Minerals and Waste Joint Plan

Habitats Regulation Assessment

Addendum

February 2018

City of York Council
North York Moors National Park Authority
North Yorkshire County Council

Addendum to the Habitat Regulations Assessment - Consideration of the Wealden Judgement (Wealden V SSCLG [2017] EWHC 351 Admin)

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Contents

1. Introduction

This document has been produced as an Addendum to the *Publication Draft Habitats Regulation Assessment (HRA) (CD29)*[1] undertaken to support the *Publication Draft Joint Plan (CD17)*. The Wealden Judgment was made in March 2017 after the *CD29* was published, and although a subsequent *Addendum to Habitats Regulation Assessment* (*SD03*) was produced in November 2017, the Addendum focused on the changes to *CD17* following consultation and did not explicitly consider the Judgement.

Therefore, this Addendum has been produced to demonstrate that in light of the Wealden Judgement, the Joint Plan is still compliant with Habitat Regulations.

2. Background

2.1. Wealden Judgement

The Wealden Judgement (Wealden V SSCLG [2017] EWHC 351 Admin)[2] quashed part of the Lewes District Council and South Downs National Park Authority Joint Core Strategy (JCS) due to deficiencies in considering in-combination assessments as part of the HRA. The key issue was in relation to whether the Competent Authority had acted lawfully in concluding there would not be likely significant effect (LSE) on the Ashdown Forest Special Area of Conservation (SAC). The case considered whether the impacts of nitrogen deposition on dry heath (a qualifying feature of the SAC) as a result of increased vehicle movements due to the JCS was adequately considered in-combination with other plans and projects including the Wealden Core Strategy (WCS).

The Design Manual for Roads and Bridges (DMRB)[3] stated that where annual average daily traffic movements (AADT) resulting from development did not exceed 1000 on affected roads, environmental effects could be "scoped" out of further assessment. Following consideration of the DMRB and advice from Natural England, it was determined by the Competent Authority that no in-combination assessment was required because the JCS on its own involved the generation of traffic below the threshold.

The Judgement found that found that on a proper interpretation of the DMRB, the in-combination effects are potentially relevant at the initial "scoping" stage as well as the subsequent stage requiring further assessment (i.e. an appropriate assessment (AA)) and that the HRA was deficient. Paragraph 93 of the judgment states:

[1] Document references refer to those provided to documents submitted at the examination stage of the Plan process https://www.northyorks.gov.uk/minerals-and-waste-joint-plan-examination

[2] [2017] EWHC 351 (Admin), [2017] Env LR 31. http://www.bailii.org/ew/cases/EWHC/Admin/2017/351.html

[3] http://www.standardsforhighways.co.uk/ha/standards/dmrb/

"The point may be tested in this manner. If the HRA for the WCS had stated that the modelled AADT value was 1,050 rather than 950...an "appropriate assessment" would have had to be made at the second stage: in other words, that these impacts could not be regarded as de Minimis, or neutral, or be removed from scope. However artificial it may be to take a fixed threshold, and however minor in reality any predicated environmental impact may be... the assessment would have to proceed to the next stage. This would be the case, therefore, despite the 1,000 AADT level being robust and extremely precautionary. In my judgment, there may be no distinction logically to be made between 1,050 additional traffic flows from one district and 1,050 (on our figures, in fact 1,140) additional traffic flows from two districts. The cars are the same and the nitrogen dioxide is the same".

In summary, as there was a pathway for the JCS to result in a potential impact to the qualifying feature of the SAC (as a result of nitrogen deposition from increase vehicle movements), the HRA should have considered the impacts of JCS in-combination with other plans and projects (e.g. the WDC Core Strategy). Had this been carried out then the threshold for screening of the impacts would have been exceeded and therefore a LSE on the SAC would have been concluded, and an AA of the potential effects of the JCS in combination with other plans and projects required.

2.2. Minerals and Waste Joint Plan HRA

The production of the Joint Plan has been supported by a HRA Screening Reports at the Preferred Option (*PPC10*) and Publication Draft (*CD29)* stages, and was updated by an Addendum to consider Additional Proposed Changes (SD03). The HRA concluded that the Joint Plan, alone and in combination with other Plans and Projects, will not result in adverse effects on the integrity of any designated sites. The HRA has considered the potential impact of both the Joint Plan polices (*Table 8, CD29*) and proposed allocated sites (*Table 9, CD29*), and determined no LSE.

Section 3 below further expands on how the HRA has adequately considered the potential impacts on the Joint Plan, including cumulatively with other plans and projects, with specific regards to air pollution in light of the Wealden Judgement.

2.3. Traffic Assessment

To inform the Joint Plan a *Traffic Assessment of Sites (SD21 and SD22)* was undertaken to consider the individual and cumulative effects on traffic levels as a result of the Plan. Table 29 (and Table 38) of SD21 identify proposed sites which were predicted to result in a net increase in additional traffic (for light vehicles and Heavy Good Vehicles (HGV)).

SD21 further considers if these sites are likely to act cumulatively resulting in significant cumulative effects. Many of the sites identified are significant distances apart, so are therefore not considered to act cumulatively. However, four locations were identified where proposed allocated sites resulting increased traffic may act cumulatively. The identified locations are:

- Submissions MJP17, MJP21, MJP33 and MP43 (Catterick to Leeming Bar)
- Submissions MJP54 and WJP22 (Great Heck)

- Submissions MJP52 and WJP05 (Upper Poppleton, York)
- Submissions MJP55 and WJP06 (Escrick)

It must be noted that sites MJP04, MJP35 and MJP43 were subsequently discounted as allocated sites.

2.4. Approach to screening for likely significant effects

The DMRB provides thresholds and distances related to traffic emissions on designated sites.

The Volume 11, Section 3, Part 1 of the DMRB paragraph 3.13 states that "Only…Designated Sites within 200 m of roads affected by the project need be considered." Therefore, the potential effects of increased traffic as a result of the Joint Plan on designated sites will be screened using the 200m buffer. For example, only if proposed allocated sites or the roads which will take increased traffic as a result of the allocations are within the 200m of a designated site shall they be screened in for further consideration.

Any sites or roads with increased traffic which are within 200m of designated sites will be checked to see if the site or its qualifying features are sensitive to air pollutants, either directly or indirectly, and could be adversely affected by the effect of local air quality.

The DMRB also defines criteria by which roads need to be "scoped" in to further consideration as part of the HRA. Or in different terms, the following criteria are the thresholds of which exceedance is considered to result in a LSE on designated sites (and will require an AA to be undertaken):

- Road alignment will change by 5m or more; or
- Daily traffic flows will change by 1,000 AADT more; or
- Heavy Duty Vehicle (HDV) flows will change by 200 AADT or more; or
- Daily average speed will change by 10km/hr or more; or
- Peak hour speed will change by 20km/hr or more.

Where allocated sites or affected roads are located within 200m of a designated site which is sensitive increased air pollution the thresholds need to be applied i.e. where there is an impact pathway between the source (air pollution from traffic) and the receptor (designated site sensitive to air pollution).

3. Assessment

3.1. Consideration of individual sites and policies

CD29 screened the allocated sites (Table 9) for their potential impacts on designated sites identified using a 15km buffer around the Plan area (*CD29 Table 3, 4 and 5).* It was concluded that the sites will not result in a LSE alone or in-combination on any designated site.

For completeness in light of the Wealden Judgment, allocated sites which are predicted to result in increased traffic (*SD21 Table 29 and 39)* have been checked with regards to their potential impacts on designated site as a result of air pollution due to increased traffic.

The proximity of the allocations and affected roads (detail provided in *SD22*) to designated sites have been considered. All the sites with regards to both their location and areas where impacts from additional traffic may occur are significantly greater distances from the designated sites than the 200m buffer distances, and therefore there is no pathway for impacts to occur.

The HRA of plan policies (*CD29*) summarised in Table 9 have been reviewed and it is determined that the original screening that determined no LSE is also still valid.

3.2. Consideration of cumulative impacts within the Joint Plan

To ensure the potential impacts of the Plan has been considered fully, it is deemed appropriate to consider intra-project cumulative effects from air pollution i.e. where increased traffic from multiple allocated sites may act together to result in impacts on designated sites.

The four locations (as outlined in section 2.3 above) were identified in *SD21* where increased traffic from allocated sites may act cumulatively. The sites, including affected roads where traffic increases may act cumulatively (see Site proforma in *CD22 Appendix B and Plans of Expected Traffic Impacts for Sites Generating Additional Traffic in Appendix C* for more detail) have been considered with regards to their impacts on designated sites, and have been screened out of further assessment (as detailed below):

<u>Catterick to Leeming Bar (MJP17, MJP21, MJP33)</u>

The sites identified may result in a cumulative increase in traffic for light vehicles and HGVs but the location where these cumulative impacts occur is greater than 10km from the nearest designated site. This is significantly greater than the 200m distance advised in the DBRM and therefore, no pathway for impacts to occur exists. It is considered there will be no LSE on any designated sites.

<u>Great Heck (MJP54 and WJP22)</u>

The location where cumulative impacts as a result of traffic associated with these two sites occurs is approximately 10km away from the nearest designated site. This is significantly greater than the 200m distance advised in the DBRM and as a result no pathway for impacts to any site exists. It is concluded there will be no LSE on any designated sites.

<u>Upper Poppleton, York (MJP52 and WJP05)</u>

The locations where a cumulative increase in traffic is likely to occur around the A59 is approximately 10km away from the nearest designated site. This is significantly greater than the 200m distance advised in the DBRM and as a result no pathway for impacts to any designated site exists. It is concluded there will be no LSE on any designated sites.

<u>Escrick (MJP55 and WJP06)</u>

The two sites result in a cumulative increase in traffic along the A19 which is approximately 3.5km away from the closest designated site (Skipworth Common SAC). This is significantly greater than

the 200m distance advised in the DBRM and as a result no pathway for impacts to any designated site exists. It is predicted there will be no LSE on any designated sites.

3.3. Consideration of in combination of Joint Plan with other Plans and projects

It is a requirement of the Conservation of Habitat and Species Regulations 2017 to consider the potential impacts of a Plan, both alone and in combination, with other plans and projects.

With regards to the potential impacts of air pollution, when considering the source - pathway – receptor model, no pathway for impacts on designated sites exists. This is because the sites (and affected roads) are significantly greater distances from the designated sites than the 200m distance advised in the DBRM.

In the absence of a pathway for impacts to occur, an in combination assessment with other plans and projects is not required. This is contrary to the Wealden HRA where a pathway for an impact to a designated site (Ashdown Forest SAC) did exist but was below a screening threshold when considered alone.

4. Conclusion

It is concluded that there is no LSE, alone or in combination, on any designated sites as a result of air pollution from increased traffic. It is also considered that the conclusion of the HRA (*CD29*) (and subsequent Addendum *(SD03)*) is still correct and the Joint Plan, alone and in combination, will not result on an adverse effect on any designated sites.

Contact us

Minerals and Waste Joint Plan Team Planning Services, North Yorkshire County Council, County Hall, Northallerton, North Yorkshire, DL7 8AH

Tel: **01609 780780** Email: **mwjointplan@northyorks.gov.uk**