

## Nottingham City Local Plan Part 2

1. I can confirm that there is no progress to date with the designation of the Sherwood possible potential Special Protection Area (ppSPA). The HRA states (Appendix 2 - *Habitats regulations appraisal - Scoping for further assessment*) that if the prospective SPA is advanced with the intention of it being classified as a SPA, the Aligned Core Strategy (ACS) will need to be subject to further assessment – however no such advancement has yet been made. We would therefore still refer you to the Natural England Sherwood advice note which suggests a ‘risk-based’ approach that could be followed to help future-proof decision-making on plans and projects

The wording which NE suggested (our response 26/11/13) with respect to the HRA which has been included at paragraph 2.32 of the Nottingham City Local Plan Part 2 (Submission) would therefore still apply:

*“The Aligned Core Strategy has been the subject of a Habitats Regulations Assessment (in shadow form as not yet a legal requirement) in light of information available to indicate that the Sherwood area may be formally proposed as a Special Protection Area in the near future, in recognition of the internationally important populations of woodlark and nightjar in this locality. Planning authorities in the Sherwood area have been advised by Natural England to take a risk based approach to spatial planning and development management, as an SPA classification would trigger the review of any live plans or approved but incomplete projects likely to significantly affect the SPA. Whilst there were no significant effects identified for allocations in the Nottingham City Area of the ACS this may need to be reassessed if an SPA classification is formalised, allocations and/or any permissions given would be reviewed, and may be modified or revoked in order to ensure compliance with the requirements of the Habitats Regulations.”*

2. The Inspector raises specific questions and we hope we can address these as follows:

**□ the HRA for the Aligned Core Strategies was undertaken in 2012 and that the specific allocations in the LAPP were not defined at that time;**

We note that the HRA for the ACS states, at paragraph 5.1 and 5.14, regarding the PUA of Nottingham, that the potential effects of the spatial strategy have been fully considered and that no additional effects would arise as a result of the specific location of the development in the Nottingham PUA. There are no other links or pathways for effects between the Nottingham PUA and European sites and there is no likelihood of any site-specific or local effects occurring which have not been addressed in the assessment of overall level of growth provision.

We therefore considered that the Aligned Core Strategy HRA had satisfactorily assessed the likely significant effects on the Nottingham City Council area and that no further assessment would be necessary.

**□ the National Planning Policy Framework indicates that potential SPAs should be given the same protection as European Sites; and**

Our advice remains that a risk based approach should be taken and therefore the Sherwood ppSPA should be treated as if it were given the same protection as designated European sites. We were satisfied that assessment contained within the Aligned Core Strategy adequately addressed impacts on the ppSPA including the proposed development in the Nottingham City Local Plan.

**□ the Wealden judgment of March 2017 (Wealden v SSCLG [2017] EWHC) and the recent judgment (April 2018) of the Court of Justice of the European Union: People over Wind, Peter Sweetman v Coilite Teoranta post-date the HRA on the Aligned Core Strategies. These judgments relate respectively to nitrogen deposition and the need for mitigation measures to be assessed within the framework of an Appropriate Assessment rather than at the screening stage.**

### **Wealden Judgement**

The potential impact of increased nitrogen deposition levels on the Birklands & Bilhaugh Special Area of Conservation (SAC), together with the other European sites, were assessed within the HRA of the Aligned Core Strategy and there was considered to be no Likely Significant Effect (LSE), either alone or in combination with other plans or projects.

The HRA considered that none of the policies within the ACS represent a significant increase in traffic on roads in close proximity to the European sites. It explained that because of the distances involved that the dispersion properties of NO<sub>x</sub> means that any contribution to N deposition at the sites as a result of the ACS can be considered to be negligible (even from an in-combination perspective).

With respect to the impact of nitrogen deposition on the Sherwood SPA, the only site which could not be ruled out as having a LSE on the Park Forest part of the ppSPA was as a result of increased Nitrogen deposition was the Top Wighay Farm allocation which falls within the Gedling District Council area. Further assessment was carried out on this allocation which concluded that there would be no LSE on the ppSPA from additional nitrogen deposition.

In light of the above it appears that the ACS HRA has provided a thorough assessment of the air quality issues relevant to the Nottingham City Local Plan Part 2, including consideration of the in combination effects. However we suggest that it could be clarified which plans and projects were used to consider the in combination assessment with regard to air quality. We also suggest that you may want to consider if there have been any changes since the HRA was completed that have not been assessed which may result in increased levels of nitrogen deposition. This should include both the proposals within the Nottingham City Local Plan Part 2 and other plans and projects from surrounding authorities (e.g. Newark & Sherwood) to ensure the cumulative effect of potential nitrogen deposition has been fully considered.

We suggest that your authority will need to ensure that sufficient evidence is available to demonstrate that the in-combination effect has been fully covered. These additional considerations could most likely be included in a short statement that can form part of the HRA audit.

We would also advise that Nottingham City Council, as a competent authority in terms of the HRA regulations, should seek their own legal advice on any implications of this recent judgment for their decisions

## **Sweetman II**

Natural England's legal team is still considering the implications of this ruling and can therefore not offer any conclusive answer on this question at present but offer the following advice:

*"Your authority should be aware of a Ruling made recently by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of People Over Wind and Sweetman vs Coillte Teoranta. [Read the case](#) (ref: C-323/17).*

*The case relates to the treatment of mitigation measures at the screening stage of a HRA when deciding whether an appropriate assessment of a plan/project is required. Competent authorities currently making HRAs should be mindful of this case and should seek their own legal advice on any implications of this recent ruling for their decisions."*

I hope this information is of assistance to you and please do not hesitate to contact me if you wish to discuss this further.