

Harlow Local Development Plan

HRA Adoption Statement

Harlow District Council

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Quality information

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1. Adoption Statement

Introduction

- 1.1 AECOM has been assisting Harlow District Council in undertaking a Habitats Regulations Assessment of the Harlow Local Development Plan, which began in in 2017 with the determination of Likely Significant Effects and continued through the HRA of the Submitted Strategic and Development Management Policies 2018 and through the Main Modifications.
- 1.2 The need for Appropriate Assessment is set out within British law by the Conservation of Habitats and Species Regulations 2017 (as amended)¹. The Regulations apply the precautionary principle to European sites. Plans and projects can only be permitted having ascertained that there will be no adverse effect on the integrity of the site(s) in question. Plans and projects with predicted adverse impacts on European sites may still be permitted if there are no alternatives to them and there are Imperative Reasons of Overriding Public Interest (IROPI) as to why they should go ahead. In such cases, compensation would be necessary to ensure the overall integrity of the site network.
- 1.3 In order to ascertain whether or not site integrity will be affected, an Appropriate Assessment should be undertaken of the plan or project in question:

Box 1: The legislative basis for Appropriate Assessment

Conservation of Habitats and Species Regulations 2017 (as amended)

The Regulations state that:

“A competent authority, before deciding to ... give any consent for a plan or project which is likely to have a significant effect on a European site ... shall make an appropriate assessment of the implications for the site in view of that sites conservation objectives... The authority shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site”.

- 1.4 The UK left the EU on 31 January 2020 under the terms set out in the European Union (Withdrawal Agreement) Act 2020 (“the Withdrawal Act”). This established a transition period, which is currently set to end on 31 December 2020. The Withdrawal Act retains the body of existing EU-derived law within our domestic law. The most recent amendments to the Habitats Regulations – the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 – make it clear that the need for HRA will continue after the end of the Transition Period.
- 1.5 Over time the phrase ‘Habitats Regulations Assessment’ (HRA) has come into wide currency to describe the overall process set out in the Habitats Directive from screening through to Imperative Reasons of Overriding Public Interest (IROPI). This has arisen in order to distinguish the process from the individual stage described in the law as an ‘Appropriate Assessment’. Throughout this report we use the term ‘Habitats Regulations Assessment’ for the overall process and restrict the use of ‘Appropriate Assessment’ to the specific stage of that name.

Scope of the Project

- 1.6 There is no guidance that dictates the physical scope of a HRA of a Development Plan Document. Therefore, in considering the physical scope of the assessment, we were guided primarily by the identified impact pathways rather than by arbitrary ‘zones’. Current guidance suggests that the following European sites be included in the scope of assessment:

¹ <https://www.legislation.gov.uk/ukxi/2017/1012/contents/made> [accessed 05/03/2019]. The regulations were subject to minor amendments in late 2018 but these do not affect the Local Development Plan HRA process or the tests that must be met

- All sites within the Harlow District boundary; and
 - Other sites shown to be linked to development within the District boundary through a known ‘pathway’ (discussed below).
- 1.7 Briefly defined, pathways are routes by which a change in activity provided within a Local Development Plan document can lead to an effect upon an internationally designated site. Guidance from the Ministry of Housing Communities and Local Government² states that the HRA should be ‘proportionate to the geographical scope of the [plan policy]’ and that ‘an AA need not be done in any more detail, or using more resources, than is useful for its purpose’ (MHCLG, 2006, p.6).
- 1.8 No European sites are located within the District boundary. There are four European sites that lie beyond the District boundary but are located within sufficient proximity that the HLDP could provide linking impact pathways that could impact the integrity of those European sites. These are:
- Epping Forest SAC;
 - Lee Valley SPA;
 - Lee Valley Ramsar site; and
 - Wormley-Hoddesdonpark Woods SAC.

HRA Task 1: Likely Significant Effects (LSE)

- 1.9 Following evidence gathering, the first stage of any Habitat Regulations Assessment and the purpose of this assessment is a Likely Significant Effect (LSE) test - essentially a risk assessment to decide whether the full subsequent stage known as Appropriate Assessment is required. The essential question is:
- 1.10 “Is the Plan, either alone or in combination with other relevant projects and plans, likely to result in a significant effect upon European sites?”
- 1.11 The objective is to ‘screen out’ those plans and projects that can, without any detailed appraisal, be said to be unlikely to result in significant adverse effects upon European sites, usually because there is no mechanism for an adverse interaction with European sites.

HRA Task 2: Appropriate Assessment (AA)

- 1.12 Where it is determined that a conclusion of ‘no likely significant effect’ cannot be drawn, the analysis has proceeded to the next stage of HRA known as Appropriate Assessment. Case law has clarified that ‘Appropriate Assessment’ is not a technical term. In other words, there are no particular technical analyses, or level of technical analysis, that are classified by law as belonging to appropriate assessment rather than determination of likely significant effects. Therefore, it is legal to undertake the fullest level of technical assessment possible and still term the analysis an investigation into likely significant effects. Drawing the line between the studies that belong in the ‘likely significant effects’ section of analysis and those that belong in the ‘appropriate assessment’ of the analysis is therefore a judgment to be made by each competent authority. The ultimate legal requirement is that, whether the analysis is termed an investigation into likely significant effects or an appropriate assessment, the analysis supports the conclusion.

Consideration of Likely Significant Effects

Recreational pressure

- 1.13 Prior to considering any mitigation, the following Local Development Plan policies could not be dismissed in the assessment of likely significant effects from potentially impacting the integrity of

² CLG (2006) Planning for the Protection of European Sites, Consultation Paper.
http://webarchive.nationalarchives.gov.uk/20061101113831/http://www.communities.gov.uk/staging/embedded_object.asp?id=1502353

Epping Forest SAC or the Lee Valley SPA and Ramsar sites as a result of increased recreational pressure. These policies were therefore carried through to appropriate assessment:

Policies

- HS1 Housing Delivery: provides for 9,200 new dwellings between 2011 to 2033
- HS3 Strategic Housing Site East of Harlow
- HGT1 Development and Delivery of Garden Communities in the Harlow and Gilston Garden Communities
- HS2 Housing Allocations
- ED4 Developing a Visitor Economy
- WE1 Strategic Green Infrastructure
- PL5 Other Open Spaces

Site Allocations

1.14 Residential site allocations provided by the Plan included land parcels that from review of freely available online imagery appear to be currently used as publicly accessible recreational spaces. These are:

- HS2-3: Land east of Katherines Way, west of Deer Park
- HS2-5: Land south of Clifton Hatch
- HS2-7 Kingsmoor Recreation Centre
- HS2-9: Land east of 144-154 Fennells
- HS2-11: Land between Second Avenue and St. Andrews Meadow

1.15 It should be noted that all these sites have since been deleted from the Local Development Plan.

Air quality

1.16 Due to the large distances involved, it is very unlikely that any individual site allocations (either employment or residential) in Harlow, would affect the integrity of a European site in isolation; however, in combination effects with other plans and projects required further consideration. The following policies could not be dismissed as being unlikely to lead to significant effects 'in combination' as a result of increased atmospheric pollution contributions. Therefore, further discussion took place in the appropriate assessment:

- HGT1 Development and Delivery of Garden Communities in the Harlow and Gilston Garden Communities
- HS1 Housing Delivery
- HS2 Housing Allocations
- HS3 Strategic Housing Site East of Harlow
- ED1 Future Employment Floorspace
- ED4 Developing a Visitor Economy
- RS2 Future Retail Floorspace

Water resources

1.17 The following policies could not be dismissed from potentially posing likely significant effects upon the Lee Valley SPA and Ramsar sites as a result of changes to water levels due to abstraction for public water supply. They were therefore discussed further in the appropriate assessment:

Policies

- HGT1 Development and Delivery of Garden Communities in the Harlow and Gilston Garden Communities
- HS1 Housing Delivery
- HS2 Housing Allocations
- HS3 Strategic Housing Site East of Harlow
- ED1 Future Employment Floorspace
- ED4 Developing a Visitor Economy

Site Allocations

- All residential and employment sites in combination

Water quality

- 1.18 The following policies could not be dismissed from potentially posing likely significant effects upon the Lee Valley SPA and Ramsar sites as a result of changes to water quality from treated wastewater discharge. They were therefore considered further in the appropriate assessment:

Policies

- HGT1 Development and Delivery of Garden Communities in the Harlow and Gilston Garden Communities
- HS2 Housing Allocations
- HS3 Strategic Housing Site East of Harlow
- ED1 Future Employment Floorspace
- ED4 Developing a Visitor Economy

Site Allocations

- All residential and employment sites in combination

Findings of Appropriate Assessment

- 1.19 The HRA for the submitted Local Development Plan included both consideration of likely significant effects, and an appropriate assessment in combination with other plans and projects, particularly regarding growth in Epping Forest District. The appropriate assessment concluded no adverse effect on the integrity of Wormley-Hoddesdonpark Woods SAC, or Lee Valley SPA and Ramsar sites through any pathway of impact.
- 1.20 In addition, it concluded that should the measures recommended within the HRA be undertaken for Epping Forest SAC with regards to recreational pressure, the Harlow Local Development Plan had a suitable framework in place that development delivered would not affect the integrity of any European sites either alone or 'in-combination' with other plans and projects. The conclusion for Epping Forest SAC was based on the following considerations.

Recreational pressure at Epping Forest SAC

- 1.21 An original visitor survey undertaken for Epping Forest Special Area of Conservation identified a 6.2km core catchment around the SAC but also confirmed that only 8 visitor postcodes (0.4% of the total) were located within Harlow District. It was thus determined that a conclusion of no adverse effect on integrity could be reached based on the most recent available published data provided that that, in line with the recommendations in the Harlow Local Development Plan HRA report and the emergence of the Interim Epping Forest Mitigation Strategy for recreational pressure:

1. The recreational pressure effect of Site HS2-9: Land east of 144 – 154 Fennells, allocated for 23 dwellings (this being the only housing allocation in Harlow that lies within 6.2km of the Epping Forest SAC) is addressed by financial contributions being made to the Epping Forest Mitigation Strategy for recreational pressure being devised by Epping Forest District Council, before that development is granted planning permission.
 2. Policy WE1 Strategic Green Infrastructure identifies the need for new Green Infrastructure to be planned into all new development. In line with this, the garden communities being created around Harlow should deliver a suitably large amount of natural accessible greenspace to maximise their recreational self-sufficiency.
- 1.22 Since the HRA report was produced, Site HS2-9 (Land East of 144-154 Fennells) has been deleted from the Local Plan as per Main Modification (MM) 3. As such, no development sites in Harlow Local Development Plan are located within the core recreational catchment of the Epping Forest SAC and thus none are required to make contributions to the recreational pressure mitigation strategy for Epping Forest SAC.

Air pollution within 200m of Epping Forest SAC

- 1.23 The HRA for the Epping Forest Local Development Plan reported on a traffic and air quality modelling exercise for Epping Forest SAC, covering relevant roads within 200m of the site, and which explicitly took account of planned growth in the rest of the East Herts/West Essex HMA (including Harlow). Paragraph 4.14 of that HRA states that ‘... growth in Epping Forest District between 2014 and 2033 is the primary source of additional ammonia and NOx emissions on the modelled road sections and all other plans and projects make a negligible contribution to the in-combination effect...’. This reinforces the conclusion of the Harlow Local Development Plan HRA as it relates to air quality.
- 1.24 Scrutiny of the data provided in Appendix F of the submitted Epping Forest Local Development Plan HRA report (January 2019) supported that conclusion. The collective contribution of future growth in Harlow, East Herts and Uttlesford together is added to the model to create the data in scenario DS1. When one compares the numbers in this column of Appendix F with those in the preceding scenario/column (DM) it is seen that they are either identical or imperceptibly different (i.e. the difference is below, generally well below, 1% of the critical level or load for all pollutants, even when the three plans (Harlow, Uttlesford and East Herts) are modelled together). This shows the negligible contribution that growth within the boundaries of these three authorities is forecast to make to changes in air quality along the modelled roads. The air quality effect of growth on the SAC can therefore be addressed by focussing on mitigating growth in Epping Forest District. The new data therefore supports a conclusion of no adverse effect of the Harlow Local Development Plan on the integrity of Epping Forest SAC either alone or as part of an ‘in combination’ effect.
- 1.25 The total forecast change in AADT on modelled links due to all three Councils together never exceeds 100 AADT and is usually much less (as low as 3-7 AADT on some links). Most of this is probably attributable to Harlow. This translates into a negligible change in the air quality modelling as set out in the latest HRA. Natural England’s comments on the HRA acknowledged that it was appropriate to focus on growth in Epping Forest District and consider growth in the other authorities (Harlow, East Herts and Uttlesford) collectively resulted in a negligible effect. As commented by the Inspector in paragraph 23 of his report ‘*The HRA also concludes that the increase in air pollution from traffic movements arising from the HLDP would be negligible and Natural England accepts that in these circumstances it would not be reasonable to require mitigation*’.

Main Modifications

- 1.26 Following the Examination into the Harlow Local Development Plan (hereafter referred to as ‘Local Development Plan’ or ‘the Plan’), the Inspector recommended a series of Main and Minor Modifications to be made to the Plan. It was therefore necessary for those modifications to be analysed in order to confirm that they will not themselves introduce new likely significant effects that were not thoroughly investigated for the HRA of the Local Development Plan.

- 1.27 Following the analysis of the Main and Minor Modification it was concluded that they will not lead to likely significant effects on European sites and do not undermine the conclusions of the HRA of the Local Development Plan. Indeed, some of the changes strengthen and reinforce the conclusions of that HRA that the Local Development Plan will not have adverse effects on the integrity of any European sites. Most notably, the inclusion of a new Policy WE3a adds protection for European sites outside of the District boundary as does the addition of text to expand on the reasoning for the duty to cooperate regarding delivery of mitigation strategies for in-combination effects on European sites impacted by multiple Districts.
- 1.28 A new visitor survey has been undertaken for Epping Forest SAC, although it has not yet been published, but this has not changed the Zone of Influence for Epping Forest SAC. In any event, the supporting text for Policy WE3a does allow for the changes in the Zone of Influence in the future; *“avoidance and/or mitigation measures set out in these strategies which will be updated from time to time to take account of new scientific evidence or monitoring information.”*

Conclusion

- 1.29 In conclusion therefore the Harlow Local Development Plan meets its legal requirements in ensuring that no adverse effect on the integrity of any European sites will arise from its adoption, either alone or in combination with other plans or projects.
- 1.30 This is reflected in the opinion of the Inspector in paragraph 23 of his final report, in which he states that *‘With the policy safeguards in the modified plan [i.e. the insertion of Policy WE3a] I am satisfied that the HLDP, in combination with other plans and projects, will not adversely affect any European sites and the requirements of the Conservation of Habitats and Species Regulations 2017 are met’*.

