

## **Delegated Decision**

**September 2019**

### **Habitat Regulations Assessment: Developer Guidance and Requirements in County Durham.**

**Ordinary/Key Decision No.**



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## **Report of Regeneration and Local Services**

**Ian Thompson, Corporate Director of Regeneration and Local Services**

### **Electoral division(s) affected:**

Countywide but predominantly Shotton and South Hetton, Trimdon and Thornley, Murton, Seaham, Wingate, Easington, Blackhall, Deneside, Passfield, Peterlee West, Dawdon, Peterlee East, Horden.

### **Purpose of the Report**

- 1 To adopt the revised Habitat Regulations Assessment: Developer Guidance and Requirements in County Durham (to be referred to as 'the Guidance').

### **Executive summary**

- 2 The last version of the Guidance was adopted by the council's Cabinet in January 2019 and published as part of the suite of evidence base documents for the County Durham Plan pre-submission draft.
- 3 There are nine European Protected Sites (and one potential Special Protection Area) in County Durham which are predominantly located in the western uplands and along the coastline. The council has a duty to ensure that all the activities it controls, including land-use planning does not harm any of the sites or the natural processes that support them.
- 4 The Habitat Regulations Assessment Developer Guidance was originally adopted by Cabinet in January 2019 and has been developed to address the responsibilities of the council and developers in respect of Habitat Regulation Assessment (HRA) under the EU Habitats and Wild Birds Directive and the Conservation of Habitats and Species Regulations 2017 (as amended in 2018). Specifically, in relation to

types of development which increase recreational pressure (e.g. residential development, visitor accommodation and visitor attractions) falling within 6km of the Durham Coast and associated European sites. This approach is supported through the Internationally Designated Sites policy of the County Durham Plan.

- 5 Following consultation on the Guidance document, as part of the consultation undertaken for the County Durham Plan, suggestions were made by key stakeholders to provide clarity on the council's approach. These comments have been reviewed and amendments made to the Guidance where appropriate.

### **Recommendation**

- 6 The Corporate Director of Regeneration and Local Services, in consultation with the Portfolio Holder for Regeneration and Economic Development, is recommended to:
  - (a) adopt the revised Habitat Regulations Assessment: Developer Guidance and Requirements in County Durham.

## **Background**

- 7 The EU Habitats and Wild Birds Directives aim to protect Europe's most important habitats and species. They primarily achieve this by requiring:
  - (a) The designation and protection of a network of land and marine habitats (European Protected Sites); and
  - (b) The protection of certain animals and plants of European importance and all naturally occurring wild birds (European Protected Species).
- 8 There are nine European Protected Sites (and one potential Special Protection Area) in County Durham which are predominantly located in the western uplands and along the coastline. The council has a duty to ensure that all the activities it controls, including land-use planning does not harm any of the sites or the natural processes that support them. In order to determine whether planning proposals are likely to harm a European Protected Site(s) or not, an assessment of their effects is required. This is known as Habitats Regulations Assessment (HRA). Whilst it is the responsibility of the council, as the competent authority, to undertake the HRA, those proposing or submitting planning applications will need to provide the council with sufficient information and evidence to enable the assessment to be undertaken.
- 9 The purpose of the Developer Guidance (attached at Appendix 3) is to explain the responsibilities of the council and developers in respect of Habitat Regulation Assessment (HRA) and outlines the coastal mitigation strategy which developers may wish to adopt to ensure that the recreational pressure arising as a result of their development can be avoided.
- 10 The last version of the Guidance was adopted by the council's Cabinet in January 2019 and published as part of the suite of evidence base documents for the County Durham Plan pre-submission draft.

## **Consultation**

- 11 The County Durham Plan Pre-Submission Draft and supporting documents were consulted on widely from 25 January until 8 March 2019.
- 12 Comments were received on the Guidance and as a result some amendments have been made to the document to improve clarity and effectiveness. These amendments are shown in the schedule of changes at Appendix 2. A final version of the guidance which includes all the amendments can be found at Appendix 3 and a tracked-changes

version of the guidance can be found at Appendix 4 for ease of reference.

- 13 The main changes are in relation to how the cost of mitigation has been calculated for sites allocated within the County Durham Plan and any unallocated windfall sites coming forward as planning applications.
- 14 Regardless of whether a site is allocated or not allocated there are three avoidance and mitigation measures identified in the guidance which need to be applied.
  - Measure 1 provides a general presumption against any net increase in development within 0.4km of the coast and which, due to proximity, is unlikely to be successfully mitigated.
  - Measure 2 seeks to provide or enhance suitable natural greenspace which will relieve pressure on protected sites by providing alternative areas for recreation.
  - Measure 3 provides mitigation measures which allow the public to continue to be able to enjoy visiting the protected areas, in ways that do not damage the sensitive/qualifying habitats or species.
- 15 Whilst it is relatively straight forward to calculate the costs for mitigation measures required to offset any impacts for known (allocated) sites, as their variables (such as location, scale, proximity to protected sites / alternative greenspace and likely impact) can be assessed, it is more difficult to determine what the impacts may be for windfall sites. The amendments to the document therefore seek to make clear that all 3 avoidance and mitigation measures need to be taken into account in order to deliver the required mitigation and delivery of the strategy.
- 16 A number of minor amendments relating to consistency of language and typographical changes have also been made, as shown in Appendix 2.
- 17 The Guidance is a working document and will be reviewed for its effectiveness at least every 5 years or sooner if new evidence emerges or monitoring results indicate that a more urgent review is required.

## **Conclusion**

- 18 The local authority and developers have responsibilities in respect of Habitat Regulations Assessments. The Guidance aims to explain these responsibilities and sets out in greater detail the council's coastal avoidance and mitigation strategy. This will give certainty to the council, developers and statutory bodies that these responsibilities are being taken seriously and that there is a clear methodology for protecting Europe's most important habitats and species whilst allowing

appropriate development to take place. The changes made to the Guidance aim to make this document easier to use, both for developers looking to bring forward sites which may impact on European sites and planning officers in the decision-making process.

### **Background papers**

19 None

### **Other useful documents**

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## **Appendix 1: Implications**

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### **Legal Implications**

This guidance document seeks to ensure the responsibilities of the council in respect of Habitat Regulation Assessment (HRA) under the EU Habitats and Wild Birds Directive and the Conservation of Habitats and Species Regulations 2017 (as amended in 2018) are met. The preparation of the guidance has been informed by a continuous dialogue with the council's legal team and Natural England as statutory consultee.

### **Finance**

Mitigation contributions from new development will help to meet the cost of ongoing monitoring to ensure the measures advocated are effective. Some monitoring or more detailed studies may need to be carried out as part of our statutory duties.

### **Consultation**

None.

### **Equality and Diversity / Public Sector Equality Duty**

None.

### **Human Rights**

None.

### **Crime and Disorder**

Mitigation measures will seek to ensure the protection of European Protected Sites by minimising damage to sites, disturbance to species caused by recreational pressure and antisocial behaviour.

### **Staffing**

Staff are in place to undertake HRA for planning applications and collect and disseminate mitigation contributions from developers.

### **Accommodation**

None.

### **Risk**

Not having an agreed mitigation strategy makes it more difficult to resist inappropriate development, negotiate appropriate levels of mitigation and to

provide the necessary certainty to facilitate appropriate development to support the local economy. Failure to ensure the protection of protected sites and species may result in prosecution.

### **Procurement**

When required, consultants have been commissioned to carry out monitoring and provide evidence studies in accordance with the council's procurement rules/procedures.

## Appendix 2: Schedule of Changes

This appendix lists the changes that have been made to the guidance document following consultation.

Section and page number	Change made	Notes
Executive Summary, page 3	Bullet points reinstated.	Formatting correction.
Coastal European Protected Sites, page 4, 3 <sup>rd</sup> paragraph	'The strategy recommends' changed to 'The strategy requires'.	To reflect legislative requirement for avoidance and mitigation measures in accordance with HRA.
Coastal European Protected Sites, page 4, 3 <sup>rd</sup> paragraph bullet points	Inclusion of the word 'alternative' before greenspaces.	For consistency of terminology within the document.
Coastal European Protected Sites, page 4, 5 <sup>th</sup> paragraph.	Removal of 'Any development with a 0.4km straight line distance of the boundary of Durham's Coastal N2K sites will be assessed on its own merits with regards to the Habitats Directive. If significant impact cannot be precluded, a detailed project-level AA must ensure no adverse effect. Within this zone an significant adverse effect can only be avoided or mitigated in exceptional circumstances, therefore there will be a general presumption against new residential development within 0.4km of the European Protected Sites boundary'. Inclusion of new paragraph 'There will be a general presumption against new development which is likely to increase recreational pressure within 0.4km of the European Protected Sites boundary. Within this zone it is likely that an adverse effect can only be avoided or mitigated in exceptional circumstances. Any development with a 0.4km	To improve clarity of approach.



	straight line distance of the boundary of Durham's Coastal N2K sites will be assessed on its own merits with regards to the Habitats Directive. If significant impact cannot be precluded, a detailed project-level AA must ensure no adverse effect.'		
How to use this document, page 7	Inclusion of summary flowchart.	To improve clarity of process.	
Coastal Avoidance and Mitigation Strategy, page 19, paragraph 3.0.2	Measure 2, inclusion of the word 'alternative' before greenspaces.	For consistency of terminology within the document	
Coastal Avoidance and Mitigation Strategy, page 21, paragraph 3.0.6	Removal of 'the council will not be able to determine the application conclude that there will be no likely significant effects to coastal European Protected sites. As a result'	To improve clarity of approach.	
Types of Development Included, page 23, paragraph 3.1.6	Inclusion of footnote 'Statement on behalf of Natural England 22/01/2018, Appeal reference APP/D3640/W/17/3184628'.	Signpost to appeal decision which clarifies Natural England's position.	
Measure 1, page 27, Paragraph 3.3.3	Bullet 1 – removal of 'either through the planning process or in support of housing allocations in the County Durham Plan'.  Bullet 2 – removal of 'this is more likely to apply to large residential proposals e.g. 100+ dwellings' and inclusion of 'For large scale applications (i.e. of 100 houses or more) it is expected that there will be adequate on site provision of alternative greenspace'.  Addition of bullet 3 – 'A combination of the two if some provision can be made onsite, with linking accessible greenspace nearby (within 500m)'.	Bullet points reworded to improve clarity of process.	

Measure 2, page 29, paragraph 3.3.8	Inclusion of the word 'alternative' before greenspaces.	For consistency of terminology within the document.
Measure 2, page 36, paragraph 3.3.10	Inclusion of 'These sites, if brought forward, will be costed on a site by site basis in addition to the CAMMs (Tier 2) measures identified.'	To improve clarity of approach.
Measure 2, page 38, Medieval village of Yoden.	Inclusion of footnote 'It is recognized that part of the site is a geological SSSI, and as such not all of the site would be utilised as part of any mitigation measures.'	To improve clarity of approach.
Measure 3, page 46, paragraph 3.4.3	Inclusion of the word 'alternative' before greenspaces.	For consistency of terminology within the document
Measure 3, page 46, paragraph 3.4.4	Inclusion of the word 'alternative' before greenspaces.	For consistency of terminology within the document
Implementation and Monitoring, page 47, green box.	'The strategy recommends' changed to 'The strategy requires'.  Inclusion of pence to required planning contribution i.e. corrected from £662 to £662.43.	To reflect legislative requirement for avoidance and mitigation measures in accordance with HRA.  Typographical error.
Implementation and Monitoring, page 47, paragraph 4.0.1	Change of wording from 'cost of measure 2 plus 3' to 'cost of measures 2 and 3'.  Inclusion of an example calculation box, in words and numbers.	To improve clarity of approach.
Implementation and Monitoring, page 47, paragraph 4.0.2	Inclusion of the words 'Measure 3' before Tier 2 and example calculation box, in words and numbers.	To improve clarity of approach.

<p>Implementation and Monitoring, page 48, paragraph 4.0.4</p>	<p>Inclusion of the word 'them' in the first sentence.</p>	<p>Typographical error – missing word.</p>
<p>Implementation and Monitoring – Measure 2, page 48, paragraph 4.0.7</p>	<p>Inclusion of additional wording 'Whilst alternative greenspace for the allocated sites has been accounted for, the provision or enhancement of alternative greenspace for windfall sites...'</p>	<p>To improve clarity of approach.</p>
<p>Implementation and Monitoring – Measure 2, page 49, paragraph 4.0.8</p>	<p>Inclusion of the word 'alternative' before greenspaces.</p>	<p>For consistency of terminology within the document</p>
<p>Explanatory Note, page 56, bullet 7</p>	<p>Inclusion of the word 'alternative' before greenspaces.</p>	<p>For consistency of terminology within the document</p>