

## **Matter 2 - Sustainability Appraisal (SA) and Habitats Regulation Assessment (HRA)**

2.1 *Is the Plan supported by the SA and HRA?*

2.2 *What evidence is there that the SA has influenced the Plan and/or undertaken a full assessment of realistic alternatives?*

2.3 *Do any adverse effects identified in the SA require significant mitigation, and how does the Plan address these issues? Has appropriate account been taken of the recent People Over Wind & Sweetman v. Coillte Teoranta (C-323/17) Judgment in the ECJ (often referred to as the Sweetman 2 Judgment)?*

The Habitats Regulations require the *competent authority* (in this case MSDC) to ensure that development does not damage protected areas such as the Ashdown Forest SPA/SAC.

The *competent authority* should seek in the first instance to avoid completely all development that poses any potential risk, but where such development is essential it must be fully mitigated.

The Council has not adhered to the Habitats Regulations in its selection of sites since sites that would pose no risk have been dismissed without consideration.

The Council acknowledges that the proposed sites in the gap between East Grinstead/Felbridge/Crawley Down (SA19/SA20) pose a direct risk to the Ashdown Forest since they are within the 7 km Zone of Influence and confirm this by putting forward mitigation measures i.e. SANGS and SAMM.

The Council has chosen not to consider sites that might deliver the quantum of houses required in the site allocations DPD which is specifically designed to provide for the identified Crawley's unmet need to be accommodated within Mid Sussex, that was not allowed for in the District Plan as submitted for Examination.

There exist sites outside the 7 km Zone of Influence within Mid Sussex and thus pose no threat to Ashdown Forest which would need to be mitigated and which the Council has chosen to dismiss without consideration; one such example is the site at Crabbet Park.

Having selected the two large sites in the gap between East Grinstead, Felbridge and Crawley Down which lie within the zone of influence the Council has relied on its existing policy to mitigate disturbance impacts on the Forest

which remains unproven. (Since the risk of disturbance was first established in 2007 the Council has advanced a mitigation policy comprising SAMGS/SAMM).

The purpose of the SAMM is to mitigate the impact of visitors who actually go to the forest. The purpose of the SANGS is to divert potential visitors away from the forest to an alternative green space. The particular risk comes from the disturbance affect of dog walkers.

According to Council website it would appear that the SAMM program is not yet functioning, and currently amounts to little more than a few leaflets for dog walkers and a mechanism for collecting developer contributions. Bearing this in mind it seems reasonable to conclude that its impact on mitigating disturbance remains minimal and there can be no certainty as to the potential benefit of the scheme since the full scheme does not seem to exist yet some ten years after the need was identified.

With respect to SANGS the Council has already set up a number of SANGS, notably the one at East Court/Ashplats Wood in East Grinstead, which has been operating for five years or so.

The obvious question that is raised is whether or not the Ashplats SANGS is proving effective. There seems to be no way of actually assessing whether or not the SANGS is delivering effective mitigation because MSDC say that the have not put in place or carried out out any monitoring or measurement of its performance. Certainly no reports are available to that effect and requests to see any such performance measurement have met with advice that none have been carried out.

The concept of SANGS is based on visitor studies. The Council was due to undertake a new study of the visitor numbers for the Ash Platt SANGS in 2020 but this has not happened, it is understood because of the Covid problems. Whilst this is understandable it means that the Council cannot know and cannot show that the size is fulfilling its important purpose of protecting Ashdown Forest. If they don't know if the Ashplats SANGS is effective then how can they be sure that a mirror SANGS on Imberhorne will be? If the overdue assessment of the effectiveness of the Ashplats SANGS shows it to fall short or be ineffective then this would mean that the proposed Imberhorne SANGS would be induct. Without effective mitigation of the adverse effects on Ashdown Forest the sites SA19/SA20 could not be delivered.

**The Habitats Regulations require the *competent authority* to adopt the precautionary approach.** The Council, as *competent authority*, has established the potential risk from disturbance and has set out policies which it hopes will mitigate the effects. However it appears that the Council is carrying out no measurement of monitoring and therefore can have no idea to what extent, if at all, the policies are working. Thus it is very difficult to accept the claim in the Habitats Regulations Assessment that there will be no adverse

affect on Ashbrown forest SPA/SAC due to the additional housing within the 7 km zone of influence.

In response to concerns raised during the Regulation 18 and Regulation 19 consultations the Council stated that it would be producing a topic paper which will deal with the representations raised. At this time no such topic paper or explanation has been published.

The Habitats Regulations Assessment cannot demonstrate that the sites SA19/ SA20 within the 7km Zone of Influence can be delivered without adverse effect to the Ashdown Forest SPA/SAC.

Since the Habitats Regulations Assessment is not satisfactory to support the proposed sites within the 7km Zone of Influence it must follow that the Sustainability Appraisal is defective in this regard and the site affects by it should be withdrawn.