

## Habitats Regulations Assessment

Statement in relation to CASE 323/1/ COURT OF JUSTICE OF THE EUROPEAN UNION

*People over Wind, Peter Sweetman v Coillte*<sup>1</sup>

May 2018

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### Introduction

The Council is aware of the recent judgement referred to above. The Court of Justice of the European Union (CJEU) ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of an appropriate assessment (AA) 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.

The Council has therefore undertaken a review of the Habitats Regulations Assessment (HRA) in relation to the Allocations Plan. Guidance from the Planning Inspectorate<sup>2</sup> and the Habitats Regulations Journal<sup>3</sup> have been used.

### The Habitats Regulations Assessment

The Allocations Plan (AP) has been modified as it has passed through the examination process and accordingly each time the HRA has been reviewed and updated. The HRA therefore is composed of 4 main documents:

- a. Habitats Regulations Assessment Report March 2015
- b. Habitats Regulations Assessment Addendum September 2016
- c. Habitats Regulations Assessment Addendum December 2016
- d. Habitats Regulations Assessment Addendum October 2017

### Review

In March 2015 the AP was screened as to Likely Significant Effects and it was concluded that Appropriate Assessment of the AP was required. AA was subsequently undertaken. The screening did identify some mitigation or avoidance measures which are provided through the existing Core Strategy (5.5). These measures, together with other cancellation and avoidance measures were considered only in the appropriate assessment. Documents a-d above have been further reviewed in light of the *Sweetman* judgement. One policy assessment (AP 89) was found to have been screened out after taking in to consideration embedded avoidance and cancellation measures within the policy. Having reviewed this screening it is appropriate to consider AP89 is subject to AA. The outcome of the AA remains unchanged as the policy contains embedded cancellation and avoidance measures to ensure no adverse impacts on integrity. HRA has been subject to consultation with Natural England throughout and they have raised no objection.

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<sup>1</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62017CN0323:EN:PDF>

<sup>2</sup> The Planning Inspectorate PINS NOTE 05/2018 09 May 2018

<sup>3</sup> <https://www.dtapublications.co.uk/>