

INDEPENDENT EXAMINATION OF THE HATFIELD PEVEREL NEIGHBOURHOOD PLAN

EXAMINER: Mary O' Rourke BA (Hons) DipTP MRTPI

To:

Lisa Miller, Hatfield Peverel PC

Alan Massow, Braintree DC

Kate Ginn, Natural England

cc: Sue Hooton, Essex County Council

Examination Ref: 05/MOR/HPNP

15 June 2018

Dear All,

Examination of the Hatfield Peverel Neighbourhood Development Plan 2015-2033

I note that consultation on the Focused Changes to the Neighbourhood Plan closes on 21 June, after which it is my intention to consider those changes along any representations made, as well as those made at the Regulation 16 stage, as I proceed with my examination of the Plan.

The Focused Changes are proposed in response to the Habitats Regulations Assessment Screening Report of December 2017, prepared as required by the Conservation of Habitats and Species Regulations 2017. The Regulations transpose into English law the provisions of the EU Habitats Directive.

I am writing to draw your attention to a recent judgement of the Court of Justice of the European Union (CJEU). In the case of *People over Wind & Sweetman v Coillte Teoranta Case C-323/17*¹, the CJEU ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures (referred to in the judgment as measures which are intended to avoid or reduce effects) should be assessed within the framework of an appropriate assessment (AA) and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage.

The implication of this judgement is that competent authorities cannot take account of any integrated or additional avoidance or reduction measures when considering at the Habitats Regulations Assessment (HRA) screening stage whether a plan is likely to have a significant effect on a European Site.

¹ View at:

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d2dc30ddf571da66f02d449d9f60cc9f39bf8846.e34KaxiLc3qMb40Rch0SaxyNch10?text=&docid=200970&pageIndex=0&doclang=EN&mode=lst&dir=&cc=first&part=1&cid=628325>

In the circumstances, I would be grateful to know whether the Council considers that the Hatfield Peverel Draft Neighbourhood Plan HRA screening report (December 2017) is legally compliant in the light of the judgement. If it is considered not to be compliant, I would be grateful to know what further work would be required to rectify this and what the timescale would be to complete and consult on that work. Clearly, I retain the discretion to come to my own view on this matter, as part of the examination, when consideration of the Plan against the Basic Conditions resumes.

Your early response would be appreciated, copied to the other recipients of this letter and placed on the Council's website.

Yours sincerely

Mary O'Rourke

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Examiner