

Maria Conti

From: Plan Cons Area Team (Norfolk, Suffolk) (NE)
Sent: 15 June 2018 08:56
To: Programme Officer
Subject: Our ref:247249 Broads Local Plan: Notice of Examination Hearing
Attachments: PINS-note-052018-People-Ove-Wind-BC.PDF

Dear Maria

Matters, Issues and Questions (MIQs)- Examination Hearing of the Broads Local Plan

Thank you for your emails regarding the forthcoming Examination Hearing of the Broads Local Plan.

With regard to the Matters, Issues and Questions document, Natural England is satisfied with the Broads Local Plan and we have only one matter to raise due to a recent legal ruling.

Matter 1 – Legal and procedural matters

- c) *Are the likely effects of the Plan adequately and accurately assessed in the Habitat Regulations Assessment (HRA) (2017) (LP-PUB3)? Is the process of seeking project-level HRA from individual schemes, as set out in Policy PUBSP15, robust?*

With regard to question c) above, Natural England advises that the HRA should be reviewed in light of the recent legal Sweetman II Judgement. For further details please consult the attached guidance note issued by PINS, and specifically point 8 on page 2 of the guidance.

Although an official position from Natural England has yet to be released, the following advice has been formulated through conversations with our legal and policy team.

Competent authorities undertaking HRAs should be aware of a recent ruling made by the Court of Justice of the European Union (the CJEU) on the interpretation of the Habitats Directive in the case of People Over Wind and Sweetman vs Coillte Teoranta (ref: C-323/17). The case relates to the treatment of mitigation measures at the screening stage of a HRA when deciding whether an appropriate assessment of a plan/project is required. The Court's Ruling goes against established practice in the UK that mitigation measures can, to a certain degree, be taken into account at the screening stage.

As a result, Natural England advises that any "embedded" mitigation relating to protected sites under the Habitat Regulations 2017 Regulation 63 (1) should no longer be considered at the screening stage, but taken forward and considered at the appropriate assessment stage to inform a decision as whether no adverse effect on site integrity can be ascertained. In light of the recent case law, any reliance on measures intended to avoid or reduce harmful effects at the likely significant stage is vulnerable to legal challenge. Local authorities may also want to seek their own legal advice on any implications of this recent ruling for their decisions.

Attendance at the hearings

Unless it would be helpful to Katie Child, the planning inspector, Natural England does not wish to attend the hearings.

Yours sincerely

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