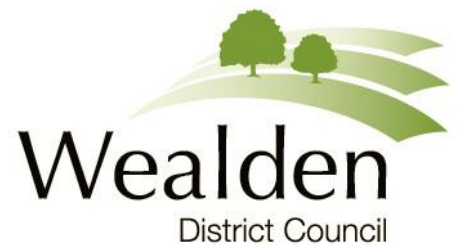


OUR REF: MB
ASK FOR: Marina Brigginsshaw ext 2498
DATE: 10th February 2017
YOUR REF:



Ms Pauline Butcher
260 Collingwood Road,
Sutton,
Surrey,
SM1 2NX
By post and email

Marina Brigginsshaw
Head of Planning Policy and Economic
Development

Dear Ms Butcher,

Re: Examination of the Mid Sussex District Plan

I am writing in response to the question raised regarding the Habitats Regulation Assessment (HRA). It is submitted that the HRA has not taken an appropriate approach and the legal requirements in this regards have not been met with regards to nitrogen deposition and the impact upon Ashdown Forest SAC and SPA.

Representations made on 24th July 2015

The Council made a representation to the Pre-Submission Draft Mid Sussex District Plan concerning the Habitat Regulations Assessment for the Mid Sussex District Plan on 24th July 2015. In particular the lack of in-combination assessment of the Local Plan with the Wealden District Core Strategy in relation to the Ashdown Forest Special Area of Conversation with regards to nitrogen deposition was raised.

In its submission the Council identified that, on the information provided at the time, the additional development would have a likely significant effect on Ashdown Forest SAC owing to increased traffic on the A26 in combination with the adopted Wealden Local Plan and further additional development outlined in the representation. An in-combination assessment was omitted from the Habitats Regulation Assessment, although an in-combination assessment was undertaken for the A22. Any impact on the SAC will in turn have the potential to impact upon the SPA, due to the potential change in habitats.

Wealden District Council therefore considers that the Habitat Regulations Assessment should have undertaken an in combination assessment with the Wealden Local Plan and associated development for the A26. If this in-combination assessment was undertaken the threshold of 1000 AADT, as defined by the Design Manual for Roads and Bridges (DMRB), would have been exceeded which would have triggered the need for an appropriate assessment. It is considered therefore that the legal requirement of an in-combination assessment of the plan and an appropriate assessment

under the Conservation of Habitats and Species Regulations 2010 as amended (Habitats Regulations) has not been undertaken.

In my representation I refer to both Regulations 61 and 62 of the Habitats Regulations which relates to individual projects (such that would be dealt with through a planning application) as opposed to Regulations 102 and 103 of the Habitats Regulations which relates to land use plans. Notwithstanding this the provisions and the process required are the same.

October 2015 HRA and December 2016 Transport Study

It is noted that in the guidance the Inspector identifies that there will be no need to submit further material based on the original representations. However, it is noted that since our submissions that a further iteration of the Habitat Regulations Assessment (HRA) dated October 2015 is now on the website, which the Council has not been given an opportunity to comment upon. The Council would wish to make the following comments with regards to this information.

The October HRA is materially different to the previous March HRA as it includes the table of the AADT against a reference case (table 5.2 page 23) with resulting different figures for AADT used in the assessment of determining likely significant effects. There appear to be a number of issues with the October HRA that require further consideration and explanation:

- 1) An in-combination assessment on the A26 is not provided although an in combination assessment against the A22 is included.
- 2) One scenario on the A26 shows an increase in AADT of 99 AADT which in-combination with the Wealden Local Plan and the Joint Lewes Core Strategy is in excess of the threshold of 1000 AADT.
- 3) The October 2015 HRA also refers to a forecast reference case in 5.1.10 as opposed to table heading 'reference case'. This casts doubt in the way in which the increase in AADT is calculated.

With regards to point 3, the DMRB (Volume II Section 3 Part 1 HA207/07 – extracts attached at Appendix A) at paragraph 3.12 explains that the scoping assessment should be carried out using traffic data for the “do minimum” (without the scheme) and “do something” scenarios for the years to be assessed. “Do something” is defined in paragraph 3.5 as with the scheme. Paragraph 3.5 identifies the years to be assessed and it is suggested that the worst year in the first 15 years from opening should be assessed. As the DMRB is guidance relating to road projects, this needs to be translated into how land use plans operate and therefore the worst year (in terms of AADT) will be the end of the plan period. Therefore in determining the change in AADT, to determine whether the road is deemed an affected road (paragraph 3.12), the last year of the plan AADT should be compared to the base year date (without the development contained within the plan). However, it would appear that in the case of the October HRA the end of plan AADT (with mitigation) has been compared to the end of plan without mitigation (ie forecast reference case). If this is the case the AADT used in the HRA is fundamentally incorrect and does not follow the DMRB on which it relies upon.

It has also come to the Council's attention that a further transport study “MSTS Stage 3 Report” Revision 03 has been undertaken and published in December 2016, which it has not had an opportunity to comment upon. This document states that the stage 3 study “identifies changes in traffic flow on roads entering the Ashdown Forest, as a result of housing and commercial development in Mid Sussex, to inform analysis under Habitats Regulations” (page 2). A corresponding HRA appears to be absent and it is not clear whether this document is meant to constitute the HRA. In this document (page 11) the reference case is for the year 2031 (do something as opposed to do nothing) which includes background trip growth, from National Trip End Model (NTEM) and Road Traffic Forecasts; landuse trips associated with committed sites and windfalls, and committed transport schemes.

In relation to Ashdown Forest, Table 13 (page 63) shows the difference between four different scenarios against the reference case and shows on the A26 showing a range from 28 to -159. This again appears to be an inappropriate use of reference case as highlighted above and adds weight to the concerns outlined in the use of the AADT in the HRA. In conclusion the AADT of the plan appears to be incorrectly calculated in the HRA and most probably significantly underestimates the AADT for the purposes of paragraph 3.12 of the DMRB. This therefore calls into question the fundamental validity of the HRA with regards to nitrogen deposition.

In combination Approach under Regulation 102

Notwithstanding the above, since the submission of representations in July 2015 the Council would wish to draw to the attention of the Planning Inspector, as competent authority, for the purposes of the Habitats Regulations 2010 as amended the following:

At recent appeals and in the High Court/ Court of Appeal, the Council has repeatedly made it clear that it does not agree with Natural England's advice regarding consideration of in-combination effects. The advice is that plans or projects that result in under 1000 AADT or 1% process contribution on roads within 200 metres of a European site will not have a likely significant effect alone or in-combination. However if a plan exceeds 1000 AADT or 1% process contribution on roads within 200 metres of a European site then it will be necessary to consider the effects in-combination with other plans or projects through an appropriate assessment. Natural England consider 1% process contribution and 1000 AADT to be roughly comparable.

It is argued that this is because each plan or project under 1000 AADT is deminimus or neutral and therefore cannot be added together. It is considered by Wealden District Council that this approach is illogical and should not be followed. The result could be that each relevant plan could be below 1000 AADT but together be much greater than 1000 AADT and the resulting impact on the protected site will not be considered. This approach does not consider the geographical circumstances of development or such arbitrary matters of local plan boundaries. However a plan which results in greater than 1000 AADT will need to undertake an appropriate assessment and consider other plans/ projects and if necessary mitigate for other plans that have been assessed as not having a likely significant effect in themselves. This is considered illogical and does not accord with other advice by Natural England regarding recreational impact on Ashdown Forest SPA which is considered in-combination with no deminimus thresholds. In the recent High Court challenge to the Joint Lewes Core Strategy, Natural England justified its approach using the 1% process contribution threshold used for permitting point source pollution. The document called AQTAG21 (attached at Appendix B), approved 2nd October 2015, states that:

The choice of the 1% assessment level as a standard approach is a matter of professional judgement. This professional judgement takes account of:

- The absolute contribution of a pollutant to an ecosystem which receives an impact at this level. For example, a contribution of 1% of the critical load for nitrogen of 10kg/ha/yr is equivalent to 0.01g of nitrogen per square metre per year. It is extremely unlikely that an emission at this level will make a significant contribution to air quality or air pollution impacts, and is therefore considered to be inconsequential both alone and in combination.
- The low likelihood of in-combination effects meaning that a conclusion of 'no adverse effect' cannot be reached at a particular location during the appropriate assessment (Stage 3) when the process contribution is less than 1%. Experience of permitting allows us to be confident that it is unlikely that a

substantial number of plans or projects will occur in the same area at the same time, such that their in-combination impact would give rise to concern at the appropriate assessment stage. If such a situation was to arise then the assessment could be determined on a case-specific basis.

- The 1% screening threshold is intended to cover a wide range of situations (e.g. different pollutants, different industrial processes and release characteristics), a range of ecosystem and human health protection standards and a range of uncertainties (such as modelling and standard setting). The threshold therefore needs to be sufficiently precautionary to minimise the risk of incorrectly screening out a situation when in-fact it merits further consideration. Many factors may affect the point at which a more detailed assessment is needed and therefore it may be appropriate to develop alternative thresholds to use in specific situations.

This relates to permits of single point sources of emissions (not vehicular traffic that can originate from a number of sources but use the same road adjacent to a European site) and in the second bullet point it is clear that this judgement assumes that it is unlikely that a substantial number of plans or projects will occur in the same area at the same time, such that their in-combination impact would give rise to concern at the appropriate assessment stage. If such a situation was to arise then the assessment could be determined on a case-specific basis.

In the case of impacts on Ashdown Forest SAC there are a number of plans that may contribute to the same area (namely major roads crossing Ashdown Forest) at the same time. So far these areas include, but are not limited to, Wealden District, Mid Sussex District and Lewes District.

Wealden District Council is currently reviewing its plan and has invested in traffic modelling, nitrogen deposition modelling and ecological monitoring. The Council will be undertaking an in-combination assessment. I would like to draw to the attention of the Inspector, as competent authority, that information on the current levels of nitrogen deposition and the ecology can be accessed on the Wealden District Council website. The nitrogen deposition monitoring was published in February 2016 with ecology reports published in December 2015 and May 2016. This information, together with work currently being undertaken by consultants appointed by Wealden District Council would allow Mid Sussex District Council to undertake an appropriate assessment of their plan.

In conclusion the Council considers that to meet the provisions of the Habitats Regulations an in-combination assessment of the Mid Sussex District Plan with other plans and projects on the A26 is required. The Council does not consider the approach by Natural England as highlighted above complies with the Habitats Regulations. In addition, the correct methodology to calculate AADT is required so that the effects on the Ashdown Forest can properly be assessed. This appears not to have been undertaken by Mid Sussex District Council and therefore the HRA has not taken the appropriate approach towards the impact of proposed development on the SAC and potentially the SPA. It is considered that an appropriate assessment is necessary and this has not been done. The Council is concerned therefore that the Mid Sussex District Plan is not in compliance with Regulation 102 of the Habitats Regulations.

Yours sincerely



Marina Briggins Shaw
Head of Planning Policy and Economic Development

Enclosures

Appendix A: Extracts from Design Manual for Roads and Bridges

Appendix B: AQTAG21