



Fylde Local Plan

COPIES OF REPRESENTATIONS MADE TO THE HABITATS REGULATIONS ASSESSMENT (June 2018) CONSULTATION

July 2018

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Eddie Graves

From: Tim Bettany-Simmons <Tim.Bettany-Simmons@canalrivertrust.org.uk>
Sent: 18 July 2018 13:45
To: PlanningPolicy
Subject: RE: CONSULTATION - Habitats Regulations Assessment Fylde Local Plan to 2032 Report June 2018

Dear Sir/Madam

The Trust have reviewed the HRA and have no comments to make.

Kind regards

Tim Bettany-Simmons BA (HONS), MSc, MRTPI
Area Planner / Cynlluniwr Ardal

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E Tim.Bettany-Simmons@canalrivertrust.org.uk
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Canal & River Trust / Glandwr Cymru,
Red Bull Wharf, Congleton Road South, Church Lawton, Stoke-on-Trent, Staffordshire, ST7 3AP

From: Sally Thompson <sally.thompson@fylde.gov.uk>
Sent: 28 June 2018 10:21
To: Sally Thompson <sally.thompson@fylde.gov.uk>
Subject: CONSULTATION - Habitats Regulations Assessment Fylde Local Plan to 2032 Report June 2018

Dear Sir/Madam,

Following recent exchanges with the Inspector the Council have now commenced a HRA consultation exercise and this will run to 19 July following which the responses will be forwarded to the Inspector for consideration regarding her report on the local plan.

The HRA report is available on the examination web page via the link below, attached is the consultation letter which details ways in which to make representations.

<http://www.fylde.gov.uk/council/planning-policy--local-plan-/www-fylde-gov-uk-examination/>

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Kind Regards
Planning Policy Team

Sally Thompson
Research and Information Officer
Fylde Borough Council

DDI: 01253 658686
Main: 01253 658658

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Mae Glandŵr Cymru yn gwmni cyfyngedig drwy warant a gofrestrwyd yng Nghymru a Lloegr gyda rhif cwmni 7807276 a rhif elusen gofrestredig 1146792. Swyddfa gofrestredig: First Floor North, Station House, 500 Elder Gate, Milton Keynes MK9 1BB.

Mrs Sally Thompson
Fylde Borough Council
Planning Policy
Town Hall
Lytham St. Annes
Lancashire
FY8 1LW

Our ref: NO/2012/103893/OR-08/IS1-L01
Your ref: EL11
Date: 19 July 2018

Dear Mrs Thompson

**HABITATS REGULATIONS ASSESSMENT FYLDE LOCAL PLAN TO 2032:
LOCAL PLAN HRA REPORT JUNE 2018**

Thank you for consulting us on the above report.

Natural England are the statutory consultee on HRAs, however we have considered the report in so far as it relates to our remit and on this occasion we have no comments to make.

Yours sincerely

Mr Alex Hazel
Planning Advisor - Sustainable Places Team

E-mail: CLPlanning@environment-agency.gov.uk

Eddie Graves

From: Hilton, Warren <Warren.Hilton@highwaysengland.co.uk>
Sent: 28 June 2018 11:43
To: PlanningPolicy
Subject: RE: CONSULTATION - Habitats Regulations Assessment Fylde Local Plan to 2032 Report June 2018

Dear Sally,

Thank you for inviting Highways England to comment on the Habitats Regulations Assessment Fylde Local Plan to 2032 Report June 2018.

There are no comments that we feel we need to make on this report.

If you would like to discuss anything about this email, please contact me.

Kind regards,

Warren Hilton, Assistant Asset Manager

Highways England | Piccadilly Gate | Store Street | Manchester | M1 2WD

Tel: +44 (0) 300 470 5226

Web: <http://www.highways.gov.uk>

From: Sally Thompson [<mailto:sally.thompson@fylde.gov.uk>]
Sent: 28 June 2018 10:21
To: Sally Thompson
Subject: CONSULTATION - Habitats Regulations Assessment Fylde Local Plan to 2032 Report June 2018

Dear Sir/Madam,

Following recent exchanges with the Inspector the Council have now commenced a HRA consultation exercise and this will run to 19 July following which the responses will be forwarded to the Inspector for consideration regarding her report on the local plan.

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Please respond to planningpolicy@fylde.gov.uk

Kind Regards
Planning Policy Team

Sally Thompson
Research and Information Officer
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Date: 18 July 2018
Our ref: 251285



FAO Sally Thompson
Fylde BC

planningpolicy@fylde.gov.uk

BY EMAIL ONLY

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CW1 6GJ

T 0300 060 3900

Dear Sally

Fylde Local Plan Habitats Regulations Assessment Report – June 2018

Thank you for your email on the above dated and received by Natural England on 28 June 2018.

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.

We have reviewed the changes to the draft Habitats Regulations Assessment for the Fylde Local Plan to 2032 (HRA) (Arcadis, June 2018, V5 ref. 011-UA004283-EEC-0F) made as a result of [Case C-323/17 People Over Wind v Coillte Teoranta](#) (also referred to as the Sweetman II Judgement).

We have been in several conversations with Arcadis about local plan HRAs and the impact from the Sweetman II judgement. Arcadis are aware of the need to structure the HRA correctly, how to carry out an appropriate assessment and are committed to amending the current HRA for the next iteration. However, having reviewed this version, taking all the above into account, we do not have any issues in principle to the conclusions of the HRA, providing the changes below are carried out.

(1) Embedded mitigation

This term is used in the report and references Policy ENV2.

This policy is an integral part of the plan and ensures compliance with national policy to protect and enhance the natural environment. It's not required as a mitigation measure (i.e. a measure to reduce an ecological impact to an acceptable level where it is no longer deemed to risk an adverse effect on site integrity). It is not sufficient for a HRA to conclude no likely significant effect because it contains a policy to protect internationally designated sites. Any policy introduced to avoid or reduce effects should specifically deal with the issue that it causing an effect. Taking this into account we recommend the removal of this term.

(2) Structure of the HRA

We also suggest that the report is re-structured under the following principle headings to clearly demonstrate that the steps of the Habitats Regulations have been undertaken:

1 - Likely Significant Effect (LSE) test

To clarify, where there is LSE alone, these sites and/or policies need to be taken to Appropriate Assessment alone. Where there is no LSE alone, these sites need to be assessed in-combination with other plans or projects to establish if, together, they result in a likely significant effect that needs to be considered at Appropriate Assessment, taken into account other plans and projects

2 - In-combination assessment of likely significant effects ruled out alone .

This assessment should come next and should include consideration of the *Wealden District Council v. Secretary of State for Communities and Local Government, Lewes District Council and South Downs National Park Authority* [2017] EWHC 351 in terms of in-combination effects relating to air pollution.

3 - Appropriate Assessment (AA)

This stage needs to assess the identified likely significant effects in detail on the features of the European site, considering the site's conservation objectives.

First, the AA must look at the potentially damaging aspects of each site allocation and/or policy and the potential effects on the site features and conservation objectives and characterise the impacts in terms of their likelihood, nature, scale, severity and duration. This assessment needs to include a consideration of the impacts on;

- The extent and distribution of qualifying habitats and species,
- The abundance and spatial distribution of qualifying species or assemblages,
- The structure of the qualifying habitat, which should not be affected in terms of abundance and diversity,
- The physical, chemical and biological processes that support the qualifying habitat to ensure these are not affected.

The AA must then look at any potential mitigation measures, to determine if they can reduce the likelihood, nature, scale, and duration of the effect to a lower level. The appropriate assessment should seek mitigation measures that are capable of implementation and will reduce the impact to the lowest level possible. Any residual effects after applying mitigation should also be considered alone and in-combination.

We note that you have taken five site allocations, with existing planning permission/project level HRAs, forward to AA. The planning permissions granted and project level HRAs undertaken are specific to that development and if the developments didn't go ahead, the site allocation would still exist. Therefore the AA must assess the potential impact of the site allocation. You can use evidence from the project level HRAs to support the conclusion. It is therefore likely that the outcomes of the AA in relation to these sites is 'no adverse integrity on European sites subject to mitigation being applied'. If this is the case, as recently instructed by an Inspector at a recent examination, the Local Plan Policy for that allocation must also include mitigation requirements.

Therefore, this may also necessitate a change to the local plan policy for each allocation. With respect to project stage mitigation the site policies concerned should include reference to what measures are required at application stage and should also reference the need for an Appropriate Assessment to include the details of the scheme that are (potentially) not yet known at the plan-level stage.

This could include;

- 1) *Timings of construction works to avoid the wintering period (October – March inclusive),*
- 2) *The erection of acoustic & visual screening throughout the construction period,*
- 3) *Barriers to prevent debris entering the nearby watercourse/ designated site*

(3) The Integrity Test

This is the conclusion of the Appropriate Assessment which should include the decision - whether it can be ascertained that the project will not have an adverse effect on the integrity of the European / Ramsar sites, taking into account the proposed mitigation

If you have any queries relating to the advice in this letter please contact me on 0208 225 7506.

Yours sincerely

Miss Elizabeth Knowles
Lead Adviser
Cheshire, Greater Manchester, Merseyside & Lancashire Area Team

Eddie Graves

From: Alban Cassidy <AlbanCassidy@cassidyashton.co.uk>
Sent: 19 July 2018 10:37
To: PlanningPolicy
Subject: Habitats Regulations Assessment Fylde Local Plan to 2032: Local Plan HRA Report June 2018

Dear Julie

I refer to the above document which appears to have been put together in something of a rush.

In particular I note the document states the following:

1.2.1 This HRA Report has been produced following the recent Court of Justice of the European Union (CJEU) judgement (People over Wind & Sweetman v Coillte Teoranta Case C-323/17), dated 12th April 2018, in Ireland. 1.2.2 The ruling stated: 1.2.3 '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.'

1.2.4 This HRA Report has been produced to ensure that the HRA of the Fylde Local Plan is legally compliant, and therefore supersedes the previous HRA Screening Report (May 2017) and Modifications Addendum (April 2018).

1.2.5 This report comprises the first and second stages in the HRA process, commonly referred to as Screening (stage 1) and Appropriate Assessment (AA). The Screening stage identifies whether or not the Fylde Local Plan is likely to result in significant effects upon one or more European sites, either alone or in-combination with other plans or programmes and whether or not an Appropriate Assessment will be required. The AA stage looks at those policies/ allocation sites where likely significant effect cannot be ruled out and assesses the potential for adverse effect on the integrity of the European sites considered in the assessment. The need for mitigation to off-set any potential impacts is discussed within the AA. Further details on the HRA stages are provided in Section 3."

On reviewing the June 2018 Report it appears that, notwithstanding the CJEU judgement, there remain a number of sites where mitigation seems to have been taken into account during the assessment process, contrary to the above. This is amplified on the conclusion at 10.1.2 in particular.

Clear demonstration of this is provided in Table 17 which refers to the assessment with mitigation in place.

To satisfy the requirements of the CJEU judgement an assessment should have been taken prior to the effects of mitigation as a separate process which would appear not to be the case.

I also note there is no further comment from Natural England in respect to the revisions which further undermines the document. Until this is received the document should not have been issued and should be held in abeyance.

The document should therefore be withdrawn until these issues have been addressed in order to ensure it is legally compliant as otherwise the whole Local Plan process is undermined.

Regards

Alban Cassidy

Alban Cassidy BA (Hons) Cert. Ecol. MSc MIEMA MRTPI C.Env
Director

Chartered Town Planner and Environmental Consultant

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