

### **13. ASSESSMENT UNDER THE HABITAT REGULATIONS: DELEGATED AUTHORITY (JEN)**

#### **Proposal**

1. The UK is bound by the terms of the Habitats Directive (92/43/EEC). Under Article 6(3) of the Habitats Directive, an appropriate assessment is required where a plan or project is likely to have a significant effect upon a European Site, either individually or in combination with other projects in view of the European Site's conservation objectives. The Directive is implemented in the UK by the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).
2. All planning applications which are not directly connected with, or necessary for, the conservation management of a habitat site, require consideration of whether the proposed development is likely to have significant effects on that site. This consideration – typically referred to as the 'Habitats Regulations Assessment screening' – should take into account the potential effects both of the development itself and in combination with other plans or projects. Where the potential for likely significant effects cannot be excluded, a competent authority, in this planning case the National Park Authority, must make an appropriate assessment of the implications of the development for that site, in view of the site's conservation objectives. The competent authority may agree to the plan or project only after having ruled out adverse effects on the integrity of the habitats site. Where an adverse effect on the site's integrity cannot be ruled out, and where there are no alternative solutions, the plan or project can only proceed if there are imperative reasons of over-riding public interest and if the necessary compensatory measures can be secured.

#### **RECOMMENDATION:**

**That authority be delegated to the Chief Executive:-**

- **To determine whether an appropriate assessment is required under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended)**
- **To carry out appropriate assessments under regulations 63 and 64 of the Conservation of Habitats and Species Regulations 2017 (as amended) including, without limitation, to require further information, to carry out consultations (and for that purpose to determine whether the opinion of the general public should be taken) and to have regard to any representations received.**

#### **Assessment**

##### **The Habitat Regulation Assessment Process**

3. The Habitat Regulation Assessment (HRA) process involves several stages:
4. Stage 1: Likely Significant Effect Test  
  
Stage 2: Appropriate Assessment  
  
Stages 3 & 4: Assessment of Alternative Solutions and Imperative Reasons of Overriding Public Interest Test.
5. Stage 1: This is essentially a risk assessment utilising existing data, records and specialist knowledge. This stage identifies the likely impacts of a project upon a European

Site and considers whether the impacts are likely to be significant. The purpose of the test is to screen in or screen out whether a full Appropriate Assessment is required. Where likely significant effects cannot be excluded, assessing them in more detail through an appropriate assessment is required to reach a conclusion as to whether an adverse effect on the integrity of the site can be ruled out.

6. Stage 2: This is the appropriate assessment and this involves consideration of the impacts on the integrity of the European Site with regard to the conservation site's structure and function and its conservation objectives. Where there are adverse effects an assessment of mitigation options is carried out. If the mitigation cannot avoid any adverse effect or cannot mitigate it to the extent that it is no longer significant, then development consent can only be given if an assessment of alternative solutions is successfully carried out or the Imperative Reasons of Overriding Public Interest (IROPI) test is satisfied.
7. Stage 3 & 4: If a project will have a significant adverse effect and this cannot be either avoided or mitigated, the project cannot go ahead unless it passes the IROPI test. In order to pass the test, it must be objectively concluded that no alternative solutions exist. The project must be referred to the Secretary of State on the grounds that there are Imperative Reasons of Overriding Public Interest as to why the project must proceed. Potential compensatory measures needed to maintain the overall coherence of the site or integrity of the European Site network must also be considered.

### **Conclusion**

8. If, following advice from Natural England, it is possible to screen out the requirement for appropriate assessment at Stage 1 then the development could proceed. If this is not possible then the development must be subject to appropriate assessment as set out above. It is proposed that these stages are delegated to officers. Where the mitigation proposed cannot avoid or mitigate effects and Stage 3 and 4 are invoked then it is proposed that authority is not delegated and these matters would be brought to Planning Committee for wider consideration of the Imperative Reasons of Overriding Public Interest test.

### **Human Rights**

9. Any human rights issues have been considered and addressed in the preparation of this report.

### **List of Background Papers** (not previously published)

Nil

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