

Joint Local Plan Councils' response to the Inspectors' query

On Friday 11 May, the JLP Councils received a query from the JLP Inspectors asking the Councils to confirm the extent to which they consider the Joint Local Plan HRA to be legally compliant in light of the recent Court of Justice of the EU judgement (*People over Wind & Sweetman v Coillte Teoranta Case C-323/17*).

We have looked at this judgement, alongside the summary statement provided by DTA in their HRA Handbook, and we have concluded that this recent judgement does not have any implications for our HRA. The reasons we have come to this conclusion are as follows:

On the 12 April 2018, the Court of Justice of the European Union issued a judgment (*People over Wind & Sweetman v Coillte Teoranta Case C-323/17*) which ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) 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.

The Councils consider that the Habitat Regulations Assessment (SUB10 as amended through EXD22 and EXD22A) is legally compliant and consistent with the ruling inasmuch as:

- All impacts on European Sites from the policies within the Joint Local Plan (including allocations) were identified and screened in at the 'Screening Stage' in chapters 4 and 5 of the HRA. Impact avoidance or reduction measures were not considered at this stage.
- All identified impacts from Joint Local Plan policies (including allocations) and the measures necessary to avoid or reduce those impacts were considered within the framework of the Appropriate Assessment in chapters 6-12 of the HRA.
- Any changes to policies to incorporate impact avoidance or reduction measures were identified within the 'Mitigation Recommendations' section of each respective Appropriate Assessment chapter (chapters 6 to 12).

Therefore the measures intended to avoid or reduce the harmful effects of the Joint Local Plan on the European designated sites have all been included within the Appropriate Assessment and as such the JLP Councils consider that the Habitat Regulations Assessment (SUB10 as amended through EXD22 and EXD22A) is legally compliant.

The Councils have also sought the advice of Natural England in this matter. They have responded to say that they agree with the Councils' conclusions in this matter – their email is attached for information.

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