

# Earswick Neighbourhood Plan

## Habitats Regulation Assessment Addendum

### Review in light of judgement ‘People over Wind’ and City of York’s Local Plan HRA Appropriate Assessment (April 2018)

**Review Date: August 2018**

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#### **Background**

The Habitat Regulations Assessment (HRA) for the Earswick Neighbourhood Plan was Submitted in March 2018 by the Neighbourhood Planning Group following 2 stages of Pre Submission consultation and receipt of consultation comments from Statutory Bodies and City of York Council. The conclusion of the HRA states (para 7.4):

*“In terms of the requirement for the Earswick Neighbourhood Plan to be subject to the Habitat Regulation Assessment, the Appraisal set out in Section 6 of this report concludes that no further work will be required in order to comply with the Habitat regulations. There are no European sites within the boundaries of the Parish; however, the Screening Report did examine its impact on Strensall Common SAC approximately 8 kms away from the Parish. The assessment finds that no significant adverse effects are likely as the result of the implementation of the Neighbourhood Plan. There is no requirement to prepare an appropriate assessment.”*

In April 2018, a notable legal judgment<sup>1</sup>, in an unrelated case , held that mitigation measures should be disregarded when carrying out HRA screening. The Earswick Neighbourhood Plan has therefore been reviewed in light of this judgment.

In addition, with regard to the City of York Council Local Plan process, the relevant HRA has been taken to Appropriate Assessment to accord with the judgment<sup>1</sup>. City of York Council submitted their Local Plan for Examination on 25th May 2018 and two Planning Inspectors have been appointed. The HRA (April 2018) was submitted together with the Local Plan but is subject to ongoing discussion with Natural England. It is therefore considered appropriate to review the HRA Screening for the Neighbourhood Plan against the Local Plan HRA Appropriate Assessment (April 2018) for in-combination effects.

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<sup>1</sup> CASE C 323/17 COURT OF JUSTICE OF THE EUROPEAN UNION

## Review

### **Policy Screening**

The HRA part of the Screening Assessment looks at each of the policies in detail against the designated sites nature conservation qualities. All the policies/sites are assessed as having no likely significant effect (NLSE) on the biodiversity site's qualifying features and for the majority of policies there is no reference to mitigation in relation to the effects of the policies.

Policy ENP3: Flood Risk and Climate Change seeks to limit the impact of flooding and effects of climate change. Existing HRA analysis states "*...any development proposals for this area should be subject to ENP policies EMP3 and ENP5 thus offering enhanced protection to the SLI [referring to River Foss Site of Local Interest for nature Conservation]*". Existing analysis also acknowledges that the River Foss runs along the western boundary of the Neighbourhood Plan area. The River Foss joins the River Ouse and is therefore a pathway that leads to the River Humber (SPA) further downstream. SLI's are however, local designations and are not designated European sites. Although identified as a pathway to a designated site, the policy aims to retain the status quo or minimise effects in relation to flood risk. We therefore continue to concur that there are no likely significant effects as a result of the policy and the issue does not need to be taken further.

In addition, analysis for the policies ENP1, ENP2, ENP5 and ENP12 state: "*where significant effects are likely or unknown an Appropriate Assessment will be required to be assessed, alone and in combination with other plans or projects and the development can only be permitted if significant effects are avoided or adequately mitigated for*". For the avoidance of doubt, the policies have been reviewed individually to consider the analysis in light of judgment:

Policy ENP1: Windfall Development - This policy seeks to retain and enhance natural boundaries. Although use of this statement defers effects to subsequent plans and projects, this statement is reasonable for this policy given that the nature of windfall development is that its location cannot be predicted at this stage.

Policy ENP2: Housing mix – The Neighbourhood plan does not allocate sites for development. This policy references the types of housing that should be provided if they come forward. Therefore this policy is not relevant to and will have no likely significant effects on European sites.

Policy ENP5: Local Green Spaces – This policy seeks to retain open and local green space. This is positive in ensuring local provision and dissuading the public to travel for recreational purposes. Recreational pressure is an issue identified in relation to Strensall Common (SAC) within 8km of the parish. Given the policy aims to retain openspace it is likely to have a

positive effect in the locality and no likely significant adverse effects as a result of the neighbourhood plan are anticipated.

Policy ENP12: Protecting Footpaths/ Bridleways – This policy seeks to support facilities for walking and horse-riding. The analysis considers that as the policy is enacted, then it will be necessary to assess whether it is likely to lead to significant in-direct impacts on the designated sites. Although use of this statement defers effects to subsequent projects, this statement is reasonable for this policy as the effect of this policy is unknown. It is not anticipated to have likely significant effects due to proximity from designated sites.

### **In combination effects**

The Screening Assessment concludes that (para 6.7) *“Given that the plan i) does not allocate sites ii) does not amend or introduce defined Limits to development iii) is in general conformity with the saved and emerging policies of the City of York Local Plan, it is concluded that no significant in-combination effects are likely to occur as a result of its implementation”*.

For the avoidance of doubt, further consideration should be given to the latest Local Plan HRA (April 2018), which takes forward several issues to Appropriate Assessment (AA). The issues included:

- Recreational pressure, change to the hydrological regime and the effect of air pollution on Strensall Common SAC; and
- Recreational pressure at the Lower Derwent Valley SPA and impacts on the bird communities that also utilised land beyond the European site.

Appropriate Assessment concluded that the Council could ascertain that there would be no adverse effect on the integrity of the Strensall Common in terms of air pollution and effects on the aquatic environment without the need for further mitigation, other than mitigation in relation to recreational pressure provided for by minor modification to clarify wording to Policies SS13, SS18, SS19 and EC1<sup>2</sup>. There were no residual effects and no need for an in-combination assessment.

Although Strensall Common SAC is considered in the assessment, it is considered that the Earswick Neighbourhood Plan would not have in-combination effects with the emerging York Local Plan (2018).

### **Summary**

- Assessment of the Neighbourhood Plan policies in the Screening are not likely to have likely significant effects;

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<sup>2</sup> Minor modifications set out in document CD0003 in the York Local Plan Examination Library: [https://www.york.gov.uk/downloads/file/15871/cd003\\_-\\_city\\_of\\_york\\_local\\_plan\\_publication\\_draft\\_schedule\\_of\\_minor\\_modifications\\_to\\_25th\\_may\\_2018\\_pdf](https://www.york.gov.uk/downloads/file/15871/cd003_-_city_of_york_local_plan_publication_draft_schedule_of_minor_modifications_to_25th_may_2018_pdf)

- There are no changes as a result of an update to considering the in-combination effects with the emerging Local Plan for York;
- Natural England raised no concerns with the Neighbourhood Plan and agreed with conclusions as presented in the original HRA Screening Assessment.

### **Conclusion**

The Habitat Regulations Assessment completed for the Earswick Neighbourhood Plan (March 2018) remains appropriate and no changes are considered necessary in light of the 'People Over Wind'<sup>1</sup> judgement.