



Nuneaton and Bedworth Borough Council Habitats Regulations Screening Assessment

Borough Plan, Publication Draft

22 November 2016

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Glossary

AA: Appropriate Assessment

ALSE: Assessment of Likely Significant Effect

APIS: UK Air Pollution Information System

DCLG: Department for Communities and Local Government

DEFRA: Department for Environment, Food and Rural Affairs

EC: European Commission

EU: European Union

HRA: Habitat Regulations Assessment

HRSA: Habitats Regulations Screening Assessment

JNCC: Joint Nature Conservation Committee

SAC: Special Area of Conservation

SPA: Special Protection Area

SSSI: Site of Special Scientific Interest

SuDS: Sustainable Drainage System



1.0 Executive Summary

WYG was commissioned by Nuneaton and Bedworth Borough Council to assess the likely significant effects of the policies set out in the Borough Plan, Publication Draft. This report provides information to inform an Assessment of Likely Significant Effect (ALSE) under Regulation 102 of the Conservation of Habitats and Species Regulations 2010 (as amended). This assessment will be completed by the Borough Council as decision maker and therefore competent authority under the Habitats Regulations for the purposes of this assessment.

This assessment considers the likely significant effects of the proposed Borough Plan, Publication Draft on the River Mease Special Area of Conservation (SAC) and Ensors Pool SAC .

The assessment was undertaken using guidance published by the European Commission (EC, 2001), to ensure that it is compliant with the relevant legislation.

This assessment considers that there are unlikely to be any significant effects on the River Mease SAC from any of the policies contained in the Borough Plan, Publication Draft largely due to the physical separation between development proposed in the Borough Plan and the SAC, and the low potential for any effects pathways such as hydrological links.

This assessment also concludes that the 'competent authority' (Nuneaton and Bedworth Borough Council) following consultation with Natural England, can approve the Borough Plan, Publication Draft, subject to ensuring that Policy NE3 makes it clear that a project level (at the planning applications stage) HRA under Regulation 60 of the Conservation of Habitats and Species Regulations 2010 (as amended) will be required for those site allocations which may affect the Ensor's Pool SAC by virtue of hydrological effects or recreational effects. Such an assessment should take into consideration the means by which it is proposed to carry out these developments and any avoidance and mitigation measures which are proposed to ensure that the integrity of Ensor's Pool SAC is not adversely affected.



2.0 Introduction

2.1 Borough Plan

The Borough Plan will play a key role in shaping the future of the Borough of Nuneaton and Bedworth up to 2031. It will influence what development will take place, how much, and where within the Borough it will be located. The Borough Plan outlines a spatial vision and strategic objectives for the area along with strategy and policies for its delivery. The context for the Borough Plan includes the National Planning Policy Framework (NPPF), 2012. This provides the national policy framework within which local policy should be prepared.

To ensure that the Borough Plan is effective in meeting future needs in a sustainable way, a Strategic Environmental Assessment and a Sustainability Appraisal has been undertaken alongside the production of the Borough Plan. This Habitats Regulations Screening Assessment (HRSa) has helped to inform these other reports.

2.2 Requirements for Habitats Regulations Assessment (HRA)

The European Directive (92/43/EEC), termed 'the Habitats Directive' was introduced to protect and enhance species and habitats of nature conservation importance at the European level. As outlined in Article 6 (3) and 6 (4) of this directive, an 'Appropriate Assessment' must be carried out on plans or projects where it is considered that they are likely to have significant effects on European sites (Natura 2000 sites), including Special Protection Areas which were designated under the 2009 Birds Directive (Directive 2009 /147/EC).

An Appropriate Assessment should identify the effects of those plans or projects on qualifying features of the European sites in relation to the Conservation Objectives of those sites and determine whether these effects will result in an adverse effect on the integrity of the designated site. Only where the decision maker (the Competent Authority - in this case, the Local Planning Authority, Nuneaton and Bedworth Borough Council), is satisfied that there will be no adverse effect on integrity, or where there are imperative reasons of overriding public interest, can the plan or project be approved.

Under Article 6(3) of the Habitats Directive, an Appropriate Assessment needs to be carried out in respect of any plan or project which:

- (i) either alone or in combination with other plans or projects would be likely to have a significant effect on a site designated within the European network; and



- (ii) is not directly connected with the management of the site for nature conservation.

This requirement is currently transposed into UK law (England and Wales) by Regulations 61 and 102 of the Conservation of Habitats and Species Regulations 2010 (as amended). Regulation 102 is the relevant regulation in the case of land use plans in England. It requires that: Where a land use plan—

(1a) is likely to have a significant effect on a European site or a European offshore marine site (either alone or in combination with other plans or projects), and

(1b) is not directly connected with or necessary to the management of the site, the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.

(2) The plan-making authority must for the purposes of the assessment consult the appropriate nature conservation body and have regard to any representations made by that body within such reasonable time as the authority specify.

(3) They must also, if they consider it appropriate, take the opinion of the general public, and if they do so, they must take such steps for that purpose as they consider appropriate.

(4) In the light of the conclusions of the assessment, and subject to regulation 103 (considerations of overriding public interest), the plan-making authority or, in the case of a regional strategy, the Secretary of State must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).



3.0 Methodology

The Habitats Directive and Regulations do not specify how assessment should be undertaken. In undertaking this HRSA the process we have adopted is that recommended in official European Commission (EC) guidance (EC, 2001). This represents the first of the following four stage approach:

Stage One: Screening — the process which identifies the likely impacts upon a Natura 2000 site of a project or plan, either alone or in combination with other projects or plans, and considers whether these impacts are likely to be significant;

Stage Two: Appropriate assessment — the consideration of the impact on the integrity of the Natura 2000 site of the project or plan, either alone or in-combination with other projects or plans, with respect to the site's structure and function and its conservation objectives. Additionally, where there are adverse impacts, an assessment of the potential mitigation of those impacts;

Stage Three: Assessment of alternative solutions — the process which examines alternative ways of achieving the objectives of the project or plan that avoid adverse impacts on the integrity of the Natura 2000 site;

Stage Four: Assessment where no alternative solutions exist and where adverse impacts remain — an assessment of compensatory measures where, in the light of an assessment of imperative reasons of overriding public interest (IROPI), it is deemed that the project or plan should proceed (it is important to note that this guidance does not deal with the assessment of imperative reasons of overriding public interest).

This report IS A Stage 1 Screening Assessment (also known as an Assessment of Likely Significant Effects) and comprises four stages:

Step 1. Determining whether the project or plan is directly connected with or necessary to the management of the Natura 2000 site(s);

Step 2. Describing the project or plan and the description and characterisation of other projects or plans that in-combination have the potential for having significant effects on the Natura 2000 site(s);

Step 3. Identifying the potential effects on the Natura 2000 site(s);



Step 4. Assessing the significance of any effects on the Natura 2000 site(s).

3.1 Scope of the Assessment

In this Stage 1 Screening Assessment, the following factors have been considered in relation to the European (Natura 2000) site(s) that could potentially be affected;

- The characteristics of these European sites;
- The conservation objectives for the sites;
- The Borough Plan and its potential effects on the Natura 2000 sites alone; and
- The potential effects of the project in-combination with other relevant plans and projects.

The scope of this Screening Assessment has been informed by the Shadow Habitat Regulations Assessment for the Submission Document version of the Borough Plan (Mott MacDonald, 2015), the Habitats Regulations Assessment of the Development Plan Document (DPD) policy on Gypsy, Travellers and Travelling Showpeople Site Allocations, Preferred Options (WYG, 2015) and consultation with Natural England, which is summarised in Appendix 1 (Natural England, 2016).



4.0 Habitats Regulations Screening Assessment

4.1 Step 1- Determining whether the project or plan is directly connected with or necessary to the management of the Natura 2000 site(s);

The Borough Plan is not connected with and not necessary for the management of any Natura 2000 sites, although it does have the potential to affect them.

4.2 Step 2 – Description of the project or plan and the description and characterisation of other projects or plans that in combination have the potential for having significant effects on the Natura 2000 site(s);

4.2.1 Description of the plan

The purpose of the Borough Plan is to shape the future of the Borough of Nuneaton and Bedworth up to 2031. It is a land use plan and it will influence what development will take place, how much, and where within the Borough it will be located. The Borough Plan outlines a spatial vision and strategic objectives for the area along with strategy and policies for its delivery. The context for the Borough Plan includes the National Planning Policy Framework (NPPF), 2012. This provides the national policy framework within which local policy should be prepared.

The Borough Plan sets out the vision for Nuneaton and Bedworth to 2031 and the objectives that will be pursued to achieve that vision. Objective 8 seeks to address climate change and encourage sustainability in all new development. This includes policies to protect and enhance the Borough's ecological network, in particular priority habitats and species and minimising impacts on biodiversity. Policy NE3 of the Publication Draft requires that: "development proposals will ensure ecological networks and services, biodiversity and geological features are conserved, enhanced, restored and where appropriate, created". Internationally important sites such as SAC's are regarded as irreplaceable and will be protected from development.

The Borough Plan also sets out policies for the delivery of development and infrastructure needed to support the sustainable development of the Borough and deliver the objectives of the Borough Plan. This includes the delivery of 10,040 new homes and 113ha of new employment land.

4.2.2 Description of other plans and projects to be considered

No other plans or projects are considered in combination with the Borough Plan, since the Borough Plan itself has been prepared under the 'duty to co-operate' and in consultation with a range of statutory bodies



and therefore the Borough Plan itself addresses all development likely to be required up to 2031 both within the Borough of Nuneaton and Bedworth and in the surrounding districts.

4.2.3 Description of the Natura 2000 sites that may be affected by the Borough Plan

The Shadow Habitats Regulations Assessment (Mott MacDonald, 2015) identified two European sites protected under the Habitats Directive within a 30km Zone of Influence (ZOI) of the Borough Plan; Ensor's Pool SAC (within the Borough of Nuneaton and Bedworth) and the River Mease SAC (which lies outside the Borough).

Ensor's Pool SAC

This lowland site in central England is standing water and was designated for its white-clawed crayfish population *Austropotamobius pallipes*. This 1 ha marl pit holds a very large population, estimated at 50,000. Although crayfish plague outbreaks have occurred in the Midlands, this waterbody is isolated from river systems and is a good example of a 'refuge' site in an important part of the species' former range. However recent surveys undertaken on behalf of Natural England have not recorded any white-clawed crayfish and have therefore established that the population no longer exists.

River Mease SAC

This lowland river is designated for its Annex I habitat of watercourses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation. This habitat type is characterised by the abundance of water crowfoots *Ranunculus* spp subgenus *Batrachium* (*Ranunculus fluitans*, *R. penicillatus* ssp. *penicillatus*, *R. penicillatus* ssp. *pseudofluitans*, and *R. peltatus* and its hybrids). Floating mats of these white-flowered species are characteristic of river channels in early to mid-summer. They may modify water flow, promote fine sediment deposition, and provide shelter and food for fish and invertebrates.

It is also designated for its Annex II species spined loach (*Cobitis taenia*) and bullhead (*Cottus gobio*). The River Mease is a good example of a riverine population of spined loach. It is a small tributary of the River Trent and has retained a reasonable degree of channel diversity compared to other similar rivers containing spined loach populations. It has extensive beds of submerged plants along much of its length which, together with its relatively sandy sediments (as opposed to cohesive mud) provides good habitat opportunities for the species. The Mease is also an example of bullhead populations in the rivers of central England. Bed sediments are generally not as coarse as other sites selected for the species, reflecting the nature of many rivers in this geographical area, but are suitable in patches due to the river's retained sinuosity. The patchy cover from submerged macrophytes is also important for the species.



The River Mease also supports two other Annex II species but these are not a primary reason for its designation. These are otter (*Lutra lutra*) and white-clawed crayfish (*Austropotamobius pallipes*)

4.3 Step 3 -Identifying the potential effects on the Natura 2000 site(s);

The Shadow Habitats Regulations Assessment (Mott MacDonald, 2015) screened out the River Mease SAC as it was considered as being outside of the influence of the policies and option sites within the Borough Plan. Nuneaton and Bedworth do not sit within the catchment of the River Mease and therefore as the only likely significant effects on this SAC and its Annex I and Annex II features are through hydrological pathways (surface water or groundwater connections) and such connections do not exist, the SAC is unlikely to be affected by policies or developments within the Borough Plan. Similarly, there is no habitat connectivity for otters or white-clawed crayfish between the River Mease and the Borough of Nuneaton and Bedworth.

The Shadow Habitats Regulations Assessment (Mott MacDonald, 2015) could not screen out likely significant effects on Ensor's Pool SAC from three policies in the Submission Borough Plan and several development site allocations, as follows:

- Policy NB2 – Scale and Location of Growth. Reason: This policy supports new development within sites that may have significant effects on the SAC;
- Policy NB16 – Open Space. Reason: This may increase recreational visits to and pressures on the SAC which is designated a Local Nature Reserve and has open public access;
- Policy NB15 – Green Infrastructure. Reason: As for above.

Given the proximity of the following site allocations to the Ensor's Pool SAC, the following sites could not be screened out due to the potential for hydrological linkages:

- Faultlands;
- Arbury;
- Gipsy Lane;
- North of Nuneaton; and
- Woodlands.

On 22nd February 2016, Natural England wrote to Nuneaton and Bedworth Borough Council setting out its formal consultation advice on the Shadow Habitats Regulations Assessment (Mott MacDonald, 2015). A



copy of this letter is appended as Appendix 1. Natural England notified the Borough Council that despite numerous specialist surveys, no evidence of the presence of Annex II species white-clawed crayfish for which Ensor's Pool SAC was designated have been found. Surveys carried out in September 2014 (trapping survey), October 2014 (Dive survey), June – September 2015 (Bioassay) and September 2015 (trapping survey) caught no crayfish. and therefore: *"Based on the survey evidence, Natural England has concluded that the population of native white-clawed crayfish is no longer present"*.

On this basis and following consultations between Natural England and the Environment Agency on potential groundwater linkages between the allocated development sites that could not be screened out in the Shadow Habitats Regulations Assessment, Natural England advised the Borough Council that:

"As a result the Borough council, in its role as competent authority, can conclude no adverse effect on the integrity of the SAC at local plan level because:

(i) A range of viable options to mitigate the effects of the proposed development exist, and therefore the plan can be taken forward with the allocation;

(ii) Carrying out the HRA at the lower tier (project) level allows the further groundwater issues to be addressed at the planning application stage, when the lower level HRA will still be required as a matter of law".

Furthermore, Natural England advised that the three policies which could not be screened out in the Shadow Habitats Regulations Assessment could now be screened out, stating that:

"Currently available information indicates that the SAC's native crayfish population has been lost, and that this is likely to be as a result of biosecurity issues (crayfish plague). Against this background the proposed housing would not further exacerbate the biosecurity risks through the effects of recreation. It is concluded that there would not be any added risk from recreation, and that advice is specifically in the context of the current situation and future prospect. Other recreation related threats to the SAC may be addressed through the detailed design of the proposed housing e.g. green and blue infrastructure provision.

As a result the Borough Council, in its role as competent authority, can conclude no adverse effect on the integrity of the SAC at local plan level because:

(i) A range of options to mitigate the recreation effects of the housing development exist



(ii) Carrying out the HRA at the lower tier (project) level allows recreation issues to be addressed at the planning application stage.

(iii) Risks specifically related to biosecurity risks can be ruled out because the allocation does not add to the existing situation, and there is therefore no additive effect”.

Natural England’s advice concluded by stating that, in the light of the above assessments:

“The advice set out above allows a plan level conclusion of no adverse effect, and consequently pushes further HRA of the proposals down to subsequent lower tier stages of planning e.g. masterplan design or planning application stage. Lower tier HRA is still required as a matter of law and should not automatically draw the same conclusions. This advice allows the Council to revise the findings of the HRA in relation to policies NB15 Green Infrastructure and NB 16 Open Space i.e. to screen out these policies subject to HRA at the lower tier level”.

4.4 Step 4 - Assessing the significance of any effects on the Natura 2000 site(s).

4.4.1 Assessment

Based on the assessments and considerations set out in Step 3, it can be concluded that the Borough Plan, Publication Draft, will have no likely significant effects on the Ensors’s Pool SAC, River Mease SAC or any other Natura 2000 sites designated under the requirements of the Habitats Directive. Therefore a plan level Appropriate Assessment (Stage 2 of the Habitats Regulations Assessment – see 3.1) is not required.



5.0 Conclusions

Based on the assessments and considerations set out in Step 3, it can be concluded that the Borough Plan, Publication Draft, will have no likely significant effects on the Ensors's Pool SAC, River Mease SAC or any other Natura 2000 sites designated under the requirements of the Habitats Directive. Therefore a plan level Appropriate Assessment (Stage 2 of the Habitats Regulations Assessment – see 3.1) is not required.

Therefore the 'competent authority' (Nuneaton and Bedworth Borough Council) following consultation with Natural England can approve the Borough Plan, Publication Draft, subject to ensuring that Policy NE3 makes it clear that a project level HRA under Regulation 60 of the Conservation of Habitats and Species Regulations 2010 (as amended) will still be required for those site allocations which may affect the Ensor's Pool SAC by virtue of hydrological effects or recreational effects. Such an assessment should take into consideration the means by which it is proposed to carry out these developments and any avoidance and mitigation measures which are proposed to ensure that the integrity of Ensor's Pool SAC is not adversely affected.



6.0 References

DCLG (2006) Planning for the Protection of European Sites: Appropriate Assessment (Consultation Document) webarchive.nationalarchives.gov.uk/20061101113831/http://...id=1502353

European Commission (2001). Assessment of Plans and Projects significantly affecting European sites. Methodological guidance on the provisions of Article 6 (3) and (4) of the Habitats Directive 92/43/EEC. European Communities 2001. http://www.rspb.org.uk/Images/spatialplansengland_tcm9-168180.pdf.

EU Directive 92/43/EC on the Conservation of Natural Habitats and Wild Fauna and Flora
http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm

Joint Nature Conservation Committee www.jncc.org.uk

Magic – Department for Environment, Food and Rural Affairs www.magic.gov.uk

Mott MacDonald, (2015) Shadow Habitats Regulations Assessment; Nuneaton and Bedworth Borough Plan, Submission Document.

Nature on the Map www.natureonthemap.org.uk

The Conservation of Habitats and Species Regulations, 2010.
<http://www.legislation.gov.uk/uksi/2010/490/contents/made>

The Conservation of Habitats and Species (Amendment) Regulations, 2012.
<http://www.legislation.gov.uk/uksi/2012/1927/contents/made>

WYG, (2015) Habitats Regulations Assessment; Nuneaton and Bedworth Borough Council DPD Policy on Gypsy, Travellers and Travelling Showpeople; Site Allocations, Preferred Options.



Appendix A – Natural England Response

Date: 22 February 2016
Our ref: 169179
Your ref: Draft submission stage HRA



Nuneaton and Bedworth Borough Council

For the attention of Kelly Ford

BY EMAIL ONLY

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Dear Kelly

Nuneaton and Bedworth Local Plan – Draft Submission Consultation response – Habitats Regulations Assessment – Advice regarding appropriate assessment and the ‘no adverse effect on integrity’ test - Local Plan policies:

- **NB2 Scale & location of Growth**
- **NB15 Green infrastructure**
- **NB16 Open Space**

Further to my email update dated 11 February 2016 Natural England sets out our advice to the Council below. This letter supplements our previous formal response dated 29 January 2016.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

In our previous response to the draft submission document we set out the following Habitats Regulations Assessment update in relation to allocation site HSG 2 (a component of policy NB2 Scale and location of growth):

Natural England's previous advice letters in response to preceding stages of the local plan refer¹. These focus on the local plan's approach to strategic housing allocation site HSG2 (Arbury) and this site's relationship with the European designated site Ensor's Pool Special Area of Conservation (SAC) – reference: draft submission policy 'NB2 Scale and location of growth'.

With regard to Ensor's Pool SAC surveys of the pool (most recently in September 2015) have failed to find the white clawed crayfish for which the site is designated as an SAC.

A survey in September 2012 caught 262 crayfish however surveys for white clawed crayfish carried out in September 2014 (trapping survey), October 2014 (Dive survey), June – September 2015 (Bioassay) and September 2015 (trapping survey) caught no crayfish. Based on the survey evidence, Natural England has concluded that the population of native white-clawed crayfish is no longer present.

In order to decide the way forward in these circumstances Natural England and the authority have agreed to work together, recording progress in the form of a 'Statement of Common

Ground'. We therefore propose to provide a separate response to the Habitats Regulations Assessment of the draft submission version of the local plan as part of that statement.

The following advice supplements our letter dated 29 January 2016 and provides our updated response to the HRA of the draft submission document stage of the local plan in respect of Ensor's Pool Special Area of Conservation for the above stated policies.

HRA – stage 2 - Appropriate Assessment

The evidence base confirms that Ensor's Pool SAC is groundwater fed¹. In relation to further more detailed aspects of the SAC's water supply mechanism and the effects that the proposed allocations might have on the SAC we have liaised with the Environment Agency and in light of our discussions, we now offer the following advice:

Groundwater (flow direction and volumes - in order to inform understanding of the groundwater catchment)

In terms of the HRA for the local plan, housing allocation HSG2 and employment allocation EMP1 'Faultlands', it is apparent that a range of options can be implemented to protect the groundwater processes that support the SAC. Dialogue with the Environment Agency confirms that investigations are required to inform the most appropriate design and the detail of the mitigation required, and given the lack of information that can be reasonably obtained at the plan level, this is best tackled at the 'project' (or planning application) stage.

As a result the Borough council, in its role as competent authority, can conclude no adverse effect on the integrity of the SAC at local plan level because:

- (i) A range of viable options to mitigate the effects of the proposed development exist, and therefore the plan can be taken forward with the allocation
- (ii) Carrying out the HRA at the lower tier (project) level allows the further groundwater issues to be addressed at the planning application stage, when the lower level HRA will still be required as a matter of law.

Recreation impacts (i.e. the risk of recreation activities arising from allocation site HSG2 adversely affecting the designated native crayfish population and their habitat)

Currently available information indicates that the SAC's native crayfish population has been lost, and that this is likely to be as a result of biosecurity issues (crayfish plague). Against this background the proposed housing would not further exacerbate the biosecurity risks through the effects of recreation. It is concluded that there would not be any added risk from recreation, and that advice is specifically in the context of the current situation and future prospect. Other recreation related threats to the SAC may be addressed through the detailed design of the proposed housing e.g. green and blue infrastructure provision.

As a result the Borough Council, in its role as competent authority, can conclude no adverse effect on the integrity of the SAC at local plan level because:

¹ 'ASSESSMENT OF THE HYDROGEOLOGY AT AND IN THE VICINITY OF ENSOR'S POOL, NUNEATON, WARWICKSHIRE'. MJCA (Aug 2014)

- (i) A range of options to mitigate the recreation effects of the housing development exist
- (ii) Carrying out the HRA at the lower tier (project) level allows recreation issues to be addressed at the planning application stage.
- (iii) Risks specifically related to biosecurity risks can be ruled out because the allocation does not add to the existing situation, and there is therefore no additive effect.

Policies 'screened in' by virtue of the HSG2 housing allocation:

- **NB15 Green Infrastructure**
- **NB16 Open Space**

The advice set out above allows a plan level conclusion of no adverse effect, and consequently pushes further HRA of the proposals down to subsequent lower tier stages of planning e.g. masterplan design or planning application stage. Lower tier HRA is still required as a matter of law and should not automatically draw the same conclusions. This advice allows the Council to revise the findings of the HRA in relation to policies NB15 Green Infrastructure and NB 16 Open Space i.e. to screen out these policies subject to HRA at the lower tier level

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries relating to the specific advice in this letter only please contact me on 0208 026 0939. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

We really value your feedback to help us improve the service we offer. We have attached a feedback form to this letter and welcome any comments you might have about our service.

Yours sincerely

Antony Muller
Lead Adviser – Sustainable Development and Wildlife Team – North Mercia Area