

### HRA OF THE LOCAL PLAN 2030

1. The Inspectors have drawn the Council's attention to the judgment of the Court of Justice of the European Union (CJEU) in the *People over Wind* case. Although there was English case law which took a different view of the issue, there was long-standing European Commission guidance which took the same approach as the CJEU has now endorsed. The CJEU decision is not, therefore, a surprise. The Council had adopted an appropriately precautionary approach to its Habitats Regulations Assessment (HRA).
2. The HRA (SD11) immediately screens out some elements of the Local Plan because it is clear that they are not likely to have a significant effect on a European site. Some elements of the Local Plan are then subjected to further consideration (in Table 2) to judge whether they are likely to have a significant effect on a European site. The conclusion is that the Local Plan is not likely to have a significant effect on a European site and that therefore Appropriate Assessment (AA) is not required.
3. The policies in Table 2 contain protective wording, the effect of which is to prevent adverse effects on protected sites. This is different from policies that require "mitigation" as properly so called, which seeks to avoid or reduce those effects.
4. Whilst the word "mitigation" does appear in SD11, it does not actually refer to avoidance or reduction measures which would qualify as mitigation properly so called. The Local Plan's policies, as assessed in SD11, provide integral and intrinsic protection against any risk of adverse effects, rather than mitigation, and thus were appropriately taken into account. The HRA does not rely on avoidance or reduction measures to conclude that there would be no likely significant effects on the European sites. The HRA did not screen out likely significant effects on the grounds of avoidance or reduction measures.
5. In no case in SD11 is a "mitigation" provision an essential part of the conclusion that, despite the likelihood of significant effects, no AA of the Local Plan is necessary. In that respect, the HRA of the Local Plan is quite unlike the wind farm project in *People over Wind*, in which the conclusion reached by the Irish authority that "an appropriate assessment is not required was ... on the basis of the distance between the proposed [project] and the European sites, **and** the protective measures" [emboldening added]. Those "protective measures" were planning conditions, whereas Table 2 refers to policy protections that are built into the Local Plan to ensure that inappropriate planning permissions cannot be granted in the first place. The provisions are integral to the Local Plan and its policies.
6. It is confirmed that, in the Council's opinion, the Local Plan does not require AA. The approach taken in SD11 is legally compliant and the requirements of the Habitats Directive and Regulations have been met. The Local Plan will not lead to any likely significant effect on European protected sites.

28<sup>th</sup> June 2018.