

Guildford Local Plan

Wisley Action Group note on the May 2018 Habitats Regulations Assessment

1. A new *Habitats Regulations Assessment for Guildford Borough Proposed Submission Local Plan: Strategy and Sites 2018 Update* was published on 30 May. The 'Explanation of changes' note produced with it says:

"The submitted HRA was compliant with the approach as now clarified because avoidance and mitigation measures have been taken into account in the appropriate assessment stage and not used to "screen out" impacts. However, an opportunity was taken to tighten up the wording in the document to make sure this is absolutely clear and to make other minor updates to the wording, resulting in the HRA May 2018."

2. The assertion that avoidance and mitigation measures were not used to screen out impacts by concluding that there were no likely significant effect is incorrect. For example, the 2017 and 2018 HRAs both say in respect of A35 (former Wisley Airfield) (page 39):

"This policy provides for bespoke SANG, thus if provided to an appropriate standard and in a timely manner will provide a suitable avoidance measure ensure this impact pathway does not result in likely significant effects upon the Thames Basin Heaths SPA, enabling this impact pathway to be screened out. ...

Provided Natural England and Guildford Council are content with the SANG provided and that the SANG and management of the SANG can be secured in perpetuity, there is no reason to conclude that suitable avoidance cannot be provided to ensure that no likely significant effects arise as a result of increased recreational pressure."

3. Similar conclusions are expressed for A38, A46.
4. The Air Quality part of the assessment relies on improvements in emissions factors and background air quality to offset (and indeed reverse) increases in emissions due to the Local Plan proposals (para 10.4.3 to 10.4.6). Chapter 12 repeats this approach:

"12.4.2 Moreover, the conclusion no likely significant effects was based primarily on the following factors:

- The fact that, even allowing for growth 'in combination' in surrounding authorities and Guildford over the plan period, there is forecast to be a net improvement in NOx concentrations and nitrogen deposition rates along all modelling links. Even at the most affected location this improvement is forecast to be retarded to only a small extent by the Guildford Local Plan and is considerably outweighed by the net improvement expected; and

- The fact that total 'in combination' NOx concentrations by 2033, while in some cases still in excess of the Critical Level, are predicted to be well below the level at which effects on vascular plants (other than growth stimulation due to nitrogen deposition) are likely to arise."

5. Para 12.4.3 continues:

“Examination of the air quality modelling in Appendix D shows that NOx concentrations and nitrogen deposition rates within 200m of the Thames Basin Heaths SPA are expected to be better at the end of the plan period than they are at the moment, due to expected improvements in vehicle emissions from the introduction on Euro6 standard vehicles and Government initiatives to improve background air quality.”

6. The HRA therefore relies on improvements which are unrelated to the developments proposed to offset adverse impacts from those schemes. It does that to assert that there are no likely significant effects. *People Over Wind* confirms that it an incorrect approach event to mitigation measures on the same scheme.
7. Other future improvements are not taken into account in either the likely significant effects or the no adverse effect on integrity tests: *Orleans v Vlaams Gewest* (Case C-387/15) [2017] Env. L.R. 12 at para 56, 58; *Briels v Minister van Infrastructuur en Milieu* (C-521/12) [2014] P.T.S.R. 1120. In some circumstances they may be compensatory measures which are required if a plan or project is allowed to proceed notwithstanding a potential adverse effect on integrity. However background improvements which are expected to arise in any event will not be compensation or mitigation because their occurrence is unrelated to the plan or project.
8. The explanation given as to why air quality does not give rise to likely significant effects is therefore erroneous in law both in that screening test and in the appropriate assessment test of ‘no adverse effect on integrity’. The new HRA is therefore legally flawed for this further reason.

31st May 2018