

Air Quality and Ecological Monitoring at Ashdown Forest: Considering the Current and Future Impacts on the SAC caused by Air Quality and Nitrogen Deposition: Response to Natural England February 2018 Advice.

Background

Wealden District Council as Local Planning Authority is the competent authority for undertaking a Habitat Regulations Assessment for Local Plans. Regulation 105 of the Conservation of Habitats and Species Regulations 2017 states that where a land use plan is likely to have a significant effect on a European site the plan-making authority for that plan must, before the plan is given effect, make an appropriate assessment of the implications for the site in view of that site's conservation objectives. In the light of the conclusions of the assessment the plan-making authority must give effect to the land use plan only after having ascertained that it will not adversely affect the integrity of the European site.

Wealden District Council appointed consultants to provide an evidence base for considering the impact of air pollution on Ashdown Forest Special Area of Conservation. The evidence informs the Habitat Regulations Assessment of the Wealden Local Plan; however it is not the Habitat Regulations Assessment of the Wealden Local Plan. The reason for this is that there are a number of legal matters that need to be considered in the Habitat Regulations Assessment which are not within the remit of the evidence base. In addition, there are a number of other studies that will also be used in the Habitat Regulations Assessment.

Therefore the advice provided by Natural England is advice and not the conclusions of the competent authority and the advice does not form the Habitat Regulations Assessment for the Local Plan.

Competent Authority Views

As competent Authority, Wealden District Council has considered the advice provided and has asked a number of questions of Natural England, in a letter dated 2nd March 2018, to help clarify their comments. In this regard Wealden District Council does not consider the advice to be complete. Wealden District Council considers it is necessary to outline where the advice is not supported by the emerging evidence or where the advice may not meet the habitats legislation. We also consider it necessary to seek further clarification on these matters as well as matters which are not clear from the advice provided. Without clarification on the points raised, we consider that the advice is likely to mislead recipients and misinform debate. As a result of the publication of the advice Wealden District will have to deploy resources to address matters which may therefore never become relevant.

Areas of Disagreement, Concern and Clarification with Natural England advice

Standard methodology – Natural England has used this advice to support the use of a 'standard methodology' which remains undefined. Natural England have been made aware that both DEFRA and the Environment Agency use a more detailed approach and have been asked to clarify their advice to use a less detailed approach which is contrary to the legislation.

Outdated Comments – Comments in relation to a superseded document is included in the advice and these comments are misleading on the basis that the conclusions are no longer relevant.

Use of published studies – Only a small sample of published studies has been cited and the limitations of those studies are not identified.

Additional Work – Throughout the advice additional work is identified. This is contradictory to the Natural England statement that further ecological analysis should not be necessary. Also this additional work will update the evidence base and as a result is likely to make elements of the current advice obsolete. Again it is misleading to publish conclusions from an incomplete evidence base.

Scenarios – The evidence base does not identify which scenarios are to be used in the Habitat Regulations Assessment. It is the role of the Habitat Regulations Assessment to explain the scenarios to be used within the assessment and the reasoning in accordance with the relevant legislation. Notwithstanding this, Natural England have identified their preferred scenario without any reference to the reasons identified by the competent authority on the most appropriate approach. These reasons take into account relevant legislation.

Advice from Centre of Ecology and Hydrology (CEH) – The air quality work undertaken by Air Quality Consultants has been peer reviewed by CEH. It is questioned as to why advice from this organisation is dismissed.

Conservation objectives – It is considered that the conservation objectives are not fully addressed in the response and there are a number of inconsistencies in relation to the impact on integrity between different statements made within the advice document.

SSSI Units – A number of assumptions are made without any reference to evidence.

Legal Matters – There are statements which relate to the Habitats Directive and the Conservation of Habitats and Species Regulations 2017 which require clarification in relation to interpretation, particularly in relation to in combination assessments.

Conclusion

There are a number of statements made within the advice provided by Natural England that may mislead recipients and distract debate if they are not clarified. It will be through the Habitat Regulations Assessment and the appropriate assessment where such matters should be addressed and examined.

However as this information has been prematurely published ahead of the publication of the Wealden Local Plan Habitat Regulations Assessment, it is considered necessary for Wealden District Council to clarify its position where there is disagreement, concern or a requirement for clarification of the advice provided.

Wealden District Council 15th March 2018