

Dore Neighbourhood Plan HRA screening- Ecology Unit consultation

1. Introduction.

- 1.1. The SCC Forward and Area Planning Team have requested that the SCC Ecology Unit review the draft Habitats Regulations Assessment (HRA) screening of the pre-submission draft of the Dore Neighbourhood Plan (DNP). This is triggered by the responses from statutory consultees, specifically Natural England who stated:

“Natural England is not aware of significant populations of protected species which are likely to be affected by the policies/proposals within the plan. It remains the case, however, that the responsible authority should provide information supporting this screening decision, sufficient to assess whether protected species are likely to be affected.”

- 1.2. The Ecology Unit has been asked to review the HRA screening opinions in respect of possible impacts on protected species and consider additional information that should be included in support of screening decisions.

2. Legislative Background.

- 2.1. It is a requirement of Article 6(3) of the EU Habitats Directive and regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended) that a screening assessment is carried out to assess the likely significant effects of a plan (or project) on any European site. The HRA screening process is specifically relevant to the possible impacts of a plan on Natura 2000 sites within 10-15km of the plan boundaries. It differs from the SEA process in that it applies a precautionary approach to the integrity of Natura 2000 sites that could be directly or indirectly impacted upon by the plan or in combination with other plans.
- 2.2. The legislation requires that where there is a “risk” of a significant effect on a European site, either individually or in combination with other plans then an Appropriate Assessment must be carried out.

3. Comments and consultation response.

- 3.1. The Aims of the DNP include the following:

- *Protection and enhancement of the natural beauty of and access to the Eastern Moorland Fringe of the Peak District National Park.*
- *Protection and enhancement of the Sheffield Green Belt and its green infrastructure which constitutes the setting of the National Park and the environmentally sensitive countryside character around Sheffield’s South-Western suburbs.*

- 3.2. The consultation response letter from Natural England is generally positive and in agreement with the draft screening assessment. However they ask for more specific information on the presence of protected species within the boundary of the DNP which are associated with the Natura 2000 sites within the boundary:

“We are not aware of significant populations of protected species which are likely to be affected by the policies / proposals within the plan. It remains the case, however, that the responsible authority should provide information supporting this screening decision, sufficient to assess whether protected species are likely to be affected”

This request is more specifically related to the HRA screening; however other than in the heading of the Natural England letter and the two introductory paragraphs the text of the letter consistently refers to the SEA/SA screening assessment. I think we should assume that they are referring to the HRA screening assessment in this specific request.

- 3.3. The DNP at 2.3 in the pre-submission consultation draft specifies the current development plans of the both LPA's that it extends across; the Peak District National Park Authority, and Sheffield City Council. As required by the NPPF, the DNP is in general conformity with the local plans within the planning guidance hierarchy. This is confirmed in Table 1 Pg.7. However there are departures from the two Core Strategies; e.g. DN Policy 5 is in favour of a more environmentally protective approach to infill housing development which is a departure from the SCC Core Strategy. There are other areas where there is a small degree of non-conformity with higher tier planning policy NPPF/Core Strategies but this does not appear to be significant. Planning guidance requires general conformity rather than absolute conformity. This should be shown clearly in a Basic Condition Statement, prepared in support of the consultation submission, which provides a clear format for identifying any departures from higher/local policy and the reasons. I have not found a Basic Condition Statement in the attachments provided but assume that one has been prepared.

- 3.4. To address the specific concerns of Natural England, a data search was carried out to provide clear evidence that no 'significant populations' of protected species would be affected by the DNP policies. Natura 2000 sites include Peak District Moors (South Pennine Moors Phase1) Special Protection Area (SPA) and the South Pennine Moors Special Area of Conservation (SAC). These two sites are to a large degree contiguous and lie in the western section of the DNP area. The protected

species referred to by Natural England are the three species of birds that are the qualifying features from the SPA: merlin (*Falco columbarious*) golden plover (*Pluvialis apricaria*) and short-eared owl (*Asio flammeus*) all of which have relatively substantial breeding populations within the boundaries of the SPA. The SPA lies wholly within the PDNP boundary and its eastern extent is generally contiguous with the national park boundary.

- 3.5. Policies of the PDNPA have been assessed through the HRA process and these are fully protective of the integrity of the SPA and through that, its qualifying features. The area of the DNP within the SCC policy contain that is relevant to the presence of protected species is that referred to in DN Policy 2 “The land lying between the boundary of the PDNP and the developed Dore Village.... “ is considered to be the area referred to by NE in respect of protected species presence. The Sheffield Biological Records Centre (SBRC) has identified **two** records of the presence of protected species in that land between the urban centre of Dore and the boundary of the SPA and PDNP over the past 10 years. This indicates that there is little territory extension by the three qualifying species outside of the SPA. Consequently we can show through evidence from the (SBRC) that there are not ‘significant populations’ of protected species that would be affected by the policies of the DNP.
- 3.6. The lack of ‘significant populations’ of protected species in the areas potentially affected by future urban land use development and the precautionary approach to additional housing provision in Policy DN5 provides evidence that it is not likely that there would be significant negative effects from policy DN5 or other DNP policies on Natura 2000 sites within 15km of the DNP area.
- 3.7. There is no reference in consultation responses to the potential impacts of atmospheric emissions in respect of the SEA and potential impacts on European sites or UK statutory sites. It is considered that outside of the potential impacts of increases in road traffic there are no allocations, policies or aims in the DNP that would impact upon the integrity of Natura 2000 sites.

NB

A recent ECJ ruling (16/11/2018) is summarised below

Appropriate assessments of development plans affecting European conservation areas must identify and examine the implications for habitats and species to be found outside the boundaries of that

site. This emanates from a planning issue in Ireland and as can be seen it only refers to 'projects' but it would not be unreasonable to consider that this ruling may also include 'plans'

The judgment states that:

1. Article 6(3) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora must be interpreted as meaning that an 'appropriate assessment' must, on the one hand, catalogue the entirety of habitat types and species for which a site is protected, and, on the other, identify and examine both the implications of the proposed project for the species present on that site, and for which that site has not been listed, and the implications for habitat types and species to be found outside the boundaries of that site, provided that those implications are liable to affect the conservation objectives of the site.
2. Article 6(3) of Directive 92/43 must be interpreted as meaning that the competent authority is permitted to grant to a plan or project consent which leaves the developer free to determine subsequently certain parameters relating to the construction phase, such as the location of the construction compound and haul routes, only if that authority is certain that the development consent granted establishes conditions that are strict enough to guarantee that those parameters will not adversely affect the integrity of the site.
3. Article 6(3) of Directive 92/43 must be interpreted as meaning that, where the competent authority rejects the findings in a scientific expert opinion recommending that additional information be obtained, the 'appropriate assessment' must include an explicit and detailed statement of reasons capable of dispelling all reasonable scientific doubt concerning the effects of the work envisaged on the site concerned.
4. Article 5(1) and (3) of, and Annex IV to, Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, must be interpreted as meaning that the developer is obliged to supply information that expressly addresses the significant effects of its project on all species identified in the statement that is supplied pursuant to those provisions.
5. Article 5(3)(d) of Directive 2011/92 must be interpreted as meaning that the developer must supply information in relation to the environmental impact of both the chosen option and of all the main alternatives studied by the developer, together with the reasons for his choice, taking into account at least the environmental effects, even if such an alternative was rejected at an early stage.