



Mrs Y Wright  
c/o Charm McFarlane  
Local Plans  
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The Planning Inspectorate,  
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Our Ref:  
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Date: 13 June 2018

Dear Mrs Wright

#### **Inspector's Additional Query Concerning the Habitats Regulations Assessment HRA**

I write in response to your letter of the 11<sup>th</sup> May concerning the Court of Justice of the European (CJEU) judgement (*People over Wind & Sweetman v Coillte Teoranta Case C-323/17*) which ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgement as measures which are intended to avoid or reduce effects) should be assessed within the framework of an appropriate assessment(AA) and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage.

The delay in responding to your letter of the 11<sup>th</sup> May is because the Council has taken legal advice and has then been liaising with its consultants – Arcadis and also Natural England NE. The Council considers that the HRA documents, in their current form are not legally compliant, however, because most of the sites in the Local Plan already have planning permission an update of the HRA, in line with the judgement does not involve a substantial amount of work. An acceptable methodology for meeting the judgement was agreed with NE on the 8<sup>th</sup> June.

NE are of the opinion that the HRA document itself should be updated, rather than producing a separate addendum. For Fylde this will mean reconsideration of sites where planning permission has not been granted, or where the HRA's original finding of 'no significant effect' depended upon the application of Policy ENV2, in an Appropriate Assessment AA. This would enable discussion of mitigation to be within the AA, and ensure that the new document will be legally compliant. The AA would re-work text from the original screening report to reflect changes to the screening. The update would also include an updated in-combination assessment to take account of the AA. The updated document would ensure it contains the most up-to-date guidance references and would include reference to the newly formed Morecambe and Duddon Estuary SPA (rather than Morecambe Bay as detailed in the Screening Report). Finally figure 4-1 would also be updated to reflect the changes as relevant, and to include the newly formed Morecambe and Duddon Estuary SPA.

The timetable for carrying out this work is set out below:

<b>Item</b>	<b>Timing</b>	
Liaise with NE regarding approach to changing HRA via email/phone	Week beginning 4 <sup>th</sup> June	Arcadis/Council
Update HRA/AA, assuming NE agreement of approach obtained quickly	Week beginning 11 <sup>th</sup> June	Arcadis
Issue to Council and address any client comments	Week beginning 18 <sup>th</sup> June	Arcadis/Council
Issue final draft	Week beginning 25 <sup>th</sup> June	Arcadis
Out to consultation	Week beginning 25 <sup>th</sup> June (21 days consultation)	Council

The update is currently on schedule and the consultation will start on 28<sup>th</sup> June and run for three weeks until 19<sup>th</sup> July. The Council will then summarise the responses and provide them to you.

Yours sincerely

*Julie Glaister*

Julie Glaister Planning Policy Manager