



Mr Stephen Pointer,
Team Manager, Planning Policy
Nottinghamshire County Council
County Hall
West Bridgford
Nottingham
NG2 7QP

2 March 2020

Dear Mr Pointer

Examination of Nottinghamshire Minerals Local Plan

I have set out in my letters to you of 21 and 28 February 2020 my concern regarding the Habitats Regulations Assessment (HRA) and the information in the submitted Plan. I am writing to advise you that my preliminary finding is that the requirements of the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) have not been met. I set out my reasons for this below.

A HRA was carried out in 2013 by WSP UK in respect of the then draft Minerals Local Plan (MLP) which was subsequently withdrawn. This considered similar site proposals to those in the submitted Plan. This HRA noted that the Bawtry Road quarry could have potential indirect hydrological impacts on the Hatfield Moor SAC and that the Scrooby quarries could have potential indirect hydrological impacts on the Birklands and Bilhaugh SAC as well as the Sherwood Forest ppSPA.

This HRA recommended that the draft MLP should contain a policy that highlights potential issues in relation to hydrology and the need for projects to demonstrate that they will not significantly affect the integrity of a European site. This is the requirement of an appropriate assessment. That policy would thus have required an appropriate assessment to be undertaken at planning application stage. The HRA concluded that, subject to such a policy an appropriate assessment of the plan was not required.

Subsequent to that HRA, case law¹ has established that competent authorities cannot take account of any integrated or additional avoidance or reduction measures when considering at the HRA screening stage whether the plan or project is likely to have an adverse effect on a European site. Following this judgment, it would appear that the 2013 HRA took mitigation into account when deciding whether appropriate assessment of the plan was needed. This would not align with the more recent case law.

A HRA of the submitted plan, carried out in 2019 by Aecom screens out any implications for the European sites. However, the submitted Plan conflicts with the conclusions of this assessment because the Site Allocation Development Briefs state that there would be:

¹ C-323/17 People over Wind, Peter Sweetman v Coillte Teoranta

- potential indirect hydrological links to the Hatfield Moor SAC (Bawtry Road west);
- potential indirect links to the Birklands and Bilhaugh SAC and Sherwood Forest ppSPA (Scrooby Thompson Land); and
- potential indirect links to the Birklands and Bilhaugh SAC and Sherwood Forest ppSPA (Scrooby North).

Regulation 105 of the Habitats Regulations states that "*Where a land use plan is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives.*"

On the basis of the information in the submitted Plan, the likelihood of a significant effect on European sites cannot be excluded. Therefore, on this basis, an appropriate assessment of the Plan is required.

Please arrange for an appropriate assessment to be undertaken. This must be subject to an equivalent level of consultation as the original report and Natural England must be consulted. Please would you assess the new HRA and advise if it would necessitate any potential main modifications to the plan.

Hearing sessions have been arranged for the week commencing 27 April 2020. It will be necessary for the appropriate assessment to have been carried out in order to inform discussion at the hearing sessions regarding the affected site allocations. Please would you advise of the timescale required to carry out the appropriate assessment.

Yours sincerely

Nick Palmer

INSPECTOR