

Ngairé Thomson
 London Borough of Barnet
 BY EMAIL

Dear Ngairé,

Our reference
 11984

Date
 19 April 2022

Address
 250 Waterloo Road
 London SE1 8RD
 Tel: 020 7383 5784

Re: Barnet Local Plan 2021 to 2036 – Review of Habitats Regulations Assessment

In March 2022, LUC was commissioned by London Borough of Barnet to undertake a review of the Habitats Regulations Assessment (HRA) Screening Report of the Barnet Local Plan in light of comments provided by The Planning Inspectorate in a letter dated 9th February 2022. This letter details the findings of this review and outlines recommendations for further work on the HRA to address these comments and to ensure compliance with the Habitats Regulations and related case law.

The Planning Inspectorate comments on the HRA:

“The HRA set out in the IIA (document Core_Gen_02) appears to utilise a methodology that may predate case law¹ insofar as mitigation measures, which are intended to avoid or reduce effects, should be assessed as part of an Appropriate Assessment (AA) and not inform the conclusions of an earlier screening stage. The HRA sets out that there are four sites in the national site network (formerly European sites as referred to in the HRA) that are potentially located within 15km of the London Borough of Barnet boundaries. In that respect, it is evident that the assessment of ‘in-combination’ effects is reliant upon mitigation in the form of ‘protective mechanisms’ in place to support the growth objectives of the London Plan. Furthermore, the HRA screening assessment of ‘indirect impacts’ suggests that the increased population anticipated in Barnet could result in increased recreational demand, increased demand on water resources and decreases in air quality.

Having regard to the above, we note the conclusions at paragraphs 25-27 of the HRA of no likely significant effects for the Plan’s related policies or proposals which presumably influenced the decision not to undertake an AA. However, there do appear to be caveats to those conclusions insofar as they are influenced by the presence of the aforementioned mitigation measures, which based on case law should be a matter for consideration as part of an AA rather than informing the HRA screening stage. Furthermore, whilst we note that there is a representation received from Natural England (document ID098) it does not specifically

¹ People over Wind, Peter Sweetman v Coillte Teoranta [2018] EUECJ C-323/17

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address the approach of the HRA of the Plan as submitted. Accordingly, we request clarification of the following:

- *Whether the HRA screening assessment accords with the relevant case law in terms of when to take mitigation measures into account?*
- *Have Natural England been engaged specifically on the HRA with a view to preparation of a SoCG? If so, what comments have been provided on the HRA? In particular, have Natural England agreed to the 15km buffer applied and would they support the general over-arching conclusions of no likely significant effects due to Barnet being too far from the four national site network sites (formerly known as European sites) as identified in the HRA?*
- *Are the site descriptions, qualifying features, conservation objectives, current pressures and threats, condition of the sites and in-combination effects, as set out in Table 2 and informed by Annex 2 and Appendix 3 of the HRA, sufficiently up-to-date?"*

LUC's response and recommendations

Relevant case law

- Following a review of the HRA of the Local Plan, it was found that the Screening Assessment relied on protection and mitigation measures outlined in the Local Plan Policies and the continued delivery of local management plans to confirm no Likely Significant Effect (LSE). Therefore, the current assessment does not accord with relevant case law set out in the 'People over Wind, Peter Sweetman v Coillte Teoranta' judgment of the European Court of Justice, which rules that Article 6(3) of the Habitats Directive should be interpreted as meaning that mitigation measures should be assessed as part of an Appropriate Assessment and should not be considered at the screening stage. It is therefore recommended that the HRA is updated to align with the People over Wind judgement to ensure that no mitigation is relied on at the Screening stage of the assessment.
- In revising the HRA Screening, there is potential to provide further supportive evidence to demonstrate that there are no impact pathways between the borough and European sites within 15km. This includes:
 - Implementation of a specific Zone of Influence (ZOI) of 6.2km in relation recreational pressure on to Epping Forest SAC, which has been recognised by Natural England. This has been identified through a visitor survey to identify the distance the majority of visitors (75%) will travel to visit Epping Forest SAC and is an approved distance by which impacts from residential development are determined. Given the distance of this SAC from the borough at approximately 8.42km, no likely significant effect would be considered to arise in relation to proposed development in the Local Plan.
 - LUC is not aware of any recognised recreation pressure ZOIs for the remaining European sites identified, including Lee Valley SPA and Ramsar site, Wormley Hoddesdonpark Wood SAC and Wimbledon Common SAC. However, a precautionary, non-specific ZOI of 7km can be applied based on typical findings from comparable studies of visitor pressure to European sites in the south of England, including Burnham Beeches² and Thames Basin Heath³, to determine LSE in relation to these European sites. Given the distance of Wormley Hoddesdonpark Wood SAC and Wimbledon Common SAC over 7km from the London Borough of Barnet, no LSE would be considered as a result of increased recreation from proposed development in the Local Plan. The majority of the Lee Valley SPA and Ramsar site is also located over 7km from the borough, however a small area to the east lies within 7km of the Walthamstow Reservoir section of the SPA and Ramsar site and as

² Chiltern and South Bucks District Councils (2020), Burnham Beeches SAC Mitigation Strategy.

³ Thames Basin Heaths Joint Strategic Partnership Board (2009), Thames Basin Heath Delivery Framework.

such would require further consideration to determine LSE in relation to increased recreation from the development in the Local Plan.

- Provide detail that Richmond Park SAC is only designated for the qualifying feature stag beetle, which relies on deadwood habitat and is not susceptible to impacts from recreation.
- Identify whether any European sites are located within 200m of a strategic road. An assessment should be undertaken to determine whether development provided for by the Barnet Local Plan in combination with development proposed in surrounding Local Planning Authorities will lead to an increase in traffic along these strategic roads that is above the screening thresholds set out in the Design Manual for Roads and Bridges (DRMB). This may be informed by existing data that has been collected to inform the London Plan, The Mayor's Transport Strategy and the London Environment Strategy.
- Provide additional information in relation to impacts from changes in water quantity and quality in relation to the Lee Valley SPA and Ramsar site. For example, the majority of the borough lies within the Brent River and Lakes water catchment area, which is not hydrologically connected to the Lee Valley. However, a smaller area to the east lies within the Lee Lower River's and Lakes and as such will require further consideration in relation to impacts from water quality in relation to the Lee Valley SPA and Ramsar site. In addition, further consideration is required as to how the borough intends to deal with increased demand for water quantity as this may result from increased abstraction from reservoirs, such as the Lee Valley.
- Due to distance, lack of features susceptible to impacts from water and lack of hydrological connectivity, no effects are considered likely in relation to Wormley Hoddesdonpark Wood SAC, Epping Forest SAC, Richmond Park SAC and Wimbledon Common SAC.

Consultation with Natural England

- The London Borough of Barnet has consulted with Natural England with regards to the HRA. Natural England has confirmed that they are in agreement with the conclusions of the assessment proposed method to apply a 15km buffer to identify European sites into the HRA. This will be supported as part of an updated Statement of Common Ground.

Baseline information

- There are small number of errors in **Table 2: European sites with the potential to be affected** of the HRA report. It is therefore recommended that this is amended to reflect the correct information as follows:
 - Review of information presented in relation to qualifying species as there are missing species noted in relation to Lee Valley SPA and Ramsar, including Northern Shoveler *Spatula clypeata*, water-milfoil *Myriophyllum Verticillatum* and water boatman *Micronecta minutissima*.
 - Update pressures and threats to include air pollution in relation to Lee Valley SPA and Ramsar site.
 - State which condition assessment is referred to in this assessment and provide additional information on condition assessment for Rye Meads and Amwell Quarry, which are part of the Lee Valley SPA and Ramsar site and have not been provided in this table.
 - Include information for Wormley Hoddesdonpark Wood SAC, which is located within 15km of the borough. This European site should be considered within the Screening Assessment of the HRA.
 - Provide an additional column to include non-qualifying habitats and species on which the qualifying habitats and/or species depend. This would help to demonstrate that

consideration has been given to the potential for effects on species and habitats, including those not listed as qualifying features, to result in secondary effects upon the qualifying features of European sites, including the potential for complex interactions and dependencies, as required as part of 'Holohan v An Bord Pleanala' (9 Nov 2018) CJEU judgment.

Conclusion and next steps

Following a review of the HRA of Barnet Local Plan in light of comments provided by The Planning Inspectorate, it is recommended that the HRA is amended in line with the comments presented in this letter. This will ensure that the HRA is compliant with the requirements of the Habitat Regulations and relevant case law and that it addresses the comments provided by the The Planning Inspectorate.

Yours sincerely

A solid black rectangular box used to redact the signature of Rebecca Turner.

Rebecca Turner
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Approved: J. Pearson, Associate Director of Planning