



Buckinghamshire Council

Habitats Regulations Assessment

For the Bierton with Broughton Neighbourhood  
Development Plan

**FINAL version**

**August 2020**

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## 1. Introduction

1.1 The screening statement will consider whether the Neighbourhood Development Plan requires a Habitats Regulations Assessment. This is a requirement of Regulation 106 of the Conservation of Habitats and Species Regulations 2017<sup>1</sup>

## 2. The Habitats Regulations Assessment (HRA) process

2.1 The application of HRA to neighbourhood plans is a requirement of the Conservation of Habitats and Species Regulations 2017, the UK's transposition of European Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (the Habitats Directive).

2.2 The HRA process assesses the potential effects of a land-use plan against the conservation objectives of any European sites designated for their importance to nature conservation. These sites form a system of internationally important sites throughout Europe and are known collectively as the 'Natura 2000 network'.

2.3 European sites provide valuable ecological infrastructure for the protection of rare, endangered or vulnerable natural habitats and species of exceptional importance within the EU. These sites consist of Special Areas of Conservation (SAC), designated under the Habitats Directive and Special Protection Areas (SPA), designated under European Directive 2009/147/EC on the conservation of wild birds (the Birds Directive). Additionally, Government policy requires that sites designated under the Ramsar Convention (The Convention on Wetlands of International Importance, especially as Waterfowl Habitat) are treated as if they are fully designated European sites for the purpose of considering development proposals that may affect them.

2.4 Under Regulation 106 of the Habitats Regulations, the assessment must determine whether or not a neighbourhood plan is likely to have a significant effect on a European Site. The process is characterised by the precautionary principle. The European Commission describes the principle as follows:

“If a preliminary scientific evaluation shows that there are reasonable grounds for concern that a particular activity might lead to damaging effects on the environment, or on human, animal or plant health, which would be inconsistent with protection normally afforded to these within the European Community, the Precautionary Principle is triggered.”

2.5 Decision-makers then have to determine what action/s to take. They should take account of the potential consequences of no action, the uncertainties inherent in scientific evaluation, and

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<sup>1</sup> <https://www.legislation.gov.uk/uksi/2017/1012/regulation/106/made>

should consult interested parties on the possible ways of managing the risk. Measures should be proportionate to the level of risk, and to the desired level of protection. They should be provisional in nature pending the availability of more reliable scientific data.

2.6 Action is then undertaken to obtain further information, enabling a more objective assessment of the risk. The measures taken to manage the risk should be maintained so long as scientific information remains inconclusive and the risk is unacceptable.

2.7 The hierarchy of intervention is important: where significant effects are likely or uncertain, plan makers must firstly seek to avoid the effect through for example, a change of policy. If this is not possible, mitigation measures should be explored to remove or reduce the significant effect. If neither avoidance, nor subsequently, mitigation is possible, alternatives to the plan should be considered. Such alternatives should explore ways of achieving the plan's objectives that do not adversely affect European sites.

2.8 If no suitable alternatives exist, plan-makers must demonstrate under the conditions of Regulation 107 of the Habitats Regulations, that there are Imperative Reasons of Overriding Public Interest (IROPI) to continue with the proposal. The following European site was identified using a 15km area of search around the Bierton Neighbourhood Area as well as including sites which are potentially connected (e.g. hydrologically) beyond this distance:

• **Chiltern Beechwoods Special Area of Conservation (SAC)**

**The nearest part of the Chiltern Beechwoods SAC** to Bierton with Broughton parish are:

- 7.3km to Little Kimble Railway Station environs
- 7.6km to Hastoe-West Leith (south of Tring)
- 12.8km to Albury Common/ Old Copse (near to Ashridge National Trust site)

2.9A qualifying body which submits a proposal for a neighbourhood development plan must provide such information as the competent authority may reasonably require for the purposes of the assessment under regulation 105 or to enable it to determine whether that assessment is required. The information received is a draft (non-statutory) version of what will become the neighbourhood plan

2.10 The Council must under Regulation 105 provide such information as the appropriate authority (Natural England) may reasonably require for the purposes of the discharge by the appropriate authority of its obligations. That information is this screening recommendation and a draft version (non-statutory) version of what will become the neighbourhood plan.

### **3. People over Wind**

- 3.1 The HRA Screening in light of the 2017 'People over Wind' Court of Justice of the European Union (CJEU) case<sup>2</sup> which ruled that *where there would be* likely significant effects at the HRA Stage 1 Screening stage, mitigation measures (specifically measures which avoid or reduce adverse effects) should be assessed as part of an Appropriate Assessment, and should not be taken into account at the screening stage.
- 3.2 The Council considers that in re-applying the criteria in para 4.2 of this HRA Screening on the likely the screening outcome and considering the 'People over Wind' CJEU case, there would be *still no likely significant effect* because there are no land allocations and development coming forward is restricted to within development settlement boundaries.

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<sup>2</sup> Case C 323/17, REQUEST for a preliminary ruling under Article 267 TFEU from the High Court (Ireland), made by decision of 10 May 2017, received at the Court on 30 May 2017, in the proceedings People Over Wind, Peter Sweetman

## 4. Assessment Process

### 4.1 Stage of HRA Screening

Stage	Task	Outcome
Stage 1: Screening (the 'Significance Test') <b>that is this current stage</b>	Description of the plan. Identification of potential effects on European Sites. Assessing the effects on European Sites.	Where effects are unlikely, prepare a 'finding of no significant effect report'. Where effects judged likely, or lack of information to prove otherwise, proceed to Stage 2.

### 4.2 Potential impacts and activities adversely affecting European sites

Broad categories and examples of potential impacts on European sites	Examples of activities responsible for impacts
<p><b>Physical loss</b></p> <ul style="list-style-type: none"> <li>• Removal (including offsite effects, e.g. foraging habitat)</li> <li>• Smothering</li> <li>• Habitat degradation</li> </ul>	<p>Development (e.g. housing, employment, infrastructure, tourism)</p> <p>Infilling (e.g. of mines, water bodies)</p> <p>Alterations or works to disused quarries</p> <p>Structural alterations to buildings (bat roosts)</p> <p>Afforestation</p> <p>Tipping</p> <p>Cessation of or inappropriate management for nature conservation</p> <p>Mine collapse</p>
<p><b>Physical damage</b></p> <ul style="list-style-type: none"> <li>• Sedimentation / silting</li> <li>• Prevention of natural processes</li> <li>• Habitat degradation</li> <li>• Erosion</li> <li>• Trampling</li> <li>• Fragmentation</li> <li>• Severance / barrier effect</li> </ul>	<p>Flood defences</p> <p>Dredging</p> <p>Mineral extraction</p> <p>Recreation (e.g. motor cycling, cycling, walking, horse riding, water sports, caving)</p> <p>Development (e.g. infrastructure,</p>

Broad categories and examples of potential impacts on European sites	Examples of activities responsible for impacts
<ul style="list-style-type: none"> <li>• Edge effects</li> <li>• Fire</li> </ul>	<p>tourism, adjacent housing etc.)</p> <p>Vandalism</p> <p>Arson</p> <p>Cessation of or inappropriate management for nature conservation</p>
<p><b>Non-physical (and indirect) disturbance</b></p> <ul style="list-style-type: none"> <li>• Noise</li> <li>• Vibration</li> <li>• Visual presence</li> <li>• Human presence</li> <li>• Light pollution</li> </ul>	<p>Development (e.g. housing, industrial)</p> <p>Recreation (e.g. dog walking, water sports)</p> <p>Industrial activity</p> <p>Mineral extraction</p> <p>Navigation</p> <p>Vehicular traffic</p> <p>Artificial lighting (e.g. street lighting)</p>
<p><b>Water table/availability</b></p> <ul style="list-style-type: none"> <li>• Drying</li> <li>• Flooding / storm water</li> <li>• Water level and stability</li> <li>• Water flow (e.g. reduction in velocity of surface water)</li> <li>• Barrier effect (on migratory species)</li> </ul>	<p>Water abstraction</p> <p>Drainage interception (e.g. reservoir, dam, infrastructure and other development)</p> <p>Increased discharge (e.g. drainage, runoff)</p>
<p><b>Toxic contamination</b></p> <ul style="list-style-type: none"> <li>• Water pollution</li> <li>• Soil contamination</li> <li>• Air pollution</li> </ul>	<p>Agrochemical application and runoff</p> <p>Navigation</p> <p>Oil / chemical spills</p> <p>Tipping</p> <p>Landfill</p> <p>Vehicular traffic</p>

Broad categories and examples of potential impacts on European sites	Examples of activities responsible for impacts
	Industrial waste / emissions
<p><b>Non-toxic contamination</b></p> <ul style="list-style-type: none"> <li>• Nutrient enrichment (e.g. of soils and water)</li> <li>• Algal blooms</li> <li>• Changes in salinity</li> <li>• Changes in thermal regime</li> <li>• Changes in turbidity</li> <li>• Air pollution (dust)</li> </ul>	<p>Agricultural runoff</p> <p>Sewage discharge</p> <p>Water abstraction</p> <p>Industrial activity</p> <p>Flood defences</p> <p>Navigation</p> <p>Construction</p>
<p><b>Biological disturbance</b></p> <ul style="list-style-type: none"> <li>• Direct mortality</li> <li>• Out-competition by non-native species</li> <li>• Selective extraction of species</li> <li>• Introduction of disease</li> <li>• Rapid population fluctuations</li> <li>• Natural succession</li> </ul>	<p>Development (e.g. housing areas with domestic and public gardens)</p> <p>Predation by domestic pets</p> <p>Introduction of non-native species (e.g. from gardens)</p> <p>Fishing</p> <p>Hunting</p> <p>Agriculture</p> <p>Changes in management practices (e.g. grazing regimes, access controls, cutting/clearing)</p>

### Interpretation of ‘likely significant effect’

4.3 Relevant case law helps to interpret when effects should be considered as being likely to result in a significant effect, when carrying out a HRA of a plan.

4.4 In the Waddenzee case<sup>3</sup>, the European Court of Justice ruled on the interpretation of Article 6(3) of the Habitats Directive (translated into Reg. 102 in the Habitats Regulations), including that:

- An effect should be considered ‘likely’, “if it cannot be excluded, on the basis of objective information, that it will have a significant effect on the site” (para 44).

<sup>3</sup> ECJ Case C-127/02 “Waddenzee” Jan 2004.

- An effect should be considered ‘significant’, “if it undermines the conservation objectives” (para 48).
- Where a plan or project has an effect on a site “but is not likely to undermine its conservation objectives, it cannot be considered likely to have a significant effect on the site concerned” (para 47).

4.5 An opinion delivered to the Court of Justice of the European Union<sup>4</sup> commented that:

*“The requirement that an effect in question be ‘significant’ exists in order to lay down a de minimus threshold. Plans or projects that have no appreciable effect on the site are thereby excluded. If all plans or projects capable of having any effect whatsoever on the site were to be caught by Article 6(3), activities on or near the site would risk being impossible by reason of legislative overkill.”*

4.6 This opinion (the ‘Sweetman’ case) therefore allows for the authorisation of plans and projects whose possible effects, alone or in combination, can be considered ‘trivial’ or de minimus; referring to such cases as those “which have no appreciable effect on the site”. In practice such effects could be screened out as having no likely significant effect; they would be ‘insignificant’.

## **5. Assessment of the draft scope for Neighbourhood Plan**

5.1 The plan area is at least 7km from the nearest SAC site. The plan is not proposing to allocate sites for new development. The plan would propose to restrict new housing to no more than 4 houses within defined development boundaries. Outside development boundaries, new housing would be exceptional cases outlined in Draft Policy H2.

5.2 The draft plan proposes development boundaries covering 9 different areas in the neighbourhood area.

5.3 The plan intends to have policies to designated Local Green Spaces and to protect the environment. The only new transport proposals in the plan would be car parking, traffic calming measures and pedestrian crossings. Small and micro business would be encouraged and proposals to expand employment or retail premises existing will be supported as long as they respect heritage and local character.

5.4 In terms of ‘in combination effects’ , the emerging local plan, the Vale of Aylesbury Local Plan currently post-Modifications but at examination, the VALP HRA, has considered the effects of growth 2013-2033 outlined in the VALP upon European sites and no Stage 2 HRA was necessary. The VALP examiner has not indicated any inadequacy as to the HRA reports and process followed for the VALP.

5.5 The condition of the Chiltern Beechwoods SAC has been set out in the HRA for the VALP <https://www.aylesburyvaldc.gov.uk/habitats-regulations-assessment>

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<sup>4</sup> Advocate General’s Opinion to CJEU in Case C-258/11 Sweetman and others v An Bord Pleanala 22nd Nov 2012.

5.6 From the plan proposals there are not considered to be any adverse impacts to SAC sites as described as potential in para 4.2 above.

## **6. Screening Outcome for Bierton with Broughton Neighbourhood Development Plan**

### **No Habitats Regulations Assessment required.**

6.1 The draft Bierton with Broughton neighbourhood plan, which does not propose to allocate any land for development, is not anticipated to have a significant effect on any European Sites, in this case the Chiltern Beechwoods SAC. The plan intends to restrict future housing growth contiguous with existing or committed housing through development boundaries. Vulnerabilities of the SAC are not likely to be exacerbated by an increase in population (e.g. air quality, visitor disturbance, recreation), there are no anticipated likely significant effects of the draft Neighbourhood Plan policies or areas for development on Chilterns Beechwoods SAC. The Neighbourhood Plan is not likely to lead to adverse effects on any European sites alone or in-combination. There is no requirement to prepare an appropriate assessment.

6.2 Natural England have been consulted on a draft of this screening opinion and endorse the screening outcome.

## APPENDIX 1– Consultation Response with Natural England

Dear David,

### Planning consultation: Bierton with Broughton Neighbourhood Plan Draft – HRA Screening Report

**Our ref: 323782**

Thank you for your consultation on the above dated 22 July 2020 which was received by Natural England on the same day.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Based on the Draft Pre-submission Neighbourhood Plan submitted, Natural England consider it unlikely that the proposed development will have a likely significant effect on Chilterns Beechwoods Special Area of Conservation.

As a result we agree with the assessment that the Bierton and Broughton Neighbourhood Plan does not require an Habitats Regulations Assessment.

Should the plan change, please consult us again.

If you have any queries relating to this advice, please contact me on the details below.

Yours sincerely,

Ellen

**Ellen Satchwell**

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<https://www.gov.uk/natural-england>