Nottingham City Council

Habitat Regulations Assessment (HRA) for the Local Plan Part 2: Land and Planning Policies Document

Adoption Statement

Summary

1. This document sets contains the adopted Habitat Regulations Assessment (HRA) for the Nottingham City Local Plan Part 2 Land and Planning Policies (LAPP) Document. The document fulfils the Council's statutory duties in accordance with the Conservation of Habitats and Species Regulations 2017 (as amended) and the Conservation of Offshore Marine Habitats and Species Regulations 2017 (as amended).

Background

2. A HRA refers to the several distinct stages of Assessment which must be undertaken to determine if a plan or project may affect the protected features of a habitats site before deciding whether to undertake, permit or authorise it. European Sites and European Offshore Marine Sites identified under these regulations are referred to as 'habitats sites' in the National Planning Policy Framework.

3. In April 2018, the Court of Justice of the European Union handed down their judgment in the case of People Over Wind (see page 5 of Shadow Habitats Regulations Assessment to inform the assessment of the LAPP (Submission Version) (LAPP.NCC18). Prior to the ruling it had been established practice that competent authorities should take account of mitigation measures which had been incorporated into a plan or project when deciding whether it would have a likely significant effect. The court ruled that this was incorrect and that it is not appropriate, at the screening stage, to take account of measures intended to avoid or reduce harmful effects on a European site.

4. As a result of this judgement, Nottingham City Council commissioned a Shadow HRA from DTA Ecology. This work has subjected the LAPP to screening for likely significant effects in light of the HRA work originally undertaken for the ACS. The report concluded that all aspects of the plan have been screened out. In addition, the report showed that there were no "effects" which might contribute incombination to the effects from other plans and projects. As such, the report concluded that no further assessment in-combination was required.

5. Natural England were consulted on the Shadow HRA document and its findings and have confirmed in their consultation response that they consider that the document satisfactorily followed the Habitat Regulations and agree with its overall conclusions. In addition, Nottinghamshire Wildlife Trust (NWT) and the Royal Society for the Protection of Birds (RSPB) were also consulted. No response was received by NWT and the RSPB stated that they were not be able to offer further feedback on the shadow HRA due to other priorities.

6. The process behind the HRA is very technical by its nature but the Shadow HRA report provides very clear conclusions that all elements of the plan have been screened out as

having no likely significant effect, and that no further assessment is required. As a result, the Council was advised by the consultants (DTA Ecology), who carried out the Shadow HRA, that wider public consultation at that stage was not necessary was very rarely done in the case of a HRA.

Findings of the HRA

7. The Shadow HRA (LAPP.NCC18) concluded that:

> "*The LAPP has been subject to assessment under the Habitats Regulations. In accordance with Defra guidance the conclusions from the earlier HRA of the Core Strategy have been adopted where relevant, limiting the scope of this assessment to any "new" effects which might arise. All elements of the plan have been screened out as having no likely significant effect, either alone or in combination with other plans and projects. No further assessment is required.*"

Consultation of the HRA

8. The Shadow HRA was available as part of the Main Modifications consultation process between 17 May 2019 and 28 June 2019. No specific comments were received on this matter.

Inspector's Comments on the HRA

9. The Inspector concluded in her report into the examination of the LAPP that: "The shadow HRA has been subject to public consultation along with the proposed MMs to the LAPP and the Council indicates that the findings of the shadow HRA will be adopted along with the adoption of the LAPP".

Adoption of the HRA

10. The Council agrees with conclusions made within the Shadow HRA report as drafted and adopted the document (contained hereafter) on 13 January 2020 as the final HRA.

ADVICE TO NOTTINGHAM CITY COUNCIL

Shadow Habitats Regulations Assessment to inform the assessment of the Local Plan Part 2 (Submission Version) by Nottingham City Council

STATUS: CONSULTATION VERSION

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1 Relevant background and introduction

1.1 Relevant background

1.1.1 Nottingham City Council (NCC) is preparing a new Development Plan Document, the Local Plan Part 2: The Land and Planning Policies Development Plan Document (LAPP). This document forms part of the Local Plan for Nottingham City along with the Core Strategy. This LAPP contains policies and site allocations against which future development proposals will be determined.

1.1.2 Of particular relevance to this HRA is a recognition that the overarching Aligned Core Strategy sets out the spatial vision and twelve objectives for Greater Nottingham as well as the core policies. The LAPP seeks to reflect and implement this vision and underlying objectives; in other words the LAPP is concerned with *how* the development provided for in the Core Strategy within the NCC boundary will be delivered. The LAPP covers the period 2011 – 2028 and is comprised of Development Plan Policies and Site allocations.

1.1.3 The LAPP is comprised of six sections as follows:

- Section 1: Introduction
- Section 2: Background
- Section 3: Development Management Policies – Sustainable Growth (23 policies)
- Section 4: Development Management Policies – Places for People (22 policies)
- Section 5: Development Management Policies – Our Environment (13 policies)
- Section 6: Development Management Policies – Making it Happen (site allocations)

1.2 Habitats Regulations of land use plans generally

1.2.1 NCC is a competent authority under the Conservation of Habitats and Species Regulations 2017[1], commonly referred to as the Habitats Regulations. In accordance with Regulation 105 of those regulations, NCC must make an assessment of the implications of their LAPP as a matter of law before it is adopted. This assessment is generally referred to as a 'Habitats Regulations Assessment' or 'HRA' and the regulations set out a clearly defined step-wise process which must be followed.

1.2.2 Under the regulations, HRA is required in respect of both 'plans' and 'projects'. Where a project is subject to assessment, there is generally sufficient detailed *project specific* information against which to make a comprehensive assessment. A plan based assessment is different; in most cases a plan is a strategic level document setting out broad intentions and often lacking the project specific details which may not be developed until after the plan has been published. Indeed, it is the plan itself which frequently steers the detail of the projects which it envisages. As such the HRA of a 'plan' is recognised to require a different approach to that of a 'project'.

1.2.3 In the case of the EC v UK[2] the European Court of Justice (the ECJ) required the UK Government to secure the assessment of Britain's land use plans under the provisions of the

[1] The Conservation of Habitats and Species Regulations 2017 SI No 1012

[2] Case C-6/04: Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland judgment of the Court 20 October 2005.

Habitats Directive. In that judgment the Advocate General, and the Court itself, recognised that although they considered Britain's land use plans could potentially have significant effects on European sites, despite the subsequent need for planning permission at 'project' level stage, the assessment of plans had to be tailored to the stage in plan making.

1.2.4 The Advocate General's opinion[3] which informed the judgment of the court acknowledged the difficulties associated with an assessment of a plan. In paragraph 49 of her opinion Advocate General Kokott stated that adverse effects:

> '*...must be assessed at every relevant stage of the procedure to the extent possible on the basis of the precision of the plan. This assessment is to be updated with increasing specificity in subsequent stages of the procedure*.'

Consistently, in the UK High Court case of Feeney[4] the judge said:

> '*Each appropriate assessment must be commensurate to the relative precision of the plans at any particular stage and no more. There does have to be an appropriate assessment at the Core Strategy stage, but such an assessment cannot do more than the level of detail of the strategy at that stage permits.*'

1.2.5 In undertaking plan based HRAs, it is therefore important to get the balance right; too severe an approach may be excessive. It is important, even adopting a precautionary approach, not to assign a 'likely significant effect' to policies and proposals that could not, realistically, have such an effect, because of their general nature. It is important to apply the precautionary principle in the 'likely significant effect test' in the Regulations, but the European Commission in its own guidance on the application of the test[5], accepts that policies in a plan that are no more than general policy statements or which express the general political will of an authority cannot be likely to have a significant effect on a site.

1.2.6 To include such policies or general proposals in a formal 'appropriate assessment' is likely to generate a considerable amount of abortive or unnecessary work. It could even lead to the plan failing the 'integrity test'. Not because, in practice, any policy or proposal might adversely affect the integrity of any European site, but because policies have been 'screened in' which generate no more than theoretical risks, or vague or hypothetical effects, and for which no meaningful assessment can be made at this stage, because no particular significant effect on any particular European site can actually be identified. Such an approach is not believed to be in the interests of the plan or the European sites. In the Boggis judgment[6], the Court of Appeal ruled that there should be "*credible evidence that there was a real, rather than a hypothetical, risk"*. What the assessment needs to concentrate on are those aspects of the plan that could, realistically, be likely to have a significant effect.

1.2.7 Too lenient a view however can be equally problematic. For example, in respect of proposed mitigation measures, the intention to simply rely on a general European 'site protection policy' in the eventual plan would not form a compliant basis for the HRA. Reliance on a

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[3] Opinion of advocate general Kokott, 9th June 2005, Case C-6/04. Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

[4] Sean Feeney v Oxford City Council and the Secretary of State CLG para 92 of the judgment dated 24 October 2011 Case No CO/3797/2011, Neutral Citation [2011] EWHC 2699 Admin

[5] European Commission, 2000, *Managing Natura 2000 Sites: The provisions of Article 6 of the Habitats Directive 92/43/EEC* section 4.3.2 at http://ec.europa.eu/environment/nature/natura2000/management/docs/art6/provision_of_art6_en.pdf

[6] Peter Charles Boggis and Easton Bavants Conservation v Natural England and Waveney District Council, High Court of Justice Court of Appeal case C1/2009/0041/QBACF Citation No [2009] EWCA Civ. 1061 20th October 2009

general European site safeguard policy as the 'mitigation measure' in the HRA of a plan is insufficient to resolve any tensions or conflicts in the plan between site protection and policies or proposals which could significantly affect European sites. In the EC v UK, the ECJ found that it was the requirement to determine planning applications in accordance with the development plan (unless material considerations indicate otherwise) that made Britain's land use plans capable of significantly affecting European sites. Consequently, policies or proposals which could have a high potential for significant adverse effects on European sites should be removed from the plan, or policy-specific, or proposal-specific, mitigation measures must be introduced to the plan. This is in preference to a general protection policy which merely creates an internal conflict between plan policies, rather than avoiding the potentially significant effects. Any tension in the plan must be resolved in favour of protecting the European sites from harm which may be caused by the effects of the policies or proposals in the plan.

1.2.8 Consequently a general policy cannot be relied upon as an all-encompassing mitigation measure in order for NCC to ascertain no adverse effects on the integrity of any European sites. A safeguard condition or policy qualifying a particular proposal in the plan would however be permissible, because it would refer to specific details of future particular development[7]. There is nothing wrong in adopting something in principle which may not happen in the future if the condition or qualification is not satisfied[8]. But this principle cannot be stretched so far that the condition or qualification is merely a general policy aspiring to protect all European sites from all and any effects of the plan.

1.3 The HRA approach

1.3.1 This HRA follows the guidance set out in *The Habitats Regulations Assessment Handbook*[9] (hereafter referred to as 'The HRA Handbook'). Current subscribers to the Handbook include Natural England and the Planning Inspectorate and the 'Practical Guidance for the Assessment of Plans under the Regulations' contained in Part F is considered to represent best practice as it is accepted by both these bodies as appropriate for their own staff to follow.

1.3.2 In April 2018, the Court of Justice of the European Union handed down their judgment in the case of *People Over Wind*[10]. Prior to the ruling it had been established practice that competent authorities should take account of mitigation measures which had been incorporated into a plan or project when deciding whether it would have a likely significant effect. The court has now ruled that this is incorrect and that it is not appropriate, at the screening stage, to take account of measures intended to avoid or reduce harmful effects on a European site.

1.3.3 The process and method of assessment is summarised in the following three diagrams which are taken from the HRA Handbook. Figure 1.1 illustrates the statutory procedures required

[7] Feeney paragraphs 88, 90 and 92

[8] Feeney paragraph 96

[9] Tyldesley, D., and Chapman, C., (2013) *The Habitats Regulations Assessment Handbook,* May 2015 edition UK: DTA Publications Ltd.

[10] Case C-323/17 Request for a preliminary ruling, *People Over Wind* and Peter Sweetman v Coillte Teoranta, 12th April 2018

by the regulations. Figure 1.2 is an outline of the four stage approach to the HRA of plans. Figure 1.3 illustrates how the HRA process is integrated into the plan making process.

Figure 1.1: Procedures required by regulations 63 and 105 of the Habitats Regulations

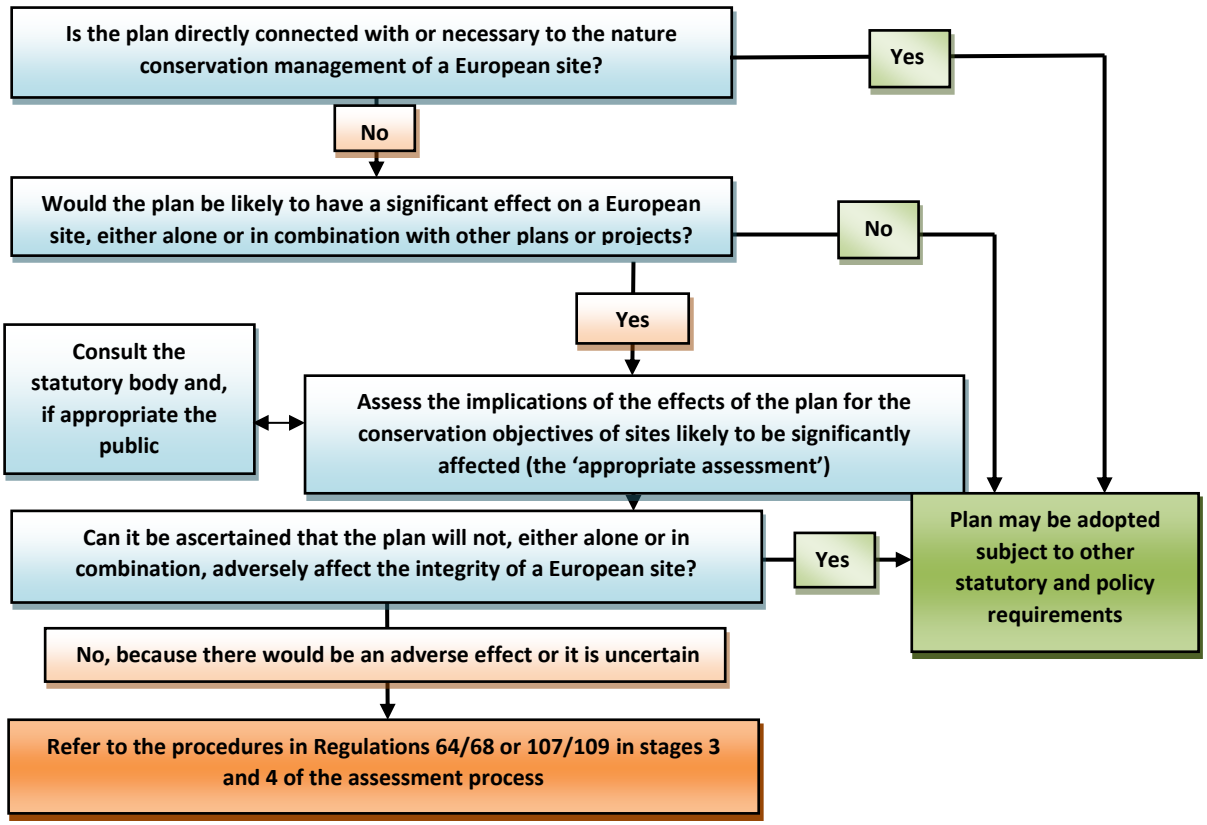


Figure 1.2: Outline of the four stage approach to the assessment of plans under the Habitats Regulations

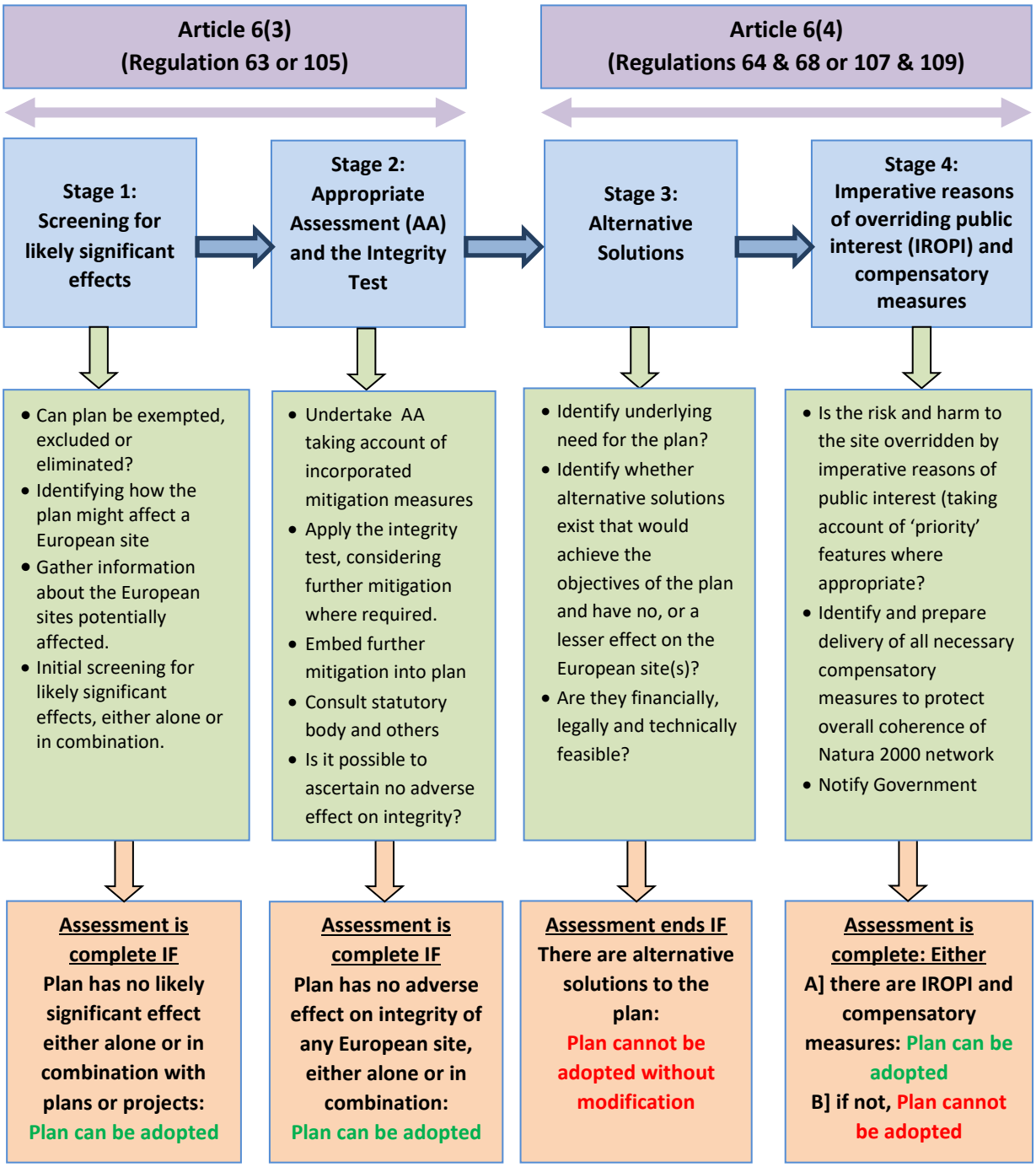
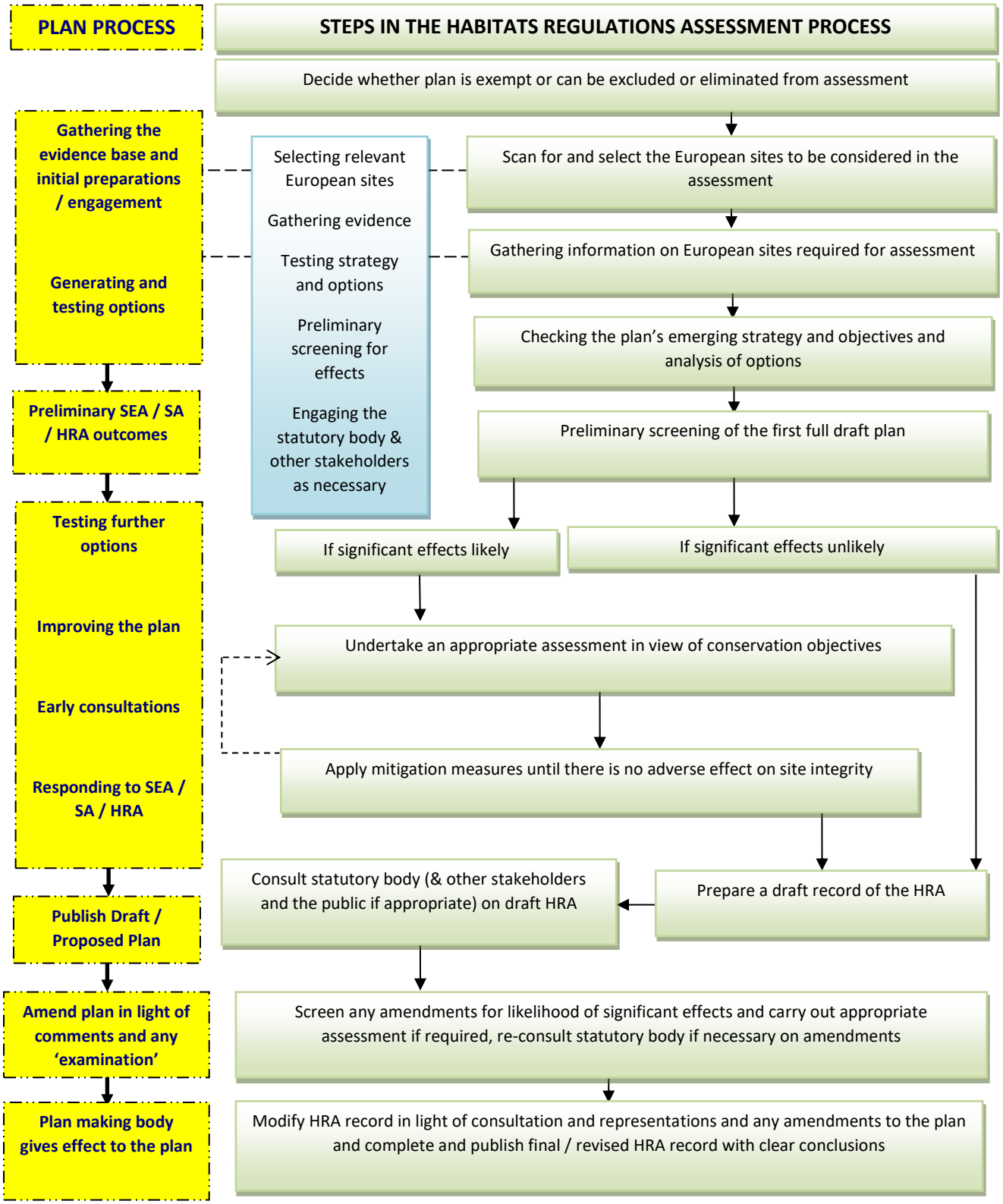


Figure 1.3: Relationship of steps in the Habitats Regulations Assessment with a typical plan making process



1.4 Scope and format of this assessment

1.4.1 This report is a *shadow* Habitats Regulations Assessment as required under regulation 105 of the Habitats Regulations. It is the responsibility of NCC as the competent authority to apply the specific legal tests and make the formal decisions which are required to be taken. This report sets out advice to NCC as to how a Habitats Regulations Assessment of the LAPP might be completed. NCC, as the competent authority, are then able to adopt the conclusions and findings set out in this report, should they consider it appropriate to do so.

1.4.2 NCC have adopted an iterative approach to the HRA of their LDP with earlier assessment effort having been undertaken in respect of the Greater Nottingham Aligned Core Strategy[11].

For reasons of transparency, and to assist a reader in following a logical assessment record, where appropriate this document cross references earlier HRA work rather than repeated in full. The emphasis is on this document being accessible as a record of an assessment under the Habitats Regulations, whilst avoiding repetition of explanatory text which is not central to the reasoning and conclusions reached and which is more appropriately set out in detail as part of earlier HRA effort for the Aligned Core Strategy as cross referenced accordingly.

1.5 The Defra guidance on competent authority co-ordination

1.5.1 An important, but frequently overlooked, provision within the Habitats Regulations can be found at regulation 67 which reads as follows:

Co-ordination where more than one competent authority involved

67. (1) This regulation applies where a plan or project—

(a) is undertaken by more than one competent authority;

(b) requires the consent, permission or other authorisation of more than one competent authority; or

(c) is undertaken by one or more competent authorities and requires the consent, permission or other authorisation of one or more other competent authorities.

(2) Nothing in regulation 61(1) or 63(2) requires a competent authority to assess any implications of a plan or project which would be more appropriately assessed under that provision by another competent authority.

1.5.2 In light of the significance of this provision for minimising duplication of assessment effort and increasing efficiency, in England Defra issued guidance on regulation 67 (the regulation 65) under the provisions of 67(3); competent authorities are obliged to have regard to this guidance under the provisions of regulation 67(4).

1.5.3 Strictly speaking, the provisions of regulation 67 do not apply as a matter of law to the assessment requirements for this LAPP, as it does not meet either of the three scenarios in regulation 67(1). However it is generally accepted[12] that paragraphs 5-7 of the Defra

[11] Greater Nottingham Aligned Core Strategies HRA Screening Record, David Tyldesley & Associates, 2012

[12] Refer section C.12 of The Habitats Regulations Assessment Handbook

guidance should be applied widely as a matter of good practice. Paragraph 4 of the guidance refers to two situations where competent authorities might 'co-ordinate' their assessment requirements. The first scenario is of relevance to the current HRA as it states that *'where previous decisions have been taken in relation to the appropriate assessment requirements for a plan or project, competent authorities should adopt the parts of the earlier assessment that are robust and have not become outdated by further information or developments'.*

1.5.4 Having introduced the concept of 'adopting' earlier decisions in order to '*simplify the assessment process and reduce its time and costs for both the applicant and the competent authorities involved'*[13], paragraphs 5-7 then provide specific further guidance on how and when a competent authority might adopt the reasoning or conclusions from an earlier assessment; they read as follows:

> *5. The Regulations transposing the Habitats Directive enable competent authorities to adopt the reasoning or conclusions of another competent authority as to whether a plan or project is likely to have a significant effect on a European site, or will adversely affect the integrity of a European site. They also provide that a competent authority is not required to assess any implications of a plan or project that would be more appropriately assessed by another competent authority'.*
>
> *6. Competent authorities should adopt the reasoning, conclusion or assessment of another competent authority in relation to the appropriate assessment requirements for a plan or project, if they can. This can happen when all or part of the appropriate assessment requirements have already been met by another competent authority. It could also happen if one competent authority is completing all or part of the appropriate assessment requirements on behalf of others. Competent authorities remain responsible for ensuring their decisions are consistent with the Habitats Directive, so must be satisfied:*
>
> - *No additional material information has emerged, such as new environmental evidence or changes or developments to the plan or project, that means the reasoning, conclusion or assessment they are adopting has become out of date*
> - *The analysis underpinning the reasoning, conclusion or assessment they are adopting is sufficiently rigorous and robust. This condition can be assumed to be met for a plan or project involving the consideration of technical matters if the reasoning, conclusion or assessment was undertaken or made by a competent authority with the necessary technical expertise.*
>
> *'7. Due to these conditions there may be cases where it is not appropriate to adopt the reasoning, conclusions or assessment of another competent authority, or it is only appropriate to adopt some elements of an earlier assessment. In addition, even where the conditions are met, a competent authority may need to undertake additional work to supplement the assessment they have adopted in order to meet the full appropriate assessment requirements.'*

[13] Refer para 2 of the Defra guidance

1.5.5 The application and implications of the Defra guidance has been considered in detail within Part C12 of the HRA Handbook which refers to a 'common sense' approach at C.12.3 and states that:

> *'In respect of 'earlier decisions' that relate to a separate plan or project, the competent authorities do not need to 'coordinate', because only one authority has a decision to take... However, the principles set out in the Defra statutory guidance, about adopting the reasoning and conclusions of another authority may be applicable and should be adopted as good practice. 'Earlier decisions' that relate to a separate plan or project could be separated by short, or relatively long, periods of time. The point is that the earlier decision is made before the later competent authority embarks on its assessment'*

In the context of this assessment it is appropriate for NCC to 'adopt' the reasoning, conclusion or assessment of relevant earlier (or 'previous') HRA findings if they can.

Earlier relevant 'plan' assessments

HRA of the 2012 'Aligned Core Strategy'

1.5.6 The Greater Nottingham Aligned Core Strategy was subject to HRA in 2012[14]. This LAPP seeks to implement this Core Strategy document and to *deliver* the quantum of development within Nottingham City as identified therein. **Of particular relevance to this HRA, the LAPP does not provide for additional growth over and above that set out within the Core Strategy; its purpose is to provide the necessary detail as to *how* that growth will be delivered.** The LAPP builds upon and further develops the core strategy so it would not be appropriate to simply 'adopt' the earlier reasoning conclusion and/or assessment in its entirety for the purposes of this HRA. The LAPP involves the identification of specific site allocations and also provides new local area policies which are linked to the overarching core strategy policies. As such, whilst this 'detail' needs to be considered, it is not necessary to duplicate assessment already completed in respect of the overall level of growth provided for. **This has already been demonstrated to be acceptable as part of the earlier HRA work**.

1.5.7 Where appropriate therefore, this assessment 'adopts' some of the underlying reasoning from the earlier HRA of the Preferred Strategy where;

- No material information has emerged which would render the reasoning 'out of date', and
- The analysis underpinning the reasoning is sufficiently rigorous and robust.

[14] Habitats Regulations Assessment 2010-12, June 2012

2 Scope of this HRA in light of the earlier HRA of the Core Strategy

2.1 Which effects to include within the scope of this HRA?

2.1.1 As clearly set out in the Defra guidance on competent authority co-ordination '*competent authorities should adopt the reasoning, conclusion or assessment of another competent authority in relation to the appropriate assessment requirements for a plan or project, if they can'*.[15] Paragraph 4 of the guidance explains that there are two situation when competent authorities can co-ordinate their assessment requirements. The first is of relevance here and states '*where previous decisions have been taken in relation to the appropriate assessment requirements for a plan or project, competent authorities should adopt the parts of the assessment that are robust and have not become outdated by further information or developments'*.

2.1.2 It therefore follows that where an 'effect' from the LAPP has already been subject to assessment as part of the HRA of the Core Strategy, in accordance with current government guidance, NCC should seek to adopt all parts of that assessment if they are satisfied that a) it remains 'robust' and b) has not become 'outdated'. Attempting to duplicate assessment effort already undertaken is both inefficient and unnecessary; as reflected at para 3 of the Defra guidance *'The Government believes that competent authorities will be able to fulfil their duties more efficiently and effectively if they follow this advice'.*

2.1.3 Before undertaking the HRA work required for the LAPP it is therefore necessary to recognise and identify any 'new' effects which might arise as a result of the LAPP. These are separate and distinct from the effects which have already been identified and subject to assessment as part of the HRA of the Core Strategy. Where NCC are satisfied that the Core Strategy HRA is 'robust' and not 'outdated' they should adopt the conclusions of that HRA rather than re-assessing the same effects mechanisms.

2.2 Effects already assessed as part of the earlier HRA

2.2.1 Looking back to the HRA of the Core strategy, the first step was to identify the 'European Sites Potentially Affected'. It is relevant to note that the aligned core strategy covered an administrative boundary beyond that for the LAPP and it is therefore a precautionary approach to adopt the reasoning as to the site which are potentially affected by the current LAPP. Section 2 identified all European sites:

(a) *in the plan area; and*
(b) *outside the plan area that may be affected, for example, through related infrastructure such as water supply reservoirs or treatment works or other waste stream infrastructure that receive waste or discharges from the plan area; and*
(c) *outside the plan area that may experience significant indirect effects, such as increased pollution or disturbance from recreational pressure*.

2.2.2 Seven sites were identified as potentially being affected by the Core Strategy, listed at para 2.5 of the earlier HRA as follows. **The reasoning as to the selection of sites potentially affected is adopted for the purpose of this HRA. No new sites have been**

[15] Refer para 6 of Defra guidance

designated/classified since the 2012 HRA which might need to be included. Detailed site information is available in the earlier Core Strategy HRA for all the sites listed below. Taking account of the relevance to this HRA, some information in respect of the Sherwood Forest prospective SPA and Birklands and Bilhaugh SAC is contained in appendix 2.

- The Birklands and Bilhaugh SAC
- South Pennine Moors SAC
- South Pennine Moors SPA
- The Peak District Dales SAC
- Rutland Water SPA
- Rutland Water Ramsar site
- The Sherwood Forest prospective SPA

2.2.3 By way of clarification, the earlier HRA explicitly excluded the potential for effects on the River Mease SAC and the Humber SAC/SPA and Ramsar (refer paras 2.2-2.3). **For the purpose of this assessment effort, the reasoning upon which potential effects upon the River Mease SAC and the Humber SAC/SPA were excluded is adopted for the purpose of this assessment. These sites are not taken forward for further consideration.**

2.2.4 Having excluded these sites from further assessment, with reference to the seven sites progressed for further assessment, para 2.24 provided a 'summary of potential effects on European sites relevant to the Aligned Core Strategy' as follows:

> *'In summary, based on the analysis of European sites in this section and Annex 2 above, and the nature, scope, content and function of the ACS, including its Spatial Strategy which in turn includes provision for 52,050 new homes to 2026 (49,060 excluding the Ashfield area proposals), of which 25,320 will be in the existing Principal Urban Area of Nottingham, it is considered that this appraisal will need to particularly consider the following range of effects on European sites[16]:*
>
> ***Recreation effects***
>
> a) *Indirect effects on the Birklands and Bilhaugh SAC through an increased population in Greater Nottingham being likely to lead to increased numbers of visitors to the Sherwood Country Park and visitor centre located in and close to the ancient forest at the Birklands;*
>
> b) *Indirect effects on the prospective Sherwood Forest SPA through an increased population in Greater Nottingham being likely to lead to increased numbers of visitors to the Sherwood Forest area generally, parts of which support the breeding species which are vulnerable to disturbance and other recreation-related pressures;*
>
> c) *Indirect effects on the South Pennine Moors SAC and SPA and the Peak District Dales SAC through an increased population in Greater Nottingham being likely to lead to increased numbers of visitors to the Peak District National Park and surrounding countryside which is designated as part of the SPA and SACs.*

[16] This is a summary of the key likely significant effects of the plan on European sites, which the screening process checked. It is not an exhaustive list of all possible effects. The screening process exhaustively checked for other effects on a policy by policy, and site by site basis.

Effects of proximity to urban areas

d) Indirect effects on the prospective Sherwood Forest SPA through allocation of new housing areas in Greater Nottingham in close proximity to the heathland and other habitats in Sherwood Forest which support the breeding species and which are vulnerable to deterioration as a result of pressures from adjacent urban areas;

Effects on air quality

e) Indirect effects on sensitive habitats in the SACs through the potential for increased emissions of air pollutants from the larger number of homes and other buildings in Greater Nottingham provided for by the plan, and any increase in traffic movements, and whether such increase in air borne pollutants would be likely to have a significant effect on the South Pennine Moors SAC , Birklands and Bilhaugh SAC or the habitats supporting the bird populations in the prospective Sherwood Forest SPA;

Water abstraction

f) Indirect effects of increased water abstraction to meet the water supply requirements of an increased number of homes and other buildings and land uses provided for by the ACS, from reservoirs in the South Pennine Moors SPA and SAC.

2.2.5 The HRA concluded in section 6 (with added emphasis) that:

> *'Potential effects arising as a result of changes to air quality, deposition of air-borne pollutants, water abstraction, waste water discharges and increased recreation pressure on the South Pennine Moors SAC and SPA, the Peak District Dales SAC, the Humber Estuary SAC, SPA and Ramsar site and Rutland Water SPA and Ramsar site would not be likely to be significant, either alone or in combination with other plans or projects.*
>
> *There could be potentially significant effects of the ACS on the prospective Sherwood Forest SPA. Two such effects could be avoided by modifications to policies in the next iteration of the ACS at Pre-Submission draft for representations.*

2.2.6 Considering each effect mechanism in turn, in order for the conclusions/reasoning or assessment of the earlier HRA to be 'adopted' it is necessary for NCC to be satisfied that a) no material information has emerged that means it has become out of date, and b) the analysis underpinning the assessment is sufficiently rigorous and robust. In respect of recreational effects, proximity effects and water abstraction, it is the opinion of DTA Ecology that both these criteria can be met and that the reasoning and conclusions of the earlier HRA can be adopted without further assessment effort. Effects associated with air quality are considered further below.

2.3 Effects associated with air quality

2.3.1 In March 2017 the Wealden Judgment (Wealden DC v SSCLG [2017] EWHC 351 Admin) was handed down. This judgment pre-dates the earlier HRA of the Core Strategy and it is necessary to consider the extent to which it may render the earlier HRA conclusion 'out of date'. The Wealden judgment related to the potential effects of a Local Plan on air quality and the High Court ruled that it was not appropriate to excluded development plans from the need for assessment 'in combination with other plans and projects' on the basis of the application of generic screening thresholds. In this case the plan had been screened against a 1000AADT threshold.

2.3.2 The earlier HRA of the Aligned Core Strategy did not rely on the use of thresholds to conclude that there would be no likely significant effects. Instead the Core Strategy HRA justified the conclusions reached in respect of air quality on the basis of the distances involved and the dispersion properties of NO_x which meant that any contribution to nitrogen deposition at the SAC could be considered to be 'negligible'. In other words the potential for effects which might 'undermine the conservation objectives' (and hence be significant) were excluded on the basis of objective information. As such, there is little direct relevance of the Wealden decision to the earlier assessment effort; it is the opinion of DTA Ecology that there is nothing in the Wealden decision which renders the underlying rationale of the earlier HRA assessment to be 'out of date'. In respect of potential for effects upon the South Pennine Moors SAC and SPA, the Peak District Dales SAC, the Humber Estuary SAC, SPA and Ramsar site, Birklands and Bilhaugh SAC and Rutland Water SPA and Ramsar site, the underlying rationale in respect of the distance of these sites from NNC remains robust. All these sites are more than 20km from the boundary of the NCC and it is the opinion of DTA Ecology that the reasoning and conclusions of the earlier HRA can be 'adopted' in respect of air quality for those sites. **Any contribution to nitrogen deposition from NOx associated with increased traffic from the LAPP can be regarded as 'negligible'. In other words, with reference to phrasing adopted by the Secretary of State in respect of recent decisions involving development proposals in Mid Sussex and potential effects upon the Ashdown Forest SAC[17], the increase from the LAPP can be regarded as '*nugatory and indistinguishable from background levels*'**.

2.3.3 By way of clarification, and for reasons of completeness, with reference to the Birklands and Bilhaugh SAC, it is recognised that outline planning permission has been granted for the proposed redevelopment of the Thoresby Colliery. The air quality report submitted in respect of the Colliery development[18] concluded that effects from air quality at the SAC were 'negligible'. Furthermore an in combination assessment was undertaken which concluded that the combined effects of the proposal, in combination with other plans and projects, would be insignificant. This assessment was undertaken after the Core Strategy had been adopted so the overall growth provided for by the Core Strategy was known at that time. Natural England were consulted on this in combination assessment and were satisfied with the conclusions reached and raised no objections. The potential contributions from the LAPP to Birklands and Bilhaugh SAC are correctly regarded as negligible/nugatory; they will make no meaningful contribution to any hypothetical in-combination effects (which have already been considered as part of the application for outline planning consent); there is no requirement for any further assessment effort in this regard.

2.3.4 With reference to the prospective SPA at Sherwood Forest, it is considered appropriate on a precautionary basis (given that the NCC boundary just falls within the 5km consultation zone) to consider potential effects in a little more detail and further explain the justification for reliance on the earlier HRA. In this regard, Natural England have recently produced guidance entitled *'Advising competent authorities on the assessment of road traffic emissions under the Habitats Regulations'* dated December 2017. Of particular relevance the guidance includes a 'note of caution' as seen below:

[17] See https://www.gov.uk/government/collections/planning-applications-called-in-decisions-and-recovered-appeals and decisions dated 1st March 2018

[18] Air Quality Report in respect of Thoresby Colliery development

NOTE OF CAUTION

When considering the sensitivity of SPA qualifying features, the extent to which changes to the structure and function of the *supporting* habitats might represent a risk to the integrity of an SPA will vary significantly, depending on the ecological role that the structure and function of a supporting habitat plays in maintaining the population for which the site has been classified. The site relevant critical load pages on APIS provide information on the sensitivity of each SPA feature.

2.3.5 The guidance contains a step wise approach which has been followed below:

Step 1: Does the proposal give rise to emissions which are likely to reach a European site?

2.3.6 The NE guidance is clear that protected sites falling within 200m of the edge of a road which might be affected by a plan or project would require further consideration. There are roads which fall within 200m of the prospective Sherwood Forest SPA.

Step 2: Are the qualifying features of sites within 200m of a road sensitive to air pollution?

2.3.7 With specific reference to the 'note of caution' referred to above, it is of central importance that the prospective SPA is recognised in respect of the supporting habitat it provides for nightjar (*Caprimulgus europaeus)*. The Air pollution Information System (an online database) contains species-pollutant data which is specific to nightjar. In the Sherwood Forest area the supporting habitat consists primarily of coniferous forests and the website explicitly states that, with reference to this broad habitat type, European nightjar is not sensitive to nitrogen impacts on the broad habitat. The reason given is *'no expected negative impact on species due to impacts on the species' broad habitat'*:

2.3.8 It is therefore the opinion of DTA Ecology that, with reference to potential effects from air quality on the Sherwood Forest prospective SPA, the LAPP will have no likely significant effect. The reasoning and conclusion set out within the Core Strategy HRA can be adopted for the purpose of this assessment. There is no new information which means that the assessment is 'out of date' and the underlying justification remains robust. In particular, the more recent guidance produced by Natural England does not undermine the robustness of the earlier reasoning and rationale.

2.4 The risk of 'new' effects as a result of the LAPP

'New' effects upon the South Pennine Moors SAC and SPA, the Peak District Dales SAC, and Rutland Water SPA and Ramsar site

2.4.1 Taking account of the relative distance from the NCC administrative boundary, the LAPP does not generate any 'new' effects which have not already been subject to assessment as part of the HRA of the Core Strategy, in respect of South Pennine Moors SAC and SPA, the Peak District Dales SAC, and Rutland Water SPA and Ramsar site. As such the following conclusions of the HRA of the Core Strategy can be adopted in respect of this HRA for the LAPP:

- Potential effects arising as a result of changes to air quality, deposition of air-borne pollutants, water abstraction, waste water discharges and increased recreation pressure on the **South Pennine Moors SAC and SPA, the Peak District Dales SAC, the Humber Estuary SAC, SPA and Ramsar site and Rutland Water SPA and Ramsar site** would not

be likely to be significant, either alone or in combination with other plans or projects (refer part 6 of 2012 HRA).

'New' effects upon the Birklands and Bilhaugh SAC

2.4.2 With reference to Birklands and Bilhaugh SAC. The LAPP will, likewise, not generate any 'new' effects beyond those already subject to assessment in 2012. Birklands and Bilhaugh SAC is located 20km from the nearest administrative boundary of NCC. Potential concerns in respect of recreational effects, air quality and proximity to urban areas were subject to assessment as part of the 2012 HRA which concluded that there will be no likely significant effect on the assumption that the proposed relocation of the old visitor centre would be implemented during the period of the aligned core strategy. The opening of the new visitor centre in August 2018 provides sufficient reassurance as to the robustness of adopting this earlier conclusion. As such, **there is no requirement for further assessment in respect of Birklands and Bilhaugh SAC as the LAPP makes no 'new' provision in terms of overall growth and no 'new' effects are therefore anticipated. The individual site allocations themselves are sufficiently distant form the SAC that potential proximity effects can be excluded on the basis that there is no conceivable effect beyond those already subject to assessment in the 2012 HRA.**

'New' effects upon the prospective Sherwood Forest SPA

2.4.3 The main potential risks identified as part of the 2012 HRA related to potential effects upon the Sherwood Forest prospective SPA. However, whilst the HRA identified potential risks, without exception, **all the concerns raised were specific to elements of the Aligned Core Strategy which were out with the administrative boundary of NCC.** The main concern related to the proposed development at Top Wighay Farm, which is located within the boundary of Gedling Borough Council. As a consequence of the 2012 HRA, Gedling have undertaken further assessment work in respect of nitrogen deposition and noise. These later assessment were subject to consultation with Natural England and both the air pollution and noise assessments concluded no likely significant effect[19]. As such, potential concerns in respect of the Top Wighay Farm development have since been resolved.

2.4.4 The LAPP makes no 'new' provision in respect of overall growth which has not already been subject to assessment under the Habitats Regulations. As such **there are no 'new' effects in respect of recreational pressure or air pollution from the overall level of growth.** With reference to proximity effects, Natural England have issued an advice note to Local Planning Authorities which is relevant to the Sherwood Forest prospective SPA[20]. The note recommends a 'risk based approach' and includes a map showing a 5km buffer around the RSPB 'Important Bird Area' (IBA) boundary (refer Appendix 2). The northern edge of the NCC administrative boundary (in the Rise Park area) is just within this buffer zone. At its closest point the NCC boundary is 4.6km from the nearest IBA boundary. As such, in respect of potential effects upon the Sherwood Forest arising from the site allocations, **any sites within the 5km consultation zones will be identified and subject to further consideration as part of this HRA**. This is a highly precautionary approach as the 5km buffer will take account of potential for recreational effects (which have already been considered as part of the earlier HRA) a screening distance in respect of proximity related impacts only would be expected to

[19] See further [link]

[20] Advice note to Local Planning Authorities regarding the consideration of likely effects on the breeding population of nightjar and woodlark in the Sherwood Forest region (see Appendix 2).

be significantly less than 5km. However, taking a precautionary approach, site allocations within 5km will be identified and checked. Site allocations beyond the 5km buffer are excluded from further consideration. The objective information provided in the Natural England advice note is sufficient to exclude effects which might undermine the conservation objectives and hence be significant.

Summary of new effects which will be subject to further consideration as part of this assessment

2.4.5 As such, with the exception of any site allocation which are located within the 5km consultation zone for the Sherwood Forest prospective SPA, direct and indirect effects upon European sites which might be associated with the development provided for within the LAPP can be ruled out. The conclusions of the HRA of the Core Strategy can be adopted in respect of potential effects associated with recreation, proximity to urban areas, air quality and water abstraction.

2.4.6 The nearest European site, Birklands and Bilhaugh SAC is 20km away. At this distance proximity based effects from the site allocations can be ruled out, on the basis of a lack of any conceivable risk; effects associated with the general increase in development within the area as a whole have already been subject to assessment as part of the 2012 HRA of the Core Strategy.

2.4.7 The prospective SPA at Sherwood Forest (which is taken into account on a precautionary basis, as part of the NE recommended 'risk based approach') is some 4.6km away. Natural England advice refers to a 5km consultation zone. Site allocations will therefore be checked and any allocations located within 5km of the prospective SPA will be subject to further consideration. Wider effects associated with the general increase in development within the area as a whole have already been subject to assessment as part of the 2012 HRA of the Core Strategy.

2.4.8 It is therefore the case that, with reference to the Defra guidance on competent authority co-ordination, taking account of the location of the site allocations provided for within the LAPP relative to the formally recognised European sites (i.e. those which meet the definition of a 'European site as set out in regulation 8 of the Habitats Regulations) potentially at risk, and adopting the reasoning and conclusions as recorded in earlier HRA assessment effort in respect of the overall increase on development, there will be no 'new' effects at all in respect of the site allocations as set out in policy SA1. It is not necessary to consider each allocation in turn as to do so would represent unnecessary and abortive work and would be contrary to the Defra guidance.

2.4.9 There is a potential risk to the prospective Sherwood Forest SPA in respect of any site allocations located within 5km of the boundary of the site. Given that the northern boundary of the NCC is located some 4.6km away only allocations located in the northern most areas have any possibility of being within 5km of the site. It is therefore unlikely that many such sites (if any) will be identified but the allocations will each be checked in this regard.

2.4.10 Beyond the site allocations as set out in policy SA1, this HRA also needs to recognise that the LAPP has developed a series of new planning policies which underpin those subject to assessment as part of the Aligned Core Strategy HRA. As such, whilst it is unlikely that any of the policies will, themselves, create a framework which presents a 'new' risk to any European sites, they will each be subject to screening as part of this HRA.

2.4.11 The 'new' effects from the LAPP which are the subject of assessment under this HRA are therefore as follows:

- **In respect of introductory and background material (section 1-2) and all other development management policies (sections 3-6) the wording of new policies will be checked to confirm that they do not give rise to any 'new' effects not already considered as part of the earlier HRA of the Core Strategy.**
- **In respect of site allocations (policy SA1) (section 6) Potential 'new' effects are limited to potential effects associated with site allocations under policy SA1 which fall within 5km of the prospective Sherwood Forest SPA.**

3 Screening the LAPP for a likelihood of significant effects

3.1 An introduction to screening

3.1.1 Having identified the sites and impact mechanism that require consideration, the first stage in the HRA process is commonly referred to as the 'screening' stage.

3.1.2 'Screening' is not a term used in the Directive or Regulations but is widely used for convenience to describe the first step of the HRA process. The purpose of the screening stage is to consider each aspect of the plan and identify whether it is:

a) Exempt from the need for assessment (where a plan is directly connected with or necessary for the management of the European site concerned)
b) Excluded from the need for assessment (where a document under consideration is not a 'plan' within the context of the Habitats Regulations)
c) Eliminated from the need for assessment (where it is obvious from the beginning that there is no conceivable effect upon any European sites)
d) Subject to assessment and screened out from further consideration (that is the case where an aspect of the plan is considered not 'likely to have a significant effect on a European site, either alone or in combination with other plans and projects')
e) Subject to assessment and screened in for further assessment (that is the case where an aspect of the plan is considered 'likely to have a significant effect on a European site, either alone or in combination with other plans and projects')

3.1.3 For aspects of the plan which are subject to assessment, the screening test requires a decision to be made as to whether that aspect of the plan has a 'likely significant effect, either alone or in combination with other plans and projects', or not.

3.1.4 The HRA Handbook contains further guidance regarding this practical interpretation of this step, with reference to case law and government guidance. Section C.7.1 sets out a series of principles relevant to the screening decision; key extracts are set out below:

- *As a result of European case law in Waddenzee, irrespective of the normal English meaning of 'likely', in this statutory context a 'likely significant effect' is a possible significant effect; one whose occurrence cannot be excluded on the basis of objective information. In this context it is permissible to ask whether a plan or project 'may have a significant effect'…*(principle 3)
- *A significant effect is any effect that would undermine the conservation objectives for a European site…* (principle 4)
- *An effect which would not be significant can properly be described as : as 'insignificant effect'; or a 'deminimis effect; or a 'trivial effect'; or as having 'no appreciable effect'; but it is important to bear in mind that, in this context, all the terms are synonymous and are being used to describe effects which would not undermine the conservation objectives'….*(principle 8)
- *'Objective', in this context, means clear verifiable fact rather than subjective opinion. It will not normally be sufficient for an applicant merely to assert that the plan or project will not have an adverse effect on a site, nor will it be appropriate for a competent*

authority to rely on reassurances based on supposition or speculation. On the other hand, there should be credible evidence to show that there is a real rather than a hypothetical risk of effects that could undermine the site's conservation objectives. Any serious possibility of a risk that the conservation objectives might be undermined should trigger an 'appropriate assessment' (principle 11).

3.2 Screening the background/introductory sections

3.2.1 The early sections of the LAPP (1 - 2) include introductory text and contextual information. This part of the Plan is factual and not proposing any change *per se,* these sections cannot conceivably have any effects on a European site and are screened out of further assessment.

Element of the plan	Assessment and reasoning	Screening conclusion
Section 1: Introduction	Administrative text	Screened out
Section 2: Background	Administrative text	Screened out

3.2.2 The Plan then continues to set out the Development Management Policies, under four main headings (Sustainable Growth, Places for People, Our Environment and Making it Happen) in sections 3-6. In accordance with the approach adopted for this assessment (refer 1.3 above) a list of 'screening categories' have been used to provide a rigorous and transparent approach to the screening process. These categories are taken from Part F of the HRA Handbook and are as follows:

A. General statement of policy / general aspiration (screened out).
B. Policy listing general criteria for testing the acceptability / sustainability of proposals (screened out).
C. Proposal referred to but not proposed by the plan (screened out).
D. Environmental protection / site safeguarding policy (screened out).
E. Policies or proposals which steer change in such a way as to protect European sites from adverse effects (screened out).
F. Policy that cannot lead to development or other change (screened out).
G. Policy or proposal that could not have any conceivable effect on a site (screened out).
H. Policy or proposal the (actual or theoretical) effects of which cannot undermine the conservation objectives (either alone or in combination with other aspects of this or other plans or projects) (screened out).
I. Policy or proposal with a likely significant effect on a site alone (screened in)
J. Policy or proposal with an effect on a site but not likely to be significant alone, so need to check for likely significant effects in combination (screened in)
K. Policy or proposal not likely to have a significant effect either alone or in combination (screened out after the in combination test).
L. Policy or proposal likely to have a significant effect in combination (screened in after the in combination test).

3.3 Screening sections 3-6 (except policy SA1)

3.3.1 As set out in para 2.1.19 the potential effect mechanisms which are relevant to this screening work are limited to:

- In respect of introductory and background material (section 1-2) and all other development management policies (sections 3-6) the wording of new policies will be

checked to confirm that they do not give rise to any 'new' effects not already considered as part of the earlier HRA of the Core Strategy.

- In respect of policy SA1 (site allocations), potential 'new' effects are limited to potential effects associated with allocations which fall within 5km of the prospective Sherwood Forest SPA.

3.3.2 The policies in chapters 3-6 were screened against the screening categories listed in 3.2.2 above and the outputs from that screening are captured in Appendix 1. With the exception of policy SA1 (which is subject to screening below), **all policies were screened as having no likely significant effect (either alone or in combination)** against the following categories:

- A (general statement of policy);
- B (policy listing general criteria for testing the acceptability of proposals);
- D (environmental protection / site safeguarding policy); or
- G (policy with no conceivable effect).

3.4 Screening policy SA1

3.4.1 With reference back to para 2.1.12 above, the only potential effect mechanism from policy SA1 which has not already been considered as part of the HRA of the Core Strategy relates to potential proximity effects which might arise from any allocations located within the 5km consultation zone for the Sherwood Forest prospective SPA.

3.4.2 Having reviewed the policies maps it is clear that only one site allocation falls within the 5km consultation zone; site reference PA1 Bestwood Road (former Bestwood day centre). This is a 1.67 ha site with a proposed use for residential (C3, predominantly family housing). The northernmost boundary of the allocation is located some 4.5km from the RSPB IBA boundary at the Burntwood Country Park and 4.8km from the nearest NE indicative core area boundary.

3.4.3 Effects associated with the overall increase in residents that might be associated with allocation PA1 (and associated recreational pressure) have already been taken into account through the HRA of the Core Strategy. As such the only potential 'new' effect mechanism relates to proximity related impacts such as cat predation, fire risk, and noise/visual/light disturbance.

3.4.4 When considering the risk to the prospective SPA from the allocation PA1, with reference to the landmark *Waddenzee* ruling an effect is 'likely' if it undermines the conservation objectives[21] and 'significant' if it cannot be excluded on the basis of objective information[22]. The distance from the IBA/indicative core area is such that potential proximity effect which might undermine the conservation objectives can be excluded on the basis of objective information (common sense) that such effects will not occur at distances of >4.5km. The site allocation PA1 will therefore have no effect at all on the prospective SPA in respect of proximity related effects. The site allocation can be assigned to category G (no conceivable effect)

[21] Case C-127/02 *Waddenzee* refer para 45
[22] Case C-127/02 *Waddenzee* refer para 47

3.5 The need for assessment in combination with other plans and projects

3.5.1 The LAPP has been subject to screening for likely significant effects in light of the HRA work already undertaken for the Core Strategy. All aspects of the plan have been screened out under categories A, B, D and G. These categories relate to a conclusion that, the policy/allocation will have no effect on a European site *at all*. With reference to the list of categories from the HRA Handbook listed at 3.1.2 above only category J would require further assessment of the potential for effects 'in combination'.

3.5.2 With reference to guidance contained within the HRA Handbook, this reflect principle 10 at section C.7 'Likely Significant Effects' which reads as follows:

> *A plan or project will initially be screened for its possible effects "alone". In Waddenzee terms, there are three possible outcomes of this screening judgement, on the basis of objective information:*
>
> *a) The plan or project will have no adverse effect on the site at all; or*
>
> *b) The plan or project alone will have no significant adverse effect on the site; that is, it could have some effect but none that, when the plan or project is taken on its own, might undermine the conservation objectives; or*
>
> *c) It cannot be ruled out that the plan or project could or would have a significant adverse effect on the site alone; that is, an effect which might undermine the conservation objectives.*
>
> *The effects of the three outcomes identified above are as follows:*
>
> (a) *The plan or project is 'screened out' and no further assessment is required, because if the plan or project will have no adverse effect on the site at all, it has no adverse effect to contribute 'in combination' to the effects of other plans or projects…*

3.5.3 The assessment undertaken for the LAPP reflects scenario (a) of this principle. Having considered the 'new' effects that may arise from the LAPP (i.e. those which have not already been subject to assessment as part of the HRA of the Core Strategy), the screening has concluded that the plan will in fact have no adverse effect at all on any European sites. As such, it has no 'effect' which might contribute in-combination to the effects from other plans and projects. As such, no further assessment in-combination is required.

3.6 Overall conclusion

3.6.1 The LAPP has been subject to assessment under the Habitats Regulations. In accordance with Defra guidance the conclusions from the earlier HRA of the Core Strategy have been adopted where relevant, limiting the scope of this assessment to any 'new' effects which might arise. All elements of the plan have been screened out as having no likely significant effect, either alone or in combination with other plans and projects. No further assessment is required.

Appendix 1: screening of development management policies

Plan Policy	Screening conclusion	Justification
CC1 Sustainable Design and Construction	B – screened out	Policy listing general criteria for testing acceptability of proposals.
CC2 Decentralised Energy and Heat Networks	A – screened out	A general statement of policy
CC3 Water	B – screened out	Policy listing general criteria for testing acceptability of proposals.
EE1 Providing a ranges of employment sites	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect which has not already been considered as part of the earlier HRA of the Core Strategy.
EE2 Safeguarding Existing Business Parks / Industrial Estates	E – no conceivable effect	This policy does not generate any 'new' risk or potential effect which has not already been considered as part of the earlier HRA of the Core Strategy.
EE3 Change of Use to Non-Employment Uses	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect which has not already been considered as part of the earlier HRA of the Core Strategy.
EE4 Local Employment and Training Opportunities	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect which has not already been considered as part of the earlier HRA of the Core Strategy.
SH1 Major Retail and Leisure Developments within the City Centre's Primary Shopping Area	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect which has not already been considered as part of the earlier HRA of the Core Strategy.
SH2 Development with primary frontages	B – screened out	Policy listing general criteria for testing acceptability of proposals.
SH3 Development with secondary frontages	B – screened out	Policy listing general criteria for testing acceptability of proposals.

Plan Policy	Screening conclusion	Justification
Development of Main Town Centre Uses in Edge of Centre and Out of Centre Locations	B – screened out	Policy listing general criteria for testing acceptability of proposals.
SH5 Independent Retail Clusters	B – screened out	Policy listing general criteria for testing acceptability of proposals.
SH6 Food and Drink Uses and High Occupancy Licensed Premises / Entertainment Venues	B – screened out	Policy listing general criteria for testing acceptability of proposals.
SH7 Centres of Neighbourhood Importance	B – screened out	Policy listing general criteria for testing acceptability of proposals.
SH8 Markets	B – screened out	Policy listing general criteria for testing acceptability of proposals.
RE1 Facilitating Regeneration	B – screened out	Policy listing general criteria for testing acceptability of proposals.
RE2 Canal Quarter	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The more detailed policy wording will have no conceivable effect on any European sites.
RE3 Creative Quarter	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The more detailed policy wording will have no conceivable effect on any European sites.
RE4 Castle Quarter	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The more detailed policy wording will have no conceivable effect on any European sites.
RE5 Royal Quarter	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The more detailed policy wording will have no conceivable effect on any European sites.

Plan Policy	Screening conclusion	Justification
RE6 The Boots Site	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The more detailed policy wording will have no conceivable effect on any European sites.
RE7 Stanton Tip	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The more detailed policy wording will have no conceivable effect on any European sites.
RE8 Waterside	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The more detailed policy wording will have no conceivable effect on any European sites.
HO1 Housing Mix	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The more detailed policy wording will have no conceivable effect on any European sites.
HO2 Protecting Dwellinghouses suitable for Family Occupation	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The more detailed policy wording will have no conceivable effect on any European sites.
HO3 Affordable Housing	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The more detailed policy wording will have no conceivable effect on any European sites.
HO4 Specialist and Adaptable Housing	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The more detailed policy wording will have no conceivable effect on any European sites.
HO5 Locations for Purpose Built Student Accommodation	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The more detailed policy wording will have no conceivable effect on any European sites.
HO6 Houses in Multiple Occupation and Purpose Built Student Accommodation	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The more detailed policy wording will have no conceivable effect on any European sites.
DE1 Building Design and Use	B – screened out	Policy listing general criteria for testing acceptability of proposals.

Plan Policy	Screening conclusion	Justification
DE2 Context and Place Making	B – screened out	Policy listing general criteria for testing acceptability of proposals.
[DE3 DELETED]	N/A	N/A
DE4 Creation and Improvement of Public Open Spaces in the City Centre	B – screened out	Policy listing general criteria for testing acceptability of proposals.
DE5 Shopfronts	B – screened out	Policy listing general criteria for testing acceptability of proposals.
DE6 Advertisements	B – screened out	Policy listing general criteria for testing acceptability of proposals.
HE1 Proposals Affecting Designated and Non-Designated Heritage Assets	B – screened out	Policy listing general criteria for testing acceptability of proposals.
HE2 Caves	B – screened out	Policy listing general criteria for testing acceptability of proposals.
LS1 Food and Drink Uses and Licensed Entertainment Venues Outside the City Centre	B – screened out	Policy listing general criteria for testing acceptability of proposals.
LS2 Supporting the Growth of Further and Higher Education Facilities	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The more detailed policy wording will have no conceivable effect on any European sites. With reference to the specific allocation at PA67, this is located beyond the 5km consultation zone for the Sherwood Forest prospective SPA
LS3 Safeguarding Land for Health Facilities	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The detailed policy wording will have no conceivable effect on any European sites.
LS4 Public Houses outside the City Centre and/or designated as an Asset of Community Value	B – screened out	Policy listing general criteria for testing acceptability of proposals.
LS5 Community Facilities	B – screened out	Policy listing general criteria for testing acceptability of proposals.

Plan Policy	Screening conclusion	Justification
TR1 Parking and Travel Planning	B – screened out	Policy listing general criteria for testing acceptability of proposals.
TR2 The Transport Network	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The detailed policy wording and proposed highway schemes will have no conceivable effect on any European sites.
TR3 Cycling	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The detailed policy wording will have no conceivable effect on any European sites.
EN1 Development of Open Space	B – screened out	Policy listing general criteria for testing acceptability of proposals.
EN2 Open Spaces in New Development	A – screened out	General statement of policy with no effect upon any European sites at all.
EN3 Playing Fields and Sports Grounds	B – screened out	Policy listing general criteria for testing acceptability of proposals.
EN4 Allotments	B – screened out	Policy listing general criteria for testing acceptability of proposals.
EN5 Development Adjacent to Waterways	B – screened out	Policy listing general criteria for testing acceptability of proposals.
EN6 Biodiversity	D – screened out	Environmental protection / Site safeguarding policy
EN7 Trees	D – screened out	Environmental protection / Site safeguarding policy
MI1 Minerals Safeguarding	D – screened out	Environmental protection / Site safeguarding policy
MI2 Restoration, After-use and After-care	G – no conceivable effect	This policy does not generate any 'new' risk or potential effect upon European sites which has not already been considered as part of the earlier HRA of the Core Strategy. The detailed policy wording will have no conceivable effect on any European sites.
MI3 Hydrocarbons	B – screened out	Policy listing general criteria for testing acceptability of proposals.
IN1 Telecommunications	B – screened out	Policy listing general criteria for testing acceptability of proposals.
IN2 Land Contamination, Instability and Pollution	B – screened out	Policy listing general criteria for testing acceptability of proposals.
IN3 Hazardous Installations and Substances	B – screened out	Policy listing general criteria for testing acceptability of proposals.
IN4 Developer Contributions	B – screened out	Policy listing general criteria for testing acceptability of proposals.

Appendix 2:
European site details

Advice Note to Local Planning Authorities regarding the consideration of likely effects on the breeding population of nightjar and woodlark in the Sherwood Forest region

March 2014

This advice note updates and replaces the previous note dated 5 September 2012 to reflect the introduction of the National Planning Policy Framework ('NPPF') and amendments to the Conservation of Habitats and Species Regulations 2010 ('the Habitats Regulations').

Summary

While no conclusion has yet been reached about the possible future classification of parts of Sherwood Forest as a Special Protection Area (SPA) for its breeding bird (nightjar and woodlark) interest, Natural England advise those affected Local Planning Authorities (LPAs) to be mindful of the Secretary of State's decision in 2011, following Public Inquiry, to refuse to grant planning permission for an Energy Recovery Facility at Rainworth where the potential impacts on these birds and their supporting habitats was given significant weight.

In light of this decision we therefore recommend a precautionary approach should be adopted by LPAs which ensures that reasonable and proportionate steps have been taken in order to avoid or minimise, as far as possible, any potential adverse effects from development on the breeding populations of nightjar and woodlark in the Sherwood Forest area. This will help to ensure that any future need to comply with the provisions of the 2010 Regulations is met with a robust set of measures already in place.

This Advice Note provides a brief explanation of the background to the current situation and suggests a 'risk-based' approach that could be followed to help future-proof decision-making on plans and projects. In addition a summary of the current LPA statutory duties in relation to birds is provided for clarity and there are links to further information relating to the legislation and policy that affects SPAs. The document is set out as follows:

- **Background – including reference to planning case law**
- **Current situation**
- **The recommended 'risk-based' approach**
- **Existing statutory duties relevant to birds**
- **Further information**
- **Map highlighting the areas of greatest ornithological interest for breeding nightjar and woodlark**

Background – the possibility of a protected area (Special Protection Area) for nightjar and woodlark in Sherwood and Rufford Energy Recovery Facility planning case law

The UK government is required by European law to identify how it can contribute to the conservation of particular bird species across their natural range in Europe through the protection of suitable sites. In doing this exercise it has identified that the populations of nightjar and woodlark in Sherwood may warrant such protection. A final decision has not been made and it remains under consideration as part of a UK-wide SPA Review Programme being led by the Joint Nature Conservation Committee[1]. The possibility of the area becoming an SPA creates a risk for spatial planning in the Sherwood area. This is because any formalisation of the site as a Special Protection Area (SPA) would place a legal

[1]See http://archive.defra.gov.uk/rural/documents/protected/spareview-tor.pdf

obligation on decision-taking bodies requiring past decisions to be reviewed and potentially modified.

In 2011, following a Public Inquiry, the Secretary of State decided to refuse to grant planning permission for an Energy Recovery Facility on land at the former Rufford Colliery site at Rainworth. The likely effect on the breeding populations of woodlark and nightjar was a key consideration in the Secretary of State's decision[2].

The Secretary of State agreed that whilst the application site was not within an area currently identified as a Special Protection Area (SPA), there was merit in following the formal approach required for SPAs. He agreed that when considering the impact of the development on the use of the area by the bird species listed on Annex 1 of the European Wild Birds Directive – in this case woodlark and nightjar - an approach similar to that set out in the relevant legislation (Regulation 61 of the Habitats Regulations[3]) should be adopted. The Secretary of State concluded that he could not be sure that the proposed development would not harm the integrity of the area used by the birds and that the conflict this created with the aims of the Regional Spatial Strategy and the potential harm to the integrity of the habitat used by woodlark and nightjar weighed significantly against the proposal.

Current situation

Until the SPA Review concludes and provides further guidance as to whether new SPAs for nightjar and/or woodlark should be classified in the UK to meet the obligations of the Wild Birds Directive, there continues to be uncertainty about the future classification of an SPA in the Sherwood Forest area. However it is our view that, based on the evidence from the most recent national nightjar and woodlark surveys in 2004 and 2006 and the interpretation of that data, there remains a possibility of an area of Sherwood Forest being recommended for future classification.

We recognise that in the interim this creates difficulty for LPAs in how they should consider land allocations and policies in Development Plans and individual planning applications within the Sherwood Forest area. How local authorities choose to confront this issue is ultimately a matter for them, however Natural England advise that LPAs should adopt a form of 'risk based approach' or similar of the kind taken by the Secretary of State in the case referred to above. This should provide decision-making with a degree of future-proofing until such a time that there is greater certainty on whether the Sherwood Forest area is to be afforded pSPA or SPA status and whether the provisions of the 2010 Regulations are to take effect as a matter of policy or law.

The recommended 'risk-based' approach

The 'risk based' approach advocated by Natural England was endorsed by the Secretary of State in coming to his decision on the development proposal at the former Rufford Colliery.

Natural England suggest that in taking a risk-based approach to development plan making and decision-making, LPAs seek to ensure that plans and proposals are accompanied by an additional and robust assessment of the likely impacts arising from the proposals on breeding nightjar and woodlark in the Sherwood Forest area. This should ideally cover the potential direct, indirect and cumulative impacts which may include, but may not be limited to, the following;

- disturbance to breeding birds from people, their pets and traffic
- loss, fragmentation and/or damage to breeding and/or feeding habitat
- bird mortality arising from domestic pets and/or predatory mammals and birds
- bird mortality arising from road traffic and/or wind turbines

[2] See http://webarchive.nationalarchives.gov.uk/20120919132719/http://www.communities.gov.uk/documents/planningandbuilding/pdf/1914959.pdf
[3] See http://www.legislation.gov.uk/uksi/2010/490/made

- pollution and/or nutrient enrichment of breeding habitats

No formal assessments of the boundary of any future SPA have been made; therefore it is not possible to definitively identify whether individual application sites would fall inside or outside any possible future designated area. However the enclosed map, which highlights the areas of greatest ornithological interest for breeding nightjar and woodlark, was submitted as evidence to the Rufford ERF Public Inquiry and could be of assistance to your Authority in this regard[4]. It is worth noting that the Inspector at the Rufford ERF Inquiry decided it appropriate to consider both boundaries to inform his recommendations.

We also advise that LPAs should seek to satisfy themselves that planning applications contain sufficient objective information to ensure that all potential impacts on the breeding nightjar and woodlark populations have been adequately avoided or minimised as far as is possible using appropriate measures and safeguards. It may be necessary to obtain ecological advice in relation to the potential impacts of a proposal and any possible avoidance or mitigation measures.

Natural England would encourage those LPAs in the Sherwood Forest area to work together, in compliance with the duty to cooperate, to consider the combined effect of their plans and proposals in order to gain a strategic overview and develop a collaborative approach. We are of the view that taking the approach outlined above represents good planning practice which will assist your Authority should the site be classified as SPA in limiting the number of plans and projects which would need to be re-considered as part of the review of consents process required by the 2010 Regulations.

Existing biodiversity and wild bird duties

In addition to advising that a risk based approach will assist LPAs in future-proofing plans and decisions, Natural England advises that there are other relevant duties in legislation and policy that direct you to consider the protection and enhancement of nightjar and woodlark populations in the Sherwood area.

Your Authority must discharge its statutory duty given under Section 40 of the Natural Environment and Rural Communities Act 2006 to have regard to the purpose of conserving biodiversity. It follows that your authority should have regard to conserving nightjar and woodlark, owing to their inclusion as Species of Principal [conservation] Importance in England[5].

Your Authority should also have regard to new duties given under regulation 9A of the Habitats Regulations, which requires LPAs to apply all reasonable endeavours to avoid the deterioration of wild bird habitat (including that of nightjar and woodlark) when exercising their statutory functions. The presence of either or both species and any effects on them is a material consideration when considering planning applications, regardless of whether the Sherwood area is put forward for classification as an SPA in due course.

Further information

Information on the legislation, policy and classification process affecting Special Protection Areas (SPAs) is available from the following websites:

- JNCC http://jncc.defra.gov.uk/page-162
- Natural England http://www.naturalengland.org.uk/ourwork/conservation/designations/spa/default.aspx
- Defra https://www.gov.uk/protected-or-designated-areas

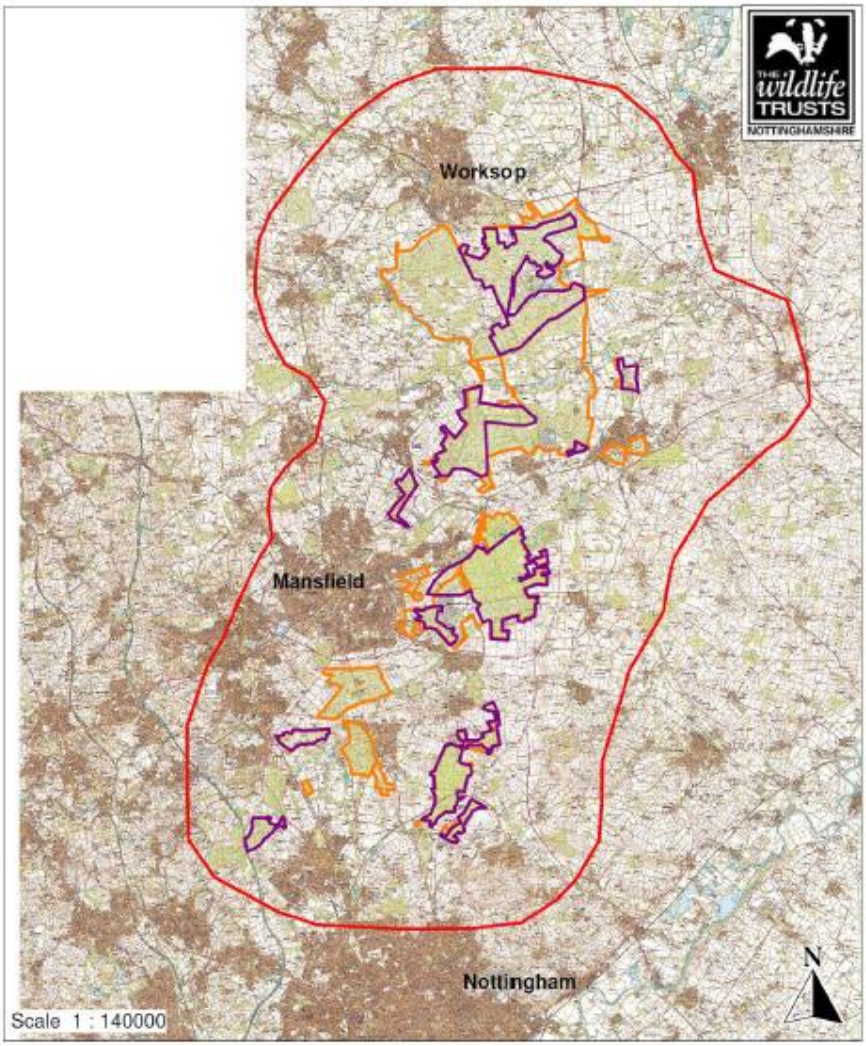
[4] http://www.nottinghamshire.gov.uk/planningsearch/plandisp.aspx?AppNo=ES/1144%20
[5] As listed in section 41 of the Natural Environment and Rural Communities Act 2006 to guide decision-makers such as public bodies, including local and regional authorities, in implementing their duty under section 40 of that Act

We hope this advice is helpful and provides further assistance. Should Natural England be in a position to update these views and advice, we will do so and notify you accordingly.

If you have any queries about this advice, please contact either Liz Newman elizabeth.newman@naturalengland.org.uk or Ryan Hildred ryan.hildred@naturalengland.org.uk

Natural England
Land Use Operations
March 2014

Map highlighting the areas of greatest ornithological interest for breeding nightjar and woodlark, submitted as evidence to the Rufford ERF Public Inquiry 2010

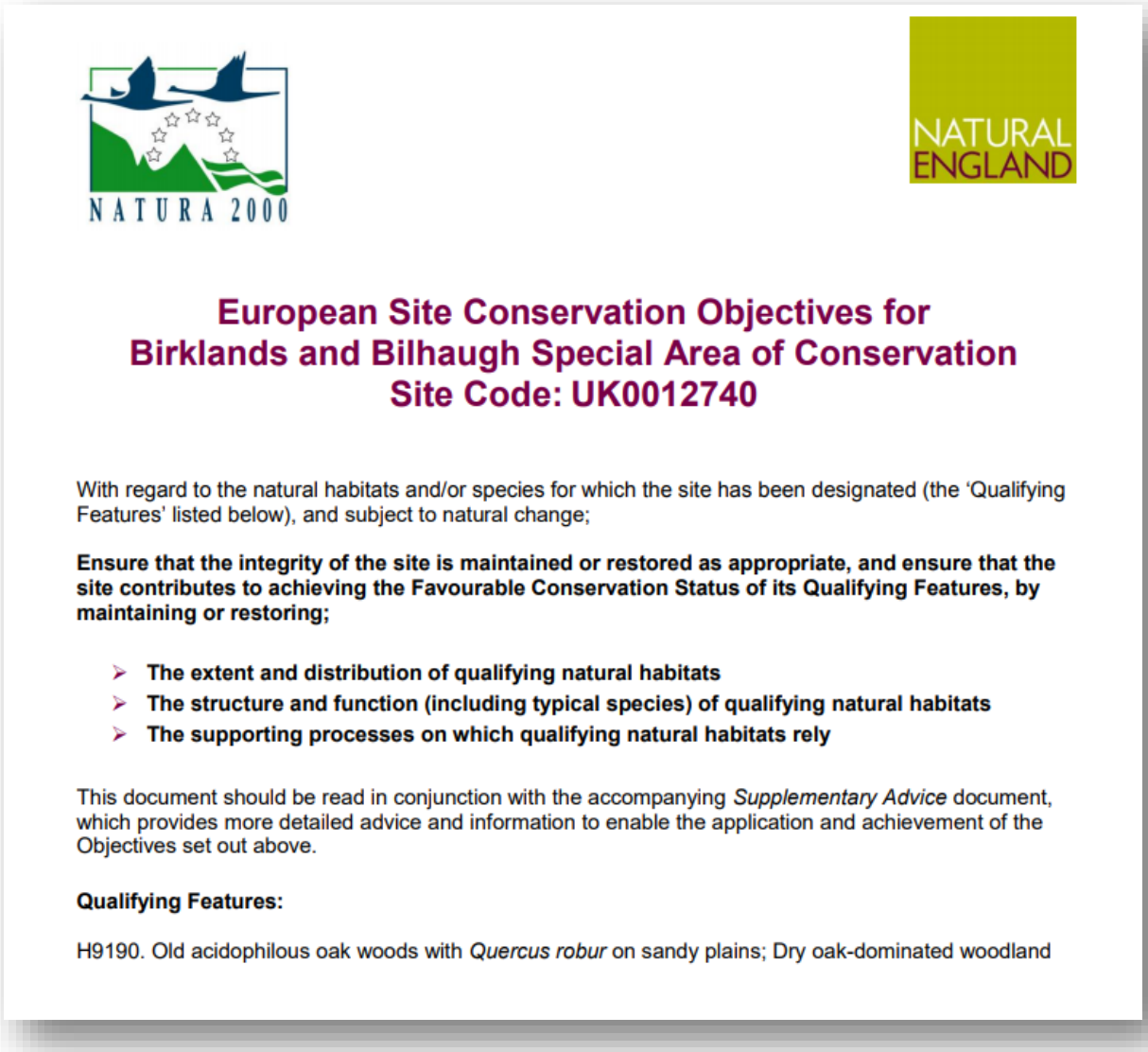


Key
RSPB IBA Boundary with 5Km buffer
NE Indicative Core Area
RSPB IBA Boundary

Plan 1

Birklands and Bilhaugh SAC

Covering approximately 270ha the Birklands and Bilhaugh SAC is a landscape remnant of the historic Sherwood Forest. The conservation objectives for the Birklands and Bilhaugh SAC are as follows:



NATURA 2000

NATURAL ENGLAND

European Site Conservation Objectives for Birklands and Bilhaugh Special Area of Conservation Site Code: UK0012740

With regard to the natural habitats and/or species for which the site has been designated (the 'Qualifying Features' listed below), and subject to natural change;

Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;

- **The extent and distribution of qualifying natural habitats**
- **The structure and function (including typical species) of qualifying natural habitats**
- **The supporting processes on which qualifying natural habitats rely**

This document should be read in conjunction with the accompanying *Supplementary Advice* document, which provides more detailed advice and information to enable the application and achievement of the Objectives set out above.

Qualifying Features:

H9190. Old acidophilous oak woods with *Quercus robur* on sandy plains; Dry oak-dominated woodland