

Hawkhurst Neighbourhood Plan



Habitats Regulation Assessment Screening Report

Final Report

December 2016

Contents

1	Introduction	2
1.1	Background	2
1.2	Legislation and Guidance	2
2	Current Approach	5
2.1	Protection Zone.....	5
2.2	Partnership Working	5
2.3	Practice Note.....	6
2.4	Site Allocations DPD.....	6
3	Screening Assessment.....	7
3.1	Key Questions	7
3.2	Assessment of Policies	8
5	Conclusion.....	12

1 Introduction

1.1 Background

- 1.1.1 This Habitats Regulations Assessment (HRA) screening report has been undertaken by Tunbridge Wells Borough Council. It concerns the Hawkhurst Neighbourhood Plan which has been produced by Hawkhurst Parish Council in accordance with the Neighbourhood Planning (General) Regulations 2012.
- 1.1.2 The purpose of the Hawkhurst Neighbourhood Plan is to:
- guide the principles for allocation of land for development,
 - help to plan positively and to influence policy on housing delivery, and,
 - protect local environmental and heritage assets.
- 1.1.3 The aim of this HRA screening report is to assess whether this Neighbourhood Plan would cause any likely significant effects on European sites.
- 1.1.4 Previous studies have determined that there are two European Sites that could potentially be impacted upon by development activities with Tunbridge Wells Borough. These are the Ashdown Forest Special Protection Area (SPA) and the Ashdown Forest Special Area of Conservation (SAC) and Natura 2000 site. The potential impacts from development on these two sites have been determined by HRA work by Tunbridge Wells Borough and other Local Authorities and relate to recreational disturbance and atmospheric pollution.
- 1.1.5 The boundary of the Ashdown Forest SAC/SPA lies outside the borough in Wealden District and is approximately 21km west of the boundary of Hawkhurst parish (Appendix A).

1.2 Legislation and Guidance

- 1.2.1 The Natura 2000 network consists of sites across Europe designated for their nature conservation importance. The Network is formed of Special Areas of Conservation for species, plants and habitats and Special Protection Areas for bird species.
- 1.2.2 Special Areas of Conservation (SACs) are designated under the European Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the 'Habitats Directive'). Special Protection Areas (SPAs) are classified under the European Council Directive 2009/147/EC on the conservation of wild birds (the 'Birds Directive').

- 1.2.3 To help protect the Natura 2000 network, there are particular requirements for plans and projects. Article 6(3) of the Habitats Directive states:

‘Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public’.

- 1.2.4 The Conservation of Habitats and Species Regulations 2010 (the ‘Habitats Regulations’), the UK’s transposition of the Habitats Directive and Regulation 102, provides:

‘(1) Where a land use plan –

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

(b) is not directly connected with or necessary to the management of the site,

the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site’s conservation objectives’.

- 1.2.5 This means that any proposed plan that may affect a European site (Special Area of Conservation or Special Protection Area) must first undergo an assessment to look at its potential impacts applying the precautionary principle. The assessment determines if the plan will adversely affect the integrity of the European site(s) concerned. This process is known as a Habitats Regulations Assessment and the first stage considers any likely significant effects (the screening stage). Straightforward mitigation measures can be applied at the screening stage which may mean that likely significant effects can be ruled out and the plan does not need to progress to the second stage (appropriate assessment).
- 1.2.6 Where likely significant effects are identified at the screening stage and cannot be ruled out after applying straightforward mitigation measures, the second stage of the HRA process is triggered. The appropriate assessment looks at the implications of a plan for a European site in view of the site’s conservation objectives. Further more detailed mitigation measures may be introduced at the appropriate assessment stage to avoid or reduce the effects of a plan on the European site(s). Before a plan may be given effect, the plan-making authority as competent authority must ascertain that it would not adversely affect the integrity of the European site(s).

- 1.2.7 In terms of neighbourhood plans, the Neighbourhood Planning (General) Regulations 2012 require a submitted neighbourhood plan to include a statement explaining how the proposed neighbourhood development plan meets the basic conditions set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990³. One of these basic conditions is that the neighbourhood plan must be compatible with EU obligations and needs to demonstrate that it is not likely to have a significant effect on a European site.

2 Current Approach

2.1 Protection Zone

- 2.1.1 Data analysis of visitor access patterns found that the majority of regular visitors to the Ashdown Forest originated from within a 7km of the Ashdown Forest. Within this 7km 'zone of influence', measures to reduce recreational pressure would be most effective; therefore, it was determined that residential development leading to a net increase in dwellings in this zone would need to contribute to an appropriate level of mitigation.
- 2.1.2 An assessment of reasonable alternatives to the 7km zone of influence and options for mitigation was made in the Site Allocations DPD Sustainability Appraisal (incorporating Strategic Environmental Assessment)¹. It is considered that this assessment can be applied to the HRAs for neighbourhood plans.

2.2 Partnership Working

- 2.2.1 The Ashdown Forest lies within Wealden District and adjacent to the north-east boundary of Mid Sussex. Parts of Tunbridge Wells, Lewes, Tandridge and Sevenoaks Districts are also within or close to the zone of influence.
- 2.2.2 Tunbridge Wells has worked closely with both Natural England and other Local Authorities affected by the SPA/SAC and between all the local authorities the following mitigation strategies have been established:
- (1) Providing of a Suitable Alternative Natural Greenspace (SANG) on appropriate development sites
 - (2) Providing of a Suitable Alternative Natural Greenspace (SANG) via a financial contribution from suitable development towards a strategic SANG
 - (3) A financial contribution from suitable development towards a Strategic Access Management and Monitoring (SAMM) strategy.

¹ http://www.tunbridgewells.gov.uk/_data/assets/pdf_file/0003/101577/TWBC_PS_21a_HearingMatter-A6_Addendum.pdf

- 2.2.3 Based on these strategies, Wealden District Council has put in place mitigation for development proposed at Uckfield, Crowborough and Maresfield with both SANG and SAMM will be required. Lewes District Council is delivering a SANG and will also require contributions towards SAMM for one development. Tunbridge Wells Borough Council has not yet allocated any sites within the 7km zone of influence, but contributions may be provided towards SAMM where appropriate.
- 2.2.4 All affected local authorities are involved in the development of the Joint SAMM Strategy and their work on mitigation described above demonstrates their commitment to protecting the Ashdown Forest SPA and SAC under the Habitats Regulations.

2.3 Practice Note

- 2.3.1 At present, Tunbridge Wells implements a practice note (Appendix B) which details the approach the authority is taking with regard to protection of the Ashdown Forest.
- 2.3.2 The practice note is particularly relevant for planning applications and describes how the HRA process should be undertaken for development falling within or close to the 7km protection zone.
- 2.3.3 The Council's HRA has shown that mitigation for development outside of the protection zone is not justified.

2.4 Site Allocations DPD

- 2.4.1 The potential effects of development on Ashdown Forest were assessed during the HRA process for the Site Allocations DPD. The screening exercise took place between Feb 2013 – Nov 2014 and found that there would be no likely significant effects on the Ashdown Forest SPA as a result of increased recreational activity or vehicle movements arising from new residential development and related population growth.
- 2.4.2 The in combination effect was also deemed to be trivial and therefore not likely to lead to significant effects².
- 2.4.3 The HRA was tested and accepted at Examination and the DPD was formally adopted in July 2016.

² http://www.tunbridgewells.gov.uk/_data/assets/pdf_file/0003/84252/Habitat-Regulations-Assessment-2014.pdf

3 Screening Assessment

3.1 Key Questions

3.1.1 This screening assessment has regard to the conservation objectives of the Ashdown Forest SPA and SAC. It also makes reference to other plans and projects; namely, the Site Allocations DPD, the emerging new Local Plan (2015-2033) and other neighbourhood plans in Tunbridge Wells Borough.

3.1.2 Key questions relating to the neighbourhood plan are included in Table 1 below and, along with the screening assessment, help to establish if an appropriate assessment is required.

Table 1. Key questions relating to the Neighbourhood Plan

Key Questions		Y/N	Implication for the HRA
1	Is the plan connected with or necessary to the management of the Ashdown Forest?	N	HRA screening is required.
2	Does the plan propose new development or allocation sites for development?	N	The Neighbourhood Plan shows preference for the type and form of development at local level but does not allocate land for a specific purpose.
3	Are there any other projects or plans that together with the Hawkhurst Neighbourhood Plan, could impact upon the integrity of a European site (a.k.a. the 'in combination effect')?	N	Plans with the potential to create in combination effects include the numerous Neighbourhood Plans in the Borough of Tunbridge Wells that are currently under development, the Site Allocations DPD and the new Local Plan which is also currently under development. Windfall sites could also have an influence. However, because Hawkhurst parish is well outside the protection zone and only guiding the type and form of development, it is highly unlikely that in combination effects of this sort will be observed.

3.2 Assessment of Policies

3.2.1 For it to be concluded that a policy would have no likely significant effect on a European site, one of the reasons listed in Figure 1 usually applies.


- 
- (A)** The policy is intended to protect the natural environment, including biodiversity, or to conserve or enhance the natural, built or historic environment, where enhancement measures will not be likely to have any negative effect on a European site;
 - (B)** The policy will not itself lead to development or other change, for example, because they relate to design or other qualitative criteria for development or other kinds of change;
 - (C)** The policy makes provision for change which has no conceivable effect on a European site, because there is no link or pathway between them and the qualifying interests, or any effect would be a positive effect, or would not otherwise undermine the conservation objectives for the site;
 - (D)** The policy makes provision for change which has no significant effect on a European site, because any potential effects would be insignificant, being so restricted or remote from the site that they would not undermine the conservation objectives for the site;
 - (E)** The policy for which effects on any particular European site cannot be identified, because the policy is too general, for example, it is not possible to identify where, when or how the policy may be implemented, or where effects may occur, or which sites, if any, may be affected.

Figure 1. Common reasons why likely significant effects are not expected.

3.2.2 Table 2 below illustrates the findings of the screening assessment for each of the policies within the Hawkhurst Neighbourhood Plan with reference to each of the 5 reasons above where applicable. This assessment determines whether there is a likely significant effect from these policies on the Ashdown Forest SPA and SAC.

Table 2. Assessment of Policies within the Neighbourhood Plan

Neighbourhood Plan Policy			Likely Significant Effects on SPA/SAC?	
Ref	Title	Aim	Y/N	Explanation
HD1	Site Selection Criteria	Preservation of greenfield land, preference for small-scale development and development within the existing developed area.	N	Small scale development is unlikely to impact significantly upon the Ashdown Forest. Reasons A, B and C
HD2	Future Housing Mix	Encourage a range of housing tenures and sizes, focusing most on units with 1-2 beds.	N	Influences mix of future housing only. As preference is for small scale housing development (HD1), it is unlikely to impact significantly upon the Ashdown Forest. Reason B and C
HD3	Modern Living	New housing will be fit for modern living and meet certain space standards. Bungalows will be encouraged.	N	Influences design of future housing only. As preference is for small scale housing development (HD1), it is unlikely to impact significantly upon the Ashdown Forest. Reason B
HD4	Design Quality	New housing will consider existing vernacular architecture. Innovation encouraged.	N	Influences design of future housing only. As preference is for small scale housing development (HD1), it is unlikely to impact significantly upon the Ashdown Forest. Reason B
LP1	Views Between Village and Countryside	Views are to be protected.	N	Protecting views around Hawkhurst will have no significant impact on the Ashdown Forest. Reason A
LP2	Area of Outstanding Natural Beauty	To support AONB Management Plan are various related policy documents.	N	Compliance with this policy will have no significant impact on the Ashdown Forest. Reason A

Neighbourhood Plan Policy			Likely Significant Effects on SPA/SAC?	
Ref	Title	Aim	Y/N	Explanation
LP3	Designated Green Spaces	Local green spaces to be afforded protection.	N	<p>Hawkhurst Parish is 21km from the Ashdown Forest and visitor surveys have revealed an extremely low number of visitors to the Forest live in Hawkhurst. Protecting local green spaces will have no significant impact on the Ashdown Forest.</p> <p>Reason A and D</p>
AM1	Highgate Hill Junction	To support improvement to the junction at the A229-A268 crossroads.	N	<p>The A229 and A268 do not pass through the Ashdown Forest. Improvements in traffic flow at this junction will have no significant impact on the Ashdown Forest.</p> <p>Reason D</p>
AM2	Improve the Pedestrian Environment	To improve footpaths within the village and encourage walking.	N	<p>Most visitors to the Ashdown Forest travel by private car. Encouraging walking within Hawkhurst will have no significant impact on the Ashdown Forest.</p> <p>Reason C</p>
AM3	Countryside Access	To improve access to countryside surrounding Hawkhurst with better signs, maps and surfaces.	N	<p>It is highly unlikely that this policy will reduce visitor pressure on the Ashdown Forest. An extremely low number of visitors to the Forest live in Hawkhurst and the Ashdown Forest has unique features which the local countryside can not replicate.</p> <p>Reason D</p>
AM4	Walking and Cycling Strategies	To encourage cycling routes and provide safe walking areas in key areas of the village.	N	<p>It is extremely unlikely that a Hawkhurst resident would travel to the Ashdown Forest by bike. This policy will have no significant impact on the Ashdown Forest.</p> <p>Reason D</p>

Neighbourhood Plan Policy			Likely Significant Effects on SPA/SAC?	
Ref	Title	Aim	Y/N	Explanation
CM1	Sports Provision	Protect and expand sport facilities in the village	N	Improving sports facilities will have no significant impact on the Ashdown Forest. Reason C
CM2	New Community Hall	To replace the existing community hall with a larger, improved facility.	N	Replacing the community hall will have no significant impact upon the Ashdown Forest. Reason C
CM3	New medical centre	To replace the existing GP practices with a larger, improved facility.	N	Replacing the existing GP practices will have no significant impact upon the Ashdown Forest. Reason C
CM4	Preservation and Enhancement of Community Services	To protect existing retail and leisure and employment facilities.	N	Protecting the existing services and facilities will have no significant impact upon the Ashdown Forest. Reason C

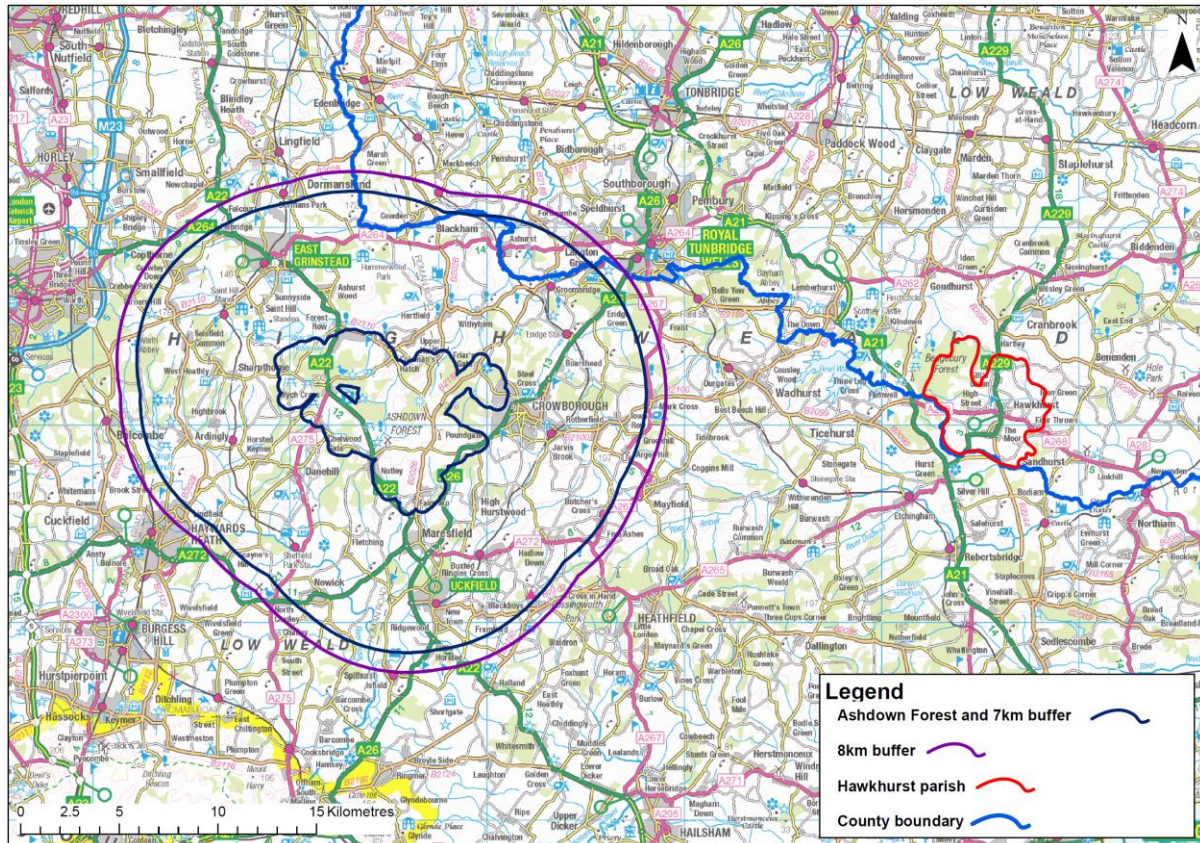
3.2.3 As can be seen in Table 2, no policies in the Hawkhurst Neighbourhood Plan were found to have a likely significant effect alone on the Ashdown Forest SPA and SAC.

5 Conclusion

- 5.1.1 As a result of the assessment in Section 4, it is unlikely there will be any significant environmental effects arising from the Hawkhurst Neighbourhood Plan. As such, the 'appropriate assessment' stage of the HRA process that ascertains the effect on integrity of the European Site) does not need to be undertaken. This conclusion was sent to Natural England for consideration and their response is included in Appendix C.

Appendix A

Ashdown Forest Protection Zones



Appendix B

HRA Practice Note

Habitat Regulations Assessment

Ashdown Forest:

Special Area of Conservation and Special Protection Area.

This note sets out what Tunbridge Wells Borough Council **must** to do in response to planning applications in respect of the Habitat Regulations Assessment. A detailed guidance note is attached but in essence the requirement is:

Within 7 km

New Residential development (net increase of **1** or more dwellings)

Council carries out Appropriate Assessment focusing on adequacy of mitigation. Usually an Applicant will provide a "Report to Inform Appropriate Assessment".

Close to the 7km boundary – Current scope set at 8km

New Residential development (net increase of **50** or more dwellings)

Council carries out a HRA screening to determine whether there will be "likely significant effects". If yes then Council to carry out Appropriate Assessment as detailed above.

HRA Screening report, which can be one page or less, should cover:

- Introduction
- Process/Methodology
- Interest features and conservation objectives of the European sites
- Likely Significant Effects of the project/plan or Appropriate Assessment (depending on the stage of HRA in question)
- Other plans and projects
- Conclusion
- Confirmation that Natural England agree with that conclusion

Very large development proposals in and around Royal Tunbridge Wells not included within the Local Plan HRA.

Any large scale development proposals that are not included with the Local Plan DPDs such as major new housing estates or a new business park that might result in significant increase in traffic through the Ashdown Forest should be screened in relation to possible adverse effects on air quality.

Note:

- i. Natural England must be consulted and their opinion must be taken into account.
- ii. The decisions and process must be recorded.
- iii. The Council is entitled to request from the applicant whatever information they need to form an opinion.

Advice Note Regarding the Procedure for Habitat Regulations Assessment (HRA) of Planning Applications

Note that throughout this document the phrase 'Habitat Regulations Assessment' (abbreviated to HRA) is used to refer generally to the entire process set out in the Conservation of Habitats & Species Regulations 2010 (as amended). When referring to specific stages of that process the terms 'HRA screening (likely significant effect test)' or 'Appropriate Assessment' are used for the first and second stage.

Ashdown Forest Special Protection Area and Special Area of Conservation

The European site of relevance to Tunbridge Wells is Ashdown Forest Special Area of Conservation & Special Protection Area. The Forest is designated as a Special Area of Conservation for its heathland and population of great crested newt. The Forest is designated as a Special Protection Area for its populations of nightjar and Dartford warbler.

The two impacts potentially requiring investigation that may arise from development in Tunbridge Wells borough are:

- Recreational pressure on heathland habitat and SPA birds; and
- Air quality effects on heathland habitat (and indirectly on the SPA birds which rely on that habitat)

Recreational pressure

Considerable work has been undertaken to identify zones of influence surrounding Ashdown Forest within which restrictions will be placed on residential development:

1. Zone A (<400m): residential developments that result in a net increase of one or more dwellings will not be permitted unless exceptional circumstances can be demonstrated.
2. Zone B (400m – 7km): residential developments that result in a net increase of one or more dwellings (i.e. not replacement dwellings) will be required to contribute to: a) the provision of Suitable Alternative Natural Greenspace (SANG) to the level of 8ha per 1,000 net increase in population; b) the implementation of an Ashdown Forest Access Management Strategy; and c) a programme of monitoring and research at Ashdown Forest.

The 7km zone does not cover the entire recreational catchment of the SPA/SAC but does cover the core catchment within which approximately 83% of regular visitors derive. The view is that a net change in population within this 7km zone has a realistic likelihood of a significant net change in visitor pressure within the SPA and thus an adverse effect.

The 7km zone will cover the vast majority of circumstances within which recreational pressure on the SAC/SPA needs consideration as an impact. However, because the 7km zone is somewhat artificial it is conceivable that developments slightly outside this zone may still contribute to recreational activity to a material extent. For example, one can envisage a situation in which a large housing development 7.2km from the SAC/SPA boundary could contribute materially to recreational pressure even though it is technically outside the 7km zone. It is to cover these circumstances that Wealden Council in particular are taking the approach that 'large scale [housing] developments taking place outside Zone B but close to

its boundary will be considered on a case by case basis for potential effects on Ashdown Forest and the need for avoidance and mitigation measures¹.

'Large scale' and 'close to its boundary' are not defined but in the Thames Basin Heaths area 'large scale' is generally taken as planning applications that would result in a net increase of over 50 dwellings. 'Close to the boundary' is deliberately not defined as it is intended to be judgment-based, but clearly it is intended to capture large developments that lie just outside the 7km zone and would therefore otherwise avoid having to provide any mitigation on a technicality. It is clearly implied that circumstances within which large developments beyond 7km of the SPA/SAC will be likely to lead to a significant effect on the SPA/SAC will only occur rarely (otherwise the 7km zone would simply be broadened).

Therefore for Tunbridge Wells Borough there are two circumstances in which Habitat Regulations Assessment for a planning application would be required to examine the issue of recreational pressure:

- (i) Where a planning application is submitted that would lead to a net increase in housing within 7km of the Ashdown Forest Special Area of Conservation and Special Protection Area (i.e. housing in the vicinity of Stone Cross and Ashurst) an Appropriate Assessment will be required. In this case the process would be as follows:
 - a. The Council would need to undertake an Appropriate Assessment² examining whether there would be adverse effects on the integrity of Ashdown Forest SAC/SPA, either alone or in combination with other projects and plans.
 - b. The Appropriate Assessment would focus on evaluating the adequacy of proposed mitigation, since much of the impact analysis has essentially already been undertaken at a strategic level in defining the 'zones of influence' around Ashdown Forest in the first place.
 - c. The first part of the Appropriate Assessment could therefore be a simple document confirming that the development would lead to a net increase in dwellings within Zone B around Ashdown Forest and that it has been confirmed from the previous studies that within Zone B an adverse effect on the integrity of the SPA/SAC in combination with other projects and plans will occur without provision of mitigation.
 - d. The applicant would be required by the Council to provide the details of the intended 'mitigation' for this effect³. In many cases, the applicant may choose to do this as part of the planning application through including a 'Report to Inform an Appropriate Assessment'.
 - e. The Council would then take account of that mitigation in their Appropriate Assessment and decide whether it would be sufficient to enable a conclusion of 'no adverse effect on the integrity of Ashdown Forest SAC/SPA', with reference to the strategic mitigation requirements identified for the SAC/SPA. The Council must consult Natural England on the conclusion of the Appropriate Assessment.
 - f. If the Council is able to conclude that there would be no adverse effects on integrity, either alone or in combination with other projects and plans, then planning permission could be granted.

¹ UE Associates (2011). Wealden District (Incorporating part of the South Downs National Park) Local Development Framework: Assessment of the Core Strategy Under the Habitats Regulations

² The HRA screening (likely significant effects test) has effectively already been completed strategically through the process that has defined the 7km zone in the first place

³ The physical delivery of the mitigation on the ground could be delivered either by the developer directly or by Tunbridge Wells Borough Council using contributions from the developer

- (ii) Where a planning application is submitted that would lead to a net increase of over 50 dwellings within 8km (or other distance determined by the Council and agreed with Natural England) of the SPA/SAC the Council would need to undertake HRA screening to examine whether there will be 'likely significant effects' on the interest features of Ashdown Forest SAC/SPA, either alone or in combination with other projects and plans. The Council is entitled to request whatever information they require from the applicant in making the judgment of likely significant effects. The Council must consult Natural England on the HRA screening. The outcome of the HRA screening would be either:
- a. There would not be a likely significant effect on the interest features of the SAC/SPA 'in combination' with other projects and plans. This could for example be due to a small amount of proposed housing coupled with the provision of a significant area of accessible natural greenspace as part of the application which will meet the needs of the new residents, or proximity to existing large areas of accessible natural greenspace other than the SPA/SAC, or the fact that the visitor survey data for the Ashdown Forest project indicates that people from that particular settlement only visit the Forest rarely; or
 - b. That there would be a likely significant effect on the interest features of the SAC/SPA 'in combination' with other projects and plans. In that case, one would need to go through the Appropriate Assessment process described in point (i) above.

Clearly in making the decision outlined in point (ii) the actual scale of net housing increase will be a very material consideration; a development of 50 dwellings, if it will be associated with new accessible natural greenspace or enhancement of access to or capacity of existing natural greenspace is less likely to result in a 'likely significant effect' than a development of 200 dwellings that is not providing any new accessible natural greenspace or improving access to existing greenspace.

Air quality

The strategic analysis undertaken for the Ashdown Forest authorities and the HRA's of the Tunbridge Wells Core Strategy and Site Allocations DPD have identified that development within Tunbridge Wells Borough is not likely to lead to a significant air quality effect on Ashdown Forest SAC/SPA alone or in combination with other projects and plans. Following Department for Transport guidance, only applications that would lead to an increase in flows on the A26, A22 and A275 through Ashdown Forest SAC/SPA in excess of 1,000 Annual Average Daily Traffic or 200 Heavy Duty Vehicle movements per day have the potential to result in a large enough change in flows to affect air quality⁴. Given the distance between Ashdown Forest and the main urban areas of Tunbridge Wells Borough it is considered very unlikely that even the largest developments would increase flows on the relevant stretches of road by this order of magnitude.

In the unlikely event that a sufficiently large planning application is submitted, the applicant should be required to confirm:

⁴ Department for Transport 2007. Design Manual for Roads and Bridges Volume 11, Environmental Assessment: Section 3 Environmental Assessment Techniques – Part 1 (HA207/07) Air Quality identifies these thresholds for defining an 'affected road' and concludes that '*If none of the roads in the network meet any of the traffic criteria [as a result of the scheme] ... then the impact of the scheme can be considered to be neutral in terms of local air quality and no further work is needed*'.

- a) That the contribution of their development (the process contribution) to changes in NOx concentrations, nitrogen deposition rates and acid deposition rates within 200m of the affected roads will not exceed 1% of the Critical Load for heathland and Critical Level for NOx; or
- b) That the contribution will exceed 1% of the Critical Level or Load but that the combined contribution of the new development and background air quality (the predicted environmental concentration) within 200m of the affected road will fall below 70% of the Critical Level or Load

These are the screening thresholds set out in Environment Agency guidance (to which Natural England subscribes). Even if these thresholds are exceeded, this still does not mean that an adverse effect on the European site will result but it does mean that more detailed ecological/air quality analysis will be required from the applicant as part of a report to inform an Appropriate Assessment to demonstrate that an adverse effect on the integrity will not occur.

Legal requirements of the Habitat Regulations Assessment process

The Habitat Regulations Assessment process (including screening and Appropriate Assessment) is dictated by the Habitats Directive and Conservation of Habitats & Species Regulations 2010 (as amended). Procedurally, HRA is relatively straightforward in that there are only a small number of things one must do by law for an HRA to be valid:

- The HRA must consider the interest features of the European site in question (i.e. the habitats and species for which it was internationally designated) within the context of their conservation objectives. The conservation objectives for Ashdown Forest are available on the Natural England website at http://www.naturalengland.org.uk/Images/UK9012181-Ashdown-Forest-SPA_tcm6-32260.pdf
- The HRA must consider the project not only in isolation but 'in combination' with other projects and plans. For example, a particular development proposal may in itself be considered not to lead to likely significant effects because of its small scale, but when considered 'in combination' with ten other similarly small projects within the same area a cumulative effect may arise.
- The Council in its role as 'competent authority' must make a clear judgment as to whether there will be likely significant effects (when undertaking HRA screening) or adverse effects on the integrity (when undertaking Appropriate Assessment) and that judgment and the process leading up to it must be documented. The Council is entitled to request from the applicant whatever information they need to form that judgment, including the applicant's own HRA assessment; and
- The Council must consult Natural England and take account of Natural England's opinion (although the competent authority is not required by law to defer to Natural England's opinion).

That is the minimum that must be undertaken and if the project or plan is simple to evaluate then it is entirely possible that this process could be documented in a short single page file note. If it is very simple then even an email exchange between the Council and Natural England confirming that there will be no likely significant effects alone or in combination with other projects and plans may be adequate; however I would suggest at least a file note using the following headings:

- Introduction
- Process/Methodology

- Interest features and conservation objectives of the European sites
- Likely Significant Effects of the project/plan or Appropriate Assessment (depending on the stage of HRA in question)
- Other plans and projects
- Conclusion
- Confirmation that Natural England agree with that conclusion

If it is not possible to conclude with confidence⁵ that there will be no likely significant effects following the initial analysis then an Appropriate Assessment is required. The process is identical to that outlined above for determination of Likely Significant Effects except that one is examining 'adverse effects on the integrity' of the European site rather than likely significant effects.

The law does not prescribe:

- How HRA screening/Appropriate Assessment is undertaken or what data should be used to make the analysis;
- The line between HRA screening and Appropriate Assessment (except in stating that an Appropriate Assessment is required if it cannot be concluded that there are no likely significant effects)
- What plans and projects should be considered 'in combination';
- Whether or not 'mitigation' proposed by the applicant can be taken into account in forming the initial 'likely significant effects' judgment;⁶
- Who else to consult other than Natural England;
- How long Natural England should be given to provide their consultation response;
- How a Habitat Regulations Assessment should be presented.

All of these are matters for local authority discretion. However, Natural England will normally ask for at least three weeks to respond to a consultation. Note that when progressing to the 'Appropriate Assessment' stage, the analysis does not necessarily have to be elaborate or very detailed; it is quite literally 'an assessment that is appropriate'. It only needs to be as detailed as is necessary to reach a firm defensible conclusion regarding effects on the integrity of the European site. For some projects an Appropriate Assessment may not need to be any longer than the HRA screening (likely significant effects).

⁵ The phrase often used is 'beyond reasonable scientific doubt'; this is intended to reflect the precautionary and risk identifying nature of the likely significant effect test so that effects are not dismissed too early without proper consideration. Do note the use of the word 'reasonable' rather than 'any' and that absence of 'reasonable scientific doubt' is not the same as 'absolute certainty'; it is rarely if ever going to be possible to make an ecological judgment with absolute certainty.

⁶ In fact, case law (the 'Dilly Lane' case) has established that it is perfectly legally acceptable to take what would otherwise be termed mitigation into account in making the judgment of likely significant effects, if that mitigation is embedded within the application and the competent authority and Natural England are of the view that it would be adequate to remove any effects

Appendix C

Natural England's Opinion

Katie McFloyd

From: Coneybeer, Julia (NE) <Julia.Coneybeer@naturalengland.org.uk>
Sent: 05 December 2016 11:51
To: Katie McFloyd; David Scully
Subject: RE: HRA Screening - Hawkhurst

Dear Katie and David,

Thank you for consulting Natural England on the above.

Natural England concurs with the conclusions made in the HRA screening report, that the Hawkhurst Neighbourhood Plan is not likely to have a significant effect on European sites.

With thanks,

Julia Coneybeer

Lead Advisor
Sustainable Development team
Sussex & Kent team
Natural England
02080268033
07778023889

I am a contractual homeworker
Post should be directed to:
Mail hub, Block B, Whittington Road, Worcester, WR5 2LQ

www.gov.uk/natural-england

We are here to secure a healthy natural environment for people to enjoy, where wildlife is protected and England's traditional landscapes are safeguarded for future generations.

In an effort to reduce Natural England's carbon footprint, I will, wherever possible, avoid travelling to meetings and attend via audio, video or web conferencing.

Natural England is accredited to the Cabinet Office Customer Service Excellence Standard

From: Katie McFloyd [<mailto:Katie.McFloyd@TunbridgeWells.gov.uk>]
Sent: 24 November 2016 14:39
To: Consultations (NE)
Cc: David Scully
Subject: HRA Screening - Hawkhurst

Dear Sir/Madam,

Please find attached for your consideration an HRA Screening Report.

The report is for a Neighbourhood Plan being prepared within our Borough which can be viewed at the link below:

http://www.tunbridgewells.gov.uk/_data/assets/pdf_file/0015/130812/01_Hawkhurst-Neighbourhood-Plan-Submission-Version.compressed.pdf

With kind regards,

Katie



Katie McFloyd MSc BSc (hons) MIEMA