

**Duty to Cooperate:  
Broads Local Plan – Habitats Regulation Assessment – amended version  
Report by Planning Policy Officer**

<b>Summary:</b>	The report introduces an addendum to the Habitats Regulation Assessment (HRA) for the Local Plan for the Broads after a recent Court of Justice of the European Union judgement relating to Habitat Regulation Assessments.
<b>Recommendation:</b>	That Planning Committee recommend to Full Authority that they endorse the addendum to be part of the HRA for the Local Plan for the Broads.

## **1 Introduction**

- 1.1 During the early stages of the Local Plan examination in public, the Inspector asked the Broads Authority about the impact of a recent Court of Justice of the European Union judgement relating to Habitat Regulation Assessments on the Local Plan for the Broads. This report explains the judgement, introduces the proposed way to address the judgement and recommends that the Planning Committee commend the proposed addendum to Full Authority for approval.

## **2 Habitat Regulation Assessments**

- 2.1 Directive 92/43/EEC (the Habitats Directive) on the ‘Conservation of Natural Habitats and of Wild Fauna and Flora’, and the UK regulations that give effect to this Directive, require an ‘Appropriate Assessment’ (AA) or Habitats Regulations Assessment (HRA) to be undertaken of the potential impacts of land-use plans (including the Broads Local Plan) on European designated habitat sites to ascertain whether they would adversely affect the integrity of such sites.
- 2.2 As part of the production of the Broads Local Plan, an HRA was prepared by Footprint Ecology. This HRA screened the plan to check for ‘likely significant effects’ (i.e. risks to European sites) as a result of the plan and the implementation of its policies. A number of recommendations were made to modify and strengthen the plan wording, both within policy and also as part of the supporting text. Risks were identified in terms of the progression of new housing and the promotion of tourism, boating and water’s edge development and navigation. Disturbance to wildlife and deterioration of habitat, particularly through nutrient enrichment arising or increasing as a result of the policies in the plan, should be avoided in order to protect against likely significant effects, and the HRA made suggestions relating to additional protective wording in policy and the requirement for adequate recreational

provision to be provided as part of the main housing allocations to deliver the proposed houses over the plan period.

- 2.3 Full Authority endorsed the HRA on 29 September 2017. The Local Plan was submitted for examination in March 2018.

### **3 The recent Judgement – the People Over the Wind ruling**

- 3.1 On 13 April 2018 the Court of Justice of the European Union published its ruling in the Case [C323/17](#) with regards to the Habitats Directive.
- 3.2 People Over Wind is an environmental group that raised concerns over the legality of a development proposal to lay an electric cable to connect a wind farm to the grid in Ireland, given its potential effects on two SACs. The issues in the People Over Wind Ruling relate to the potential implications of the cable laying for the two SACs, and in particular the River Barrow and River Nore SAC, which hosts an Irish subspecies of the Freshwater Pearl Mussel; the 'Nore' Pearl Mussel *Margaritifera durrovensis*.
- 3.3 The proposed mitigation for the scheme was to be agreed with the Local Planning Authority post-consent and detailed in a 'Construction Management Plan'. The Judgement ruled that the mitigation measures needed to be considered as part of the initial Appropriate Assessment and not after permission had been granted.
- 3.4 The Judgment provides important clarity on the correct stage of HRA for a decision-making body to establish whether mitigation measures are fit for purpose and to remove uncertainty in terms of the consequences of the project for European sites. This needs to take place at the Appropriate Assessment stage. The **People Over Wind** case has also ruled that mitigation cannot be taken into account when considering the screening test for Likely Significant Effects.
- 3.5 The ruling was made on 12 April 2018.

### **4 The Inspector's request**

- 4.1 The Planning inspector who has been appointed to conduct the examination into the Broads Local Plan has made the following request (on 14 May 2018).

*'On 12 April 2018 the Court of Justice of the European Union issued the above judgement, which ruled that Article 6(3) of the Habitats Directive should be interpreted as meaning that mitigation measures should be assessed within the framework of an Appropriate Assessment, and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage.'*

*In light of this judgement, can I ask the Authority to re-visit the screening assessment on the Broads Local Plan, and confirm the extent to which you*

*consider the Habitats Regulations Assessment on the Plan is legally compliant'.*

## **5 Footprint Ecology's proposal**

- 5.1 The HRA for the Local Plan for the Broads was completed by Footprint Ecology; Natural England described the work as exemplary.
- 5.2 In response to the request from the Inspector, the Authority asked Footprint Ecology to assess the situation and provide feedback on this issue.
- 5.3 Footprint Ecology has liaised with Natural England and produced the amended HRA. This has been sent to the Inspector in draft form as it awaits Full Authority's endorsement. The changes are shown in red.

## **6 The Broads Authority as the Competent Authority**

- 6.1 The Habitats Directive requires competent authorities to decide whether or not a plan or project can proceed having undertaken the following "appropriate assessment requirements" to:
- Determine whether a plan or project may have a significant effect on a European site;
  - If required, undertake an appropriate assessment of the plan or project;
  - Decide whether there may be an adverse effect on the integrity of the European site in light of the appropriate assessment.
- 6.2 The Broads Authority is the competent authority and therefore needs to endorse the Addendum.

## **7 Recommendation**

- 7.1 It is recommended that Planning Committee agree the approach to meeting the requirements of the Judgement and recommend to Full Authority that they endorse the addendum as part of the HRA for the Local Plan for the Broads.

Background papers: None

Author: Natalie Beal

Date of report: 11 June 2018

Appendices: [Appendix A comprising Proposed HRA Addendum \(in Appendix 2\)](#)