

INSPECTOR'S NOTE

Habitats Regulation Assessment: CJEU judgment in People over Wind, Peter Sweetman v Coillte Teoranta

1. The HRA carried out for the Local Plan states that no Appropriate Assessment (AA) has been carried out. In a number of places in the HRA it is stated that, once the competent authority is satisfied that mitigation can be carried out, or provided the policy wording refers to mitigation, this will suffice and no AA is required at plan level. This is repeated in a number of places.

2. Also, as regards Liverpool John Lennon Airport (LJLA) and the Port of Liverpool, the HRA concludes that there could be several likely significant effects on European designated sites from the expansion of LJLA (Policy EC7) but that the policy "does not present a mechanism for a likely significant effect". As regards the Ports, the HRA says Policy EC8 "does not allocate or promote development".

3. However, that does not appear correct. The expansion of LJLA in line with the masterplan is supported by the Plan, subject to AA. It is "a key spatial priority" (paragraph 5.8). The "sustainable" development of the Ports is also supported (also paragraph 5.8). These therefore form part of the plan's proposals. The plan is sufficiently supportive of the expansion of LJLA to release Green Belt land, for example, so the expansion proposals evidently form part of the plan provisions. The plan clearly does promote development in both LJLA and the Ports.

4. There are a number of other aspects of the plan that could have likely significant effects on European designated sites. The HRA refers to the plan's housing and employment provisions, but there are others. An example is the choice of locations for wind turbines.

5. In People over Wind, Peter Sweetman v Coillte Teoranta the CJEU issued a judgment which ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures should be assessed within the framework of an appropriate assessment 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.

6. The HRA report includes information that identifies likely significant effects on European site and their designated features but concludes that they can be mitigated through avoidance or

reduction measures, and it does not go on to the AA stage. However, the implication of the CJEU judgment is 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.

7. In these circumstances, the Council should:

- confirm the extent to which it considers its HRA report is legally compliant in light of the judgment;
- re-visit the screening assessment in doing so;
- undertake any necessary appropriate assessment.

8. Once the Council has taken legal advice and has given some thought to the scale of these tasks I would be grateful for an indication of the timescale for this work.

Jonathan Bore
INSPECTOR

26 November 2018