



The countryside charity

Kent

Matter 1 Legal Compliance

Issue 2 – Habitats Regulations Assessment

Q1. What is the justification for the 7km 'zone of influence' used in the HRA and Local Plan Policy EN11? Does it continue to represent an appropriate distance for considering recreational pressure?

CPRE Kent does not believe the 7km zone detailed in Policy EN11 is justified as it will likely exclude a large number of developments from which new residents are likely to visit the SPA, and thus increase recreational pressure.

The HRA uses the 2008 and 2016 visitor surveys to support the use of a 7km zone around the SPA within which development is required to mitigate its impact. But this distance is not justified for visitors from the borough by these surveys.

The 2016 survey concluded from its 452 interviews that the average straight-line distance from home to the survey point was 8.4km and that 25% of visitors lived more than 9.6km from the survey point. Furthermore 19% of all visitors surveyed lived beyond the 7km zone, which immediately casts doubt on the effectiveness of this 7km zone.

For visitors living in the Tunbridge Wells area, the 2016 survey found that 23 interviewees (5% of the 452 total) had travelled from within the borough. However, only one of these 23 had travelled from within the 7km zone, or put another way, 96% of the visitors from the Tunbridge Wells area had travelled to the SPA from outside the 7km zone. By only considering mitigation contributions to be collected from developments within the 7km zone, this will result in potentially no mitigation being provided to prevent harm caused by 96% of the visitors from the Tunbridge Wells borough. Whilst we do not consider that a 7km zone is justified for Wealden District, for those visiting the SPA from the Tunbridge Wells area, a mitigation that would miss potentially 96% of the visitors would clearly be totally ineffective.

The HRA states that the 7km zone has been agreed with all participating local authorities and Natural England. However, all these bodies, including Natural England, are required to operate within the constraints afforded by the Habitats Regulations. For the Council, it is clear that the 7km zone is totally inappropriate when it only seeks mitigation to cover 4% of the potential visitors to the SPA.

Last year, visitor surveys were undertaken at several access points to the SPA (in August) and at four SANGs (in September). It was anticipated by the commissioning LPAs (including TWBC) that the results would be available in October and November respectively. However, at the time of submitting this hearing statement, no results have been made available.

The Kent branch of the Campaign to protect Rural England exists to protect the beauty, tranquillity and diversity of the Kent countryside

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Q5. The HRA concludes that there will be no adverse effects upon the integrity of the Ashdown Forest SPA/SAC as a result of increased atmospheric pollution or recreational pressure resulting from the submitted Plan. Is this conclusion reasonable and justified by appropriate evidence?

CPRE Kent does not consider that the conclusion of no adverse effect on Ashdown Forest SPA/SAC is justified due to a lack of certainty in the evidence supporting this position.

Ashdown Forest SPA

Both the Council and Natural England consider that there is a likely significant effect arising from any increase in visitor pressure to the SPA. Further development is very likely to increase that visitor pressure and the appropriate assessment in the HRA has concluded that mitigation of any increase in visitor pressure is required.

The appropriate assessment then concludes that there will be no adverse effect from increased development due to mitigation being provided.

The reasoning in the HRA for concluding no adverse effect is based upon only considering development within the 7km zone. But as we have outlined above in our response to Question 2, this 7km restriction is not supported by any data. Indeed, the 2016 visitor survey suggests that 96% of visitors from the Tunbridge Wells area to the SPA live outside the 7km zone, thus compromising the use of the 7km zone.

Furthermore, the HRA then considers that the proportion of visitors to the SPA from within the 7km zone is only a small proportion of the total number of visitors. The HRA states: *“While there is strong scientific evidence to conclude that TWB’s contribution to recreation in Ashdown Forest is insignificant ...”*

We totally dispute this statement. The 2016 visitor survey (which is hardly strong scientific evidence) concluded that 5% of the visitors to the SPA came from the Tunbridge Wells borough and this proportion cannot be considered as insignificant.

To avoid an adverse effect to the SPA from increased visitor pressure from development, the local plan includes mitigation.

The CJEU has ruled that at the time a decision is made, i.e. a plan is adopted, that it shall be certain that the mitigation will be both provided and effective. Certainty has been defined as being beyond reasonable scientific doubt.

Neither the HRA nor the Tunbridge Wells local plan include any data to confirm that the proposed SANGs and SAMMS mitigation will be effective. Natural England’s position that the mitigation *“is accepted”* does not carry any weight whatsoever, without the necessary confirmatory evidence.

In 2015, a research project was sponsored by a number of LPAs and Natural England as there was a concern that SANGs at Thames Basin Heaths were not working as intended and not diverting dog walkers from the SPA. This research, completed in 2018, was unable to conclude that SANGs do work and it suggested that further research be undertaken.

Freedom of Information requests have been submitted both to Wealden District Council and Natural England requesting the information from which they are able to demonstrate that the mitigation to the SPA is effective, but neither has been able to provide this information.

The Inspector will be aware that permission for a plan or project can only be granted when there is evidence that the proposed mitigation will be effective. As the appropriate assessment for the Tunbridge Wells local plan fails to include any evidence, then no development within an area where residents of new development are likely to visit the SPA, can be permitted.

Ashdown Forest SAC

The SAC is currently overloaded with nitrogen, with deposition across the entire area above the critical load. One of the conservation objectives for the SAC is to reduce nitrogen deposition to below the critical load. Adding more nitrogen deposition from development will be in conflict with this objective and thus the Habitats Regulations.

Appendix 3 of the Regulation 19 HRA is concerned with air quality impacts to the SAC and concludes that growth in the local plan either alone, or in combination, will not cause an adverse effect on the SAC.

However, a cursory examination of this document indicates some fundamental errors, including:

1. The growth for the surrounding LPAs has been taken as the OAN calculated in 2017. However, 2018 brought the standard method which resulted in LPAs having to plan for far higher housing figures than their 2017 OAN. The AECOM traffic model from which the emissions are calculated thus considerably underestimates the traffic increase across the SAC.
2. The emissions across Ashdown Forest have been measured between 2014 and 2020, however, the HRA ignores this data.
3. Whereas the HRA is predicated on NOx emissions falling in line with Defra's notoriously over-optimistic historical predictions, the monitoring data has shown that NOx emissions were rising.
4. It is not clear from the HRA how much weight has been placed on ammonia, which is not included in Defra's forecasts. The monitoring indicates that it has been increasing. Furthermore, AQC has calculated that 52% of the nitrogen deposition to the SAC is derived from ammonia.
5. The HRA seeks support from Caporn et al (2016) but omits to take note that this report records that there was evidence of a greater loss of species richness below the critical load than above it. Clearly, this indicates that the critical load has been set too high as it should represent the level at below which significant harmful effects do not occur. This issue has been raised by Prof. Mark Sutton of CEH, who manage the APIS database.
6. The HRA concludes no adverse effect for two reasons: i) that the increase in harmful emissions is nugatory, and ii) that the autonomous fall in emissions is greater than the rise from development.
7. Taking point i):
 - The increase in emissions will be greater if the correct housing figures for the surrounding LPAs had been included in the traffic model.
 - The deposition would be increased had ammonia been correctly included.
 - In Dutch Nitrogen, the level at which the CJEU accepted as a level of concern was 28 times smaller (0.00014kg) than AECOM consider nugatory (0.04kg)
8. For point ii): this is the wrong test. In her July 2018 opinion on Dutch Nitrogen, Advocate General Kokott stated that autonomous measures can only be considered if at the time when additional emissions are permitted, that the existing level of emissions is below the

critical level/load. As this point is likely to be many years, even decades away, additional emissions cannot be authorised as part of this local plan.

It is clear, therefore, that the HRA contains several areas of doubt and patently is not certain. The conclusion of no adverse effect to the SAC cannot be sustained.

Issue 3 – Sustainability Appraisal

Q4. Has the Council, through the Sustainability Appraisal, considered alternative strategies which avoid major development in the High Weald AONB altogether?

Q5. Has the Council, through the Sustainability Appraisal, considered alternative strategies which avoid releasing land from the Green Belt?

It is CPRE Kent's view that there is an accumulation of environmental damage – to the green belt and AONB - that needs to be addressed, before new growth can be deemed sustainable. With the principles of sustainable development having been well-established for 30 years, continued environmental degradation during a time of economic growth is a clear national policy failure.

Within the Local Plan process, it falls on the Sustainability Appraisal to turn around this failure. Specifically, we would expect to see a significant degree of 'positive discrimination' towards the environment to begin to readdress this balance.

On this basis we would have expected to see growth strategies that considered increased site densities, as a means of ensuring that green field and AONB development was kept to a minimum. For instance, with Growth Strategy 1 (no green belt) and Growth Strategy 2 (no AONB majors), both scenarios assume that the OAN (678 dpa) cannot be met and therefore assessed lower housing numbers of 346dpa and 560dpa. Both assessments resulted in negative scores, based around the fact that reduced development would not be sufficient to meet housing need.

The principle at stake here is that need is being conflated with demand. That is, we do not consider that the demand for housing can be sustainably met within the Borough without further degradation of the environment.

Appendix F of the 2016 scoping report sets out recommendations for the new local plan, SA objective, by SA objective.

The recommendations under the Housing objective include making allowances in the Council's housing target in recognition of the Borough's constraints. And linked to that, the recommendations for the Land Use objective include the protection of the Green Belt; and for the Landscape objective protection of the AONB.

Despite the importance of the Green Belt and AONB as a component of the environmental theme - comprising one arm of sustainability - housing has been given a higher priority. The opportunity has not been taken, in the interests of securing sustainable development, to weigh the balance more advantageously towards the environment.

Furthermore, effective use of land/reduced greenfield land take could result in more compact forms of development which would be more likely to maintain vibrancy of settlements by making market housing affordable to young/local people and result in a fall in private car usage.

Appendix B of the 2021 SA (version for submission) assigns a 'high' weight to the provision of housing. The more houses to be provided, the higher the weighting to be given (see p.353).

In terms of making allowances to (i.e. reducing) the housing target because of constraints in the borough "scores were applied to reflect the degree to which a high quantum of development was reduced to provide environmental protection." The same 'high' weighting doesn't appear to have been applied to protecting the green belt or developing on previously developed brownfield land, in preference to greenfield.

In fact, and as highlighted on page 7 of the non-technical summary, the inclusion of a new garden settlement and large urban expansion were found to be fundamental to the preferred strategy. The combination of this, and the fact no alternative garden settlements not involving green belt release made it to the second stage of the SA, demonstrates that there has not been sufficient consideration of alternative strategies which avoid release of land from the green belt and AONB.

Q11. Are the scores and conclusions reached in the Sustainability Appraisal reasonable, sufficiently accurate and robust to inform the submission version of the Local Plan?

Social theme SA objectives

SA objective: housing

It is CPRE Kent's view that there is an accumulation of environmental damage – to the green belt and AONB - that needs to be addressed, before new growth can be deemed sustainable. With the principles of sustainable development having been well-established for 30 years, continued environmental degradation during a time of economic growth is a clear national policy failure.

Within the Local Plan process, it falls on the Sustainability Appraisal to turn around this failure. Specifically, we would expect to see a significant degree of 'positive discrimination' towards the environment to begin to readdress this balance.

The principal positive score for many sites is for housing. This is unsurprising given that any allocation which simply increases housing will score positively against this objective. We would therefore have expected far more robust commentary to have accompanied the outputs within the sustainability appraisal, highlighting the environmental benefits of those spatial options which considered lower overall housing targets, and a greater environmental health warning for those options which have sought to meet or exceed the housing target.

Failure to do this creates the appearance that the Council is giving predominant weight to housing provision and little or no weight to the protection of the Green Belt or the AONB, contrary to the NPPF.

See response to Questions 4 and 5 above.

SA objective: education

This objective scores positively for all allocation sites (except for the allocation for elderly housing). This is incomprehensible, given the statement in the SA that: "the score for the education objective is a combination of the adverse effects that come from the cumulative pressures that the new dwellings could place on the existing school which does not have room for expansion".

Environmental theme SA objectives

SA objective: land use

Land use should be given lower scores than in the SA because not only are greenfield sites being built over but also the relatively low housing densities fail to make efficient use of land. As such, they fail to protect soils and other greenfield sites.

Issue 4 – Other Aspects of Legal Compliance

Q7. Did the Council make available copies of all the submission policies maps, showing any changes that would result from the adoption of the Local Plan?

An Interactive Map (CD_3.129t) supplements the Inset maps previously provided. However, this is not referenced in the Index of Policies Maps nor elsewhere in the Local Plan, was not made available for the previous public consultations, is a beta version only and has no user instructions. CPRE considers this could be a valuable addition, but clearly further work is required. We additionally question whether reliance on an interactive map for core information could disadvantage some older people or others with protected characteristics.

CPRE Kent considers that the following information is not shown or not shown in sufficient detail on individual Inset maps for the cumulative impact of the changes that would result from the adoption of the Local Plan to be seen:

- the proximity of the Tudeley Village Strategic Settlement and the Paddock Wood/East Capel strategic urban extension to Five Oak Green;
- the relative sizes of these settlements by use of a standard scale across the maps;
- the proximity to each other of settlements elsewhere in the borough and the relative sizes of those settlements, again by use of a standard scale across the maps;
- the entirety of the safeguarded land for an entirely off-line A228 Colts Hill Bypass (TP 6);
- the entirety of the new link bypassing Five Oak Green (STR 6);
- the safeguarded section of the A21 Kippings Cross to Lamberhurst;
- the full extent of the safeguarded railway land between Paddock Wood to Hawkhurst (the Hop Pickers Line (Policy TP 5), which is intended to form an active travel route;
- the environmental, landscape and heritage designations in the wider surrounds of each settlement; and
- policy references, with the exception of those for Site Allocations and Gypsy and Traveller sites.

Additionally, despite the commitment in Policy STR6 Transport and Parking to prioritise Active Travel (walking and cycling) the location of inter-settlement active travel routes set out in the Council's LCWIP are not shown on the Inset Maps or the Interactive Map. We additionally note that the Low Traffic Networks in the Main Urban Area and surrounds, also specified in Policy STR6 and set out in the LCWIP, are not shown on the policies maps.