2010) in consultation with NE (pers. comm., 2010a) |
| Chichester and Langstone Harbours SPA/Ramsar | Coastal wetlands, breeding, migratory and wintering birds | Recreational disturbance (including dogs); loss of supporting habitats; water pollution | No Site too distant |
| Portsmouth Harbour SPA/Ramsar | Coastal wetlands supporting migratory and wintering birds | Recreational disturbance (including dogs); air and water pollution | No Site too distant |
| Solent Maritime SAC | Estuarine habitats | None identified in screening report | No Largely inaccessible |
| Solent and Isle of Wight Lagoons SAC | Coastal lagoons | None identified in screening report | No Largely inaccessible |
| The Mens SAC | Beech woods supporting Barbastelle bat | None identified in screening report | No Woodland site with limited access |
| Duncton to Bignor Escarpment SAC | Beech woodlands | None identified in screening report | No Woodland site with limited access |
| Ebernoe Common SAC | Beech woods supporting Barbastelle bat and Bechstein’s bat | None identified in screening report | No Woodland site with limited access |
| Singleton and Cocking Tunnels SAC | Barbastelle bat and Bechstein’s bat roost | None identified in screening report | No Site inaccessible |

| European Site | Summary of Features | Potential Effects of Arun Core Strategy | Significant Effect either alone or in combination? |
|----------------------|---|--|---|
| Kingley Vale SAC | Yew woods | None identified in screening report | No Site too distant |
| Rook Clift SAC | Lime/maple woods on slopes | None identified in screening report | No Site distant with limited access |
| Castle Hill SAC | Calcareous grassland and scrub with early gentian maintained by grazing | None identified in screening report | No Site distant with limited access |