

29 May 2018

Query from the Inspector following submission of the Hearing Statements and in light of:

**People over Wind, Peter Sweetman v Coillte Teoranta
Court of Justice of the European Union Case C-323/17**

The Council is referred to the recent judgment of the Court of Justice of the European Union (CJEU) which 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 Inspector has noted the Council's answer to Q.4, Issue 1b of the MIQ but wants the Council to specifically confirm the following:

- The extent to which the Council considers that its' HRA Report and Addendum Report is legally compliant in light of the above judgment. The screening assessment should be read again before a response is made.
- The Inspector is particularly concerned with any policies or allocations which have been subject to screening in the HRA process which have identified likely significant effects but where it has been concluded that such effects can be mitigated such that AA is not required. Can the Council confirm whether any policies or site allocations fall within this category?

A response to the above should be provided in writing as soon as possible, ideally prior to the opening of the examination hearings.

The Inspector requests that a copy of this note and any response is published on the Examination website.

Karen Ridge

Examination Inspector

Council Response

The Council considers that its HRA Report (EL1 008) and HRA Update (EL1 009) are compliant with the recent judgment of the Court of Justice of the European Union (CJEU).

The Inspector's note queries whether there are instances where "policies or allocations which have been subject to screening in the HRA process which have identified likely significant effects but where it has been concluded that such effects can be mitigated such that AA is not required". The Council can confirm that no policies or site allocations fall under this category.

The results of the screening appraisal of policies and site allocations can be found in Chapter 6 of EL1 008 HRA March 2017. This shows show that:

- Policies DS4, C1, C6, EC2, EC3, H1, H2, H3, HC15 and site SHL010a could have a possible adverse effect on a Natura 2000 site.
- Policies EC1, EC7 and sites SHL001, EMR03, OPP1 and OPP3 could have an adverse effect on a Natura 2000 site.

The impact of all the above policies and sites identified in the results of the screening appraisal were fully considered through the framework of the AA. See Chapter 11 of EL1 008 HRA March 2017 for the AA. Note that there is an error on Table 2, p51 which should read "OPP3 Salthouse Mills" rather than "OPP2 Salthouse Mills".

The HRA Update (EL1 009) screened the major modifications to assess whether they would alter any of the conclusions in the HRA Report (EL1 008) or introduce any new impacts or effects. Modification reference MAJ1 involved a change to the boundary of the Energy Uses Opportunity Area under Policy EC7. This policy was assessed as having an adverse effect on a Natura 2000 site in the HRA Report (EL1 008). The Screening Appraisal in the HRA Update (EL1 009) shows that this policy will continue to have an adverse effect on a Natural 2000 site. However, it was concluded that the policy has previously undergone an AA in the HRA Report (EL1 008) and the results of the AA remain valid. See page 3 of the HRA Update (EL1 009) for further information.