

Policy DP15: Ashdown Forest SPA

The issue of SANGs was discussed at the housing hearings. However, should there be / has there been an assessment of reasonable alternatives to the 7km zone of influence?

Have the Plan and the HRA taken an appropriate approach towards the impact of proposed development on the SPA and have legal requirements been met?

SUMMARY

This is a representation to the question above posed by the Inspector to be discussed at the forthcoming hearings scheduled to commence 28 February. I would like to participate in the hearing discussing this matter.

The Plan and HRA:

- **has not taken an appropriate approach to the Ashdown Forest SPA/SAC and is not supported by robust evidence**
- **does not meet the legal requirements of the Habitats Regulations or the Habitats Directive**
- **has not been produced in conformity with the precautionary principle.**

The Council identified potential adverse effects on the Ashdown Forest SPA/SAC as early as 2007 but has not put in place an effective means of monitoring the level of development that affects the Ashdown Forest and there is no regular reporting mechanism and none is proposed in the Plan. Nonetheless, the Council has allowed a substantial level of development since it discovered the potential risks in 2007 and has failed to provide evidence to show that the development it has already allowed meets the Habitats Regulations requirements and that its decision not to provide mitigation for this development is justified. **It has not followed the precautionary approach.**

The Council fails to explain why it is adopting a different policy approach to that followed by Wealden District Council in its adopted Local Plan.¹

The Plan's Ashdown Forest policy should cover all potential risks to the Ashdown Forest which the Council has identified (as early as 2007) as being due to (i) disturbance and (ii) air pollution. It does not.

The policy does not provide a mechanism to monitor and manage the issues and does not provide a meaningful or regular reporting structure. It fails the PMM requirement.

The Plan is not justified by the evidence provided.

Expansion & justification of points made in SUMMARY

1. The Habitats Regulations require the *competent authority* to adopt the *precautionary principle* when preparing plans. The approach by the Council has not done so and continues to fail to do so in the Plan and its Policies.

¹ http://www.wealden.gov.uk/Wealden/Residents/Planning_and_Building_Control/

[Planning_Development_Management/Agents_and_Parish_Council_Information/Planning_Agents_Ashdown_Forest.aspx](http://www.wealden.gov.uk/Wealden/Residents/Planning_and_Building_Control/Planning_Development_Management/Agents_and_Parish_Council_Information/Planning_Agents_Ashdown_Forest.aspx)

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2. The Council's approach is contrary to that followed by Wealden District Council [WDC] even though both Councils rely on the same baseline evidence with regard to Ashdown Forest. The WDC Local Plan was tested at Examination in 2012, was found sound and was adopted. Further work regarding Habitats Regulations compliance was explored at the WDC Sites Allocations Examination in 2014. The WDC approach has been supported by Natural England².
3. The WDC Local Plan was subject to Judicial Review and appeal. The SoS's decision that the Plan was sound was supported by the judges in all aspects except the matter as to whether WDC had adequately considered alternatives to the 7km Zone of Influence [ZoI]. It is to be noted that the judgment criticises the appellants for not raising this matter during the Examination leaving it until the appeal to the original JR, but nonetheless found their point valid.
4. **Bearing this in mind the MSDC appropriate assessment should have considered the WDC policy approach and explained the basis for choosing to follow a different and contradictory approach. It has not done so.**
5. The Council has not submitted an up-to-date HRA. In particular, it has not carried out a new assessment given the publication of a new Mid Sussex Transport Study report (dated December 2016 but only published at the beginning of February 2017). In itself it is surprising that the the Plan was submitted to the SoS without this fundamental evidence and that it was left until February for publication, even though the report was signed off in early December. This hardly constitutes '*front loading*' of consultation and must surely fall under the heading of producing a '*rabbit out of the hat*' and so runs contrary to the principles underlying the Planning & Compulsory Purchase Act (2004). The submitted HRA does not consider this new information and is out-of-date.
6. **The policy District Plan DP15 does NOT discharge the Council's responsibilities under the Habitats Regulations.**
7. The Council first identified the risk to Ashdown Forest SPA/SAC from increased disturbance and atmospheric pollution in mid 2007, through its Screening Report. Nonetheless, it proceeded to adopt its **Small Scale Housing Allocations DPD** in April 2008 without a Habitats Regulations Assessment as was required and without pointing out to the Inspector that it had identified the potential adverse impact on Ashdown Forest. The Inspector makes it clear [Para 3.10 Inspector's Report, Nov 2007]³ that had he been made aware of the proximity and risk to the Ashdown Forest SPA/SAC sites he would have required an Appropriate Assessment.
8. Since 2007 the Council has permitted a substantial amount of development within the 7km ZoI. However it has failed to monitor or report this - something that formed an extensive discussion during a set of appeals that were heard via hearings in late 2014 called by PINS because the Council's approach to Habitats Regulations had been "*inconsistent*".⁴ All four appeals were dismissed on Habitats grounds against the Council's wishes and advice of NE.
9. In October 2011 the Council published its first draft Habitats Regulations Assessment⁵ for the Plan, which concluded that both SANGS and SAMM would be needed for mitigating 1200 dwellings in the ZoI. Since then considerably more have been built and even more permitted/are planned. The Council offers no explanation or evidence as to why it has

² The exception being with regard to the Interim SAMM Strategy

³ <http://www.midsussex.gov.uk/planning-licensing-building-control/planning-policy/local-development-framework/small-scale-housing-allocations-development-plan-document/inspectors-report-november-2007/>

⁴ APP/D3830/A/14/2211981; APP/D3830/A/13/2207529; APP/D3830/A/13/2202266; APP/D3830/A/13/2201124

⁵ http://www.midsussex.gov.uk/media/4199/hra_fullreport_191011.pdf - Section 6

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concluded that there is no need to mitigate this already allowed development. Indeed the Council fails to even set out when they consider "*the clock started ticking*". The Appropriate Assessment should at least discuss and explain this approach.

10. The proposed policy DP15 does nothing to set out how the Council can rectify this failure to monitor and manage the Habitats Regulations issue, whether in relation to potential adverse impacts through disturbance or air pollution. It does not provide a mechanism to manage and monitor the impact of future completions under the Plan. It does not meet the Regulations or comply with the precautionary principle.
11. At the Examination of the WDC Local Plan⁶ in early 2012 the Inspector paused the examination to allow WDC to consult on strengthening its approach to the Habitats Regulations and protecting Ashdown Forest. This resulted in a more robust policy and also to WDC commissioning specific monitoring of the air quality across the Ashdown Forest. This has been under way but WDC advise that it is too early to have sufficient data to draw any conclusions. It is understood that MSDC has declined to take part in this exercise and the draft District Plan has no proposals for taking account of new information as it becomes available. The Council offers no justification for this.
12. The Mid Sussex HRA **relies entirely** on the Mid Sussex Transport Study [MSTS] to reach its conclusion that the issue of increased atmospheric pollution due to development in the Plan can be discounted. Unfortunately, (i) the MSTS is not up-to-date and so is contrary to the NPPF and (ii) the wrong figures are extracted from the MSTS thus providing incorrect and mis-leading evidence. The late provision of the MSTS-3 has prevented detailed study of the report but the following observations are made, nonetheless.
13. The MSTS-3 published this month still relies on (2008) data from the West Sussex Transport Model [WSTM] extrapolated to give a base year of 2010. Most of the data is therefore 9 years old and out-of-date. The recent Jubb reports which have been accepted by the examiner of the East Grinstead Neighbourhood Plan, by West Sussex CC for consideration with planning applications, by Surrey CC and also in a recently dismissed (On traffic grounds) planning appeal⁷, provide up-to-date data for the junctions at Turners Hill and the Dukes Head Roundabout. This up-to-date data shows that the assumptions used in the WSTM and hence the MSTS-3 report considerably underestimate the actual levels of traffic at these junctions, with traffic *at the present time already exceeding* the predicted values in the MSTS-3 for 2031.
14. It is clear that relying on this out-of-date data/predictions from the MSTS-3 does not meet the precautionary principle or the NPPF.
15. Notwithstanding the **unsuitability** of the MSTS-3 (set out above) **the data provided in the MSTS already shows that the increase in traffic over the plan period across the Forest exceeds the DMRM threshold, when it is analysed correctly.**
16. The Habitats Regulations require the competent authority to show that there will be no significant adverse effects as a result of development in the Plan itself or in combination with all other known plans (unless the effects can be mitigated). The Council identified the potential risk in 2007 and so must consider if the level of development from that point onward is likely to risk adverse impacts.
17. In extracting the data from the MSTS-3 the Council repeats a mistake it made in earlier iterations of the Habitats Regulations Assessment. Instead of considering the impact of the full quantum of development over the Plan period it considers the amount of traffic produced under the Plan by 2031 against a theoretical reference case, **also in 2031**. This

⁶ http://www.wealden.gov.uk/Wealden/Residents/Planning_and_Building_Control/Planning_Policy/Wealden_Local_Plan/PPolicy_Wealden_Local_Plan.aspx

⁷ APP/D3830/W/16/3156544

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approach is clearly in error, which was pointed out to the Council as early as 2013 in the MTRU report provided by the PRC (submitted against planning application 12/01588 /FUL).

18. The objective of the Habitats Regulations requirement for an Appropriate Assessment is to assess the risk from all development across the period. The Council identified the risk of increased atmospheric pollution in 2008 and so should be ensuring that no risk is derived from development delivered from this point. The base year for the MSTs is 2010. It is self-evident that the Regulations require the impact to be considered for the start of the plan i.e. 2010 vs. the impact once the plan is delivered in 2031. This is not achieved by comparing the predicted traffic levels in 2031 under the preferred development scenario with the predicted traffic levels in a theoretical 2031 scenario - the "Reference Case". Comparing one prediction for 2031 with another 2031 provides no useful idea of the impact or not of development on traffic levels as a result of the Plan.
19. This point is substantiated in the attached report by MTRU which the PRC first made available to MSDC ahead of a planning application 12/001588/FUL⁸ in December 2013. The Council has never addressed the argument put by the MTRU report but has sought to brush it aside without any substantive response.
20. The correct approach as described by MTRU⁹ must be to compare the level of traffic at the outset with the predicted level at the end of the Plan i.e. 2010 vs 2031, not 2031 vs 2031. In other words comparing the Base Year case against the End Year case of the District Plan with all proposed development completed.
21. The Habitats Regulations Assessment supporting the adopted Wealden Local Plan, prepared by Urban Edge the same consultants used by MSDC, shows that the impact of traffic from the whole level of development across the plan period must be assessed.
22. The tables below use the base year data provided in Appendix C of the MSTs-1 and compares it with the very recently produced data from the MSTs-3. From this it is clear that the DMRB local and regional thresholds are breached.
23. Consideration of revised AADT figures provided in MSTs-3 [December 2016]:

	Base Year [2010]*	Reference Case	Development Case	Alternative Development Case	Development Case [Sensitivity]	Alternative Development Case [Sensitivity]
A275	5229	7555	7208	7166	7207	7143
A22	4883	6337	6055	5928	6015	5881
A26	3410	4300	4141	4314	4170	4328
B2110	2235	2467	2191	2216	2227	2237

* Base Year data is extracted from MSTs-1 Appendix C¹⁰; other data from Table 13 of MSTs-3 December 2018 - units in all columns two-way AADTs

The increase in traffic AADT due to the plan according to the MSTs figures are predicted to be:

⁸ <https://pa.midsussex.gov.uk/online-applications/caseDetails.do?action=dispatch&keyVal=M3HOOTKT0A500&caseType=Application>

⁹ <http://194.165.12.101/AnitePublicDocs/00282677.pdf>

¹⁰ http://www.midsussex.gov.uk/media/3534/final_msts_january2013.pdf

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	Base Year [2010]*	Reference Case	Development Case	Alternative Development Case	Development Case [Sensitivity]	Alternative Development Case [Sensitivity]
A275	-	2326	1979	1937	1978	1914
A22	-	1454	1172	1045	1132	998
A26	-	890	731	904	760	918
B2110	-	232	-44	-19	-8	2

From this it is clear that the 1000AADT threshold is materially breached for the A22 and A275 in all scenarios tested.

24. On this basis the conclusion reached in the MSDC HRA that the impact of traffic on air pollution can be discounted is **not correct**. The Council has **not** shown that there would be no risk of adverse effects due to atmospheric pollution likely to result from the Mid Sussex District Plan alone and thus the Regulations have not been met by the Plan.
25. The Regulations require the competent authority to also consider the effect in combination with other plans. The principal effect from other plans is likely to be due to the Wealden Local Plan which predicts an increase of 583 AADTs on the A22 and thus, if taking the lowest value from MST5-3, a combined level of at least 1581 AADT is predicted. The A26 threshold would also be breached. Wealden did not provide estimates of increases on traffic along the A275 in their Habitats Regulations Assessment.

	MSDC increase in AADTS [lowest scenario]	WDC Increase in AADTS	Combined increase
A22	998	583	1581

26. The Regulations and the Precautionary Principle have not been met.

Disturbance

27. The Council bases its approach on the same baseline data as WDC yet it takes a different approach to mitigation but the HRA does not explain why. It should do so since the approach by WDC has been tested at Examination and subsequently in court.
28. The Council has not monitored development within the 7km ZoI since it identified the risk to Ashdown Forest due to increased visitors/disturbance. This was established during the set of appeals called by PINS in late 2014¹¹.
29. The Council has not explained why it has chosen to use guidelines derived at the Examination of the South East Plan for the Thames Basin SPA in preference to those proposed by WDC at Examination of its Sites Allocation DPD. In particular, the evidence provided to WDC by Footprint Ecology that the Thames Basin SANGS guidelines were **not appropriate for protecting Ashdown Forest**. This included Footprint Ecology's conclusion that the 8ha per 1000 population formula for capacity is NOT appropriate for Ashdown Forest mitigation providing an alternative formula of 1 person per hour per hectare. The Council should have evaluated the two approaches and set out why it has chosen to stick with the Thames Basin parameters.

¹¹ APP/D3830/A/14/2211981; APP/D3830/A/13/2207529; APP/D3830/A/13/2202266; APP/D3830/A/13/2201124

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30. The Council has not explained what dwellings completed since 2007 are to be set against the Ashplats SANGS and on what basis.
31. The Council has not shown that it has done any work to evaluate the integrity of the Ashplats SANGS proposal relying on work carried out for Fairview New Homes to support a planning application. There is no evidence that the Council asked its Habitats Consultants (Urban Edge) to review that work. Why not?
32. Taking the data from the visitor study provided by Ecology Solutions (that was not conducted to MRA standards) it is clear that the current usage in peak hours already substantially exceeded the 1 person per hectare per hour standard proposed by Footprint Ecology. Again no review of this is conducted by MSDC.
33. The site at Ashplats Wood/East Court is predominantly woodland (most of it designated as ancient woodland and SNCI). This does not provide a credible alternative to the open heathland of Ashdown Forest and the nature of the heavy clay soil means that during much of the year it is not possible to leave the footpath, effectively restricting the capacity to absorb visitors. The SANGS mitigation should not risk damage to valuable sites such as ancient woodland/SNCI and encouraging dog walkers to visit in preference to Ashdown Forest clearly poses a risk which the Council does not see to have evacuated. It is noted that a proposal to use Burleigh's Wood, Crawley Down (semi-ancient woodland) for a SANGS was rejected because increased dog walking would damage the local ecology. The implication of the Council's SANGS Strategy document is that since it claims that Ashplats is only 10% utilised (2013) there is 90% capacity - in other words if it is used to mitigate the full quantum of housing set out in the strategy, the visitor rate would multiple tenfold. The open area at Ashplats Wood is dominated by the formal playing fields which again fail to replicate the natural openness of Ashdown Forest.
34. The Council, based on the evidence provided, has not made reasonable steps to assess the suitability/capacity of the Ashplats site or explained why they consider it suitable despite the apparent shortcomings. They have not commissioned their Habitats advisors, Urban Edge, to review the work by Ecology Solutions submitted by Fairview New Homes in support of a planning application. This does not meet the precautionary approach.

Monitoring & Management

35. The Council does not set out any mechanisms to monitor or manage the issues of disturbance and air pollution. It assumes that the MSTs-3 traffic figures will be accurate - despite the evidence to the contrary. It assumes that the Ashplats SANGS and the SAMM will perform as they hope but provide no substantive evidencing that this might be expected to be so.
36. The Council has declined to take part in the air pollution monitoring being carried out by WDC and proposes no monitoring of traffic over the Ashdown Forest to compare actual numbers with the predictions of the MSTs-3.
37. The Council has no reporting of development allowed or completed within the 7km ZoI and produces no reporting of the offset of development against the SANGS or SAMM provision.