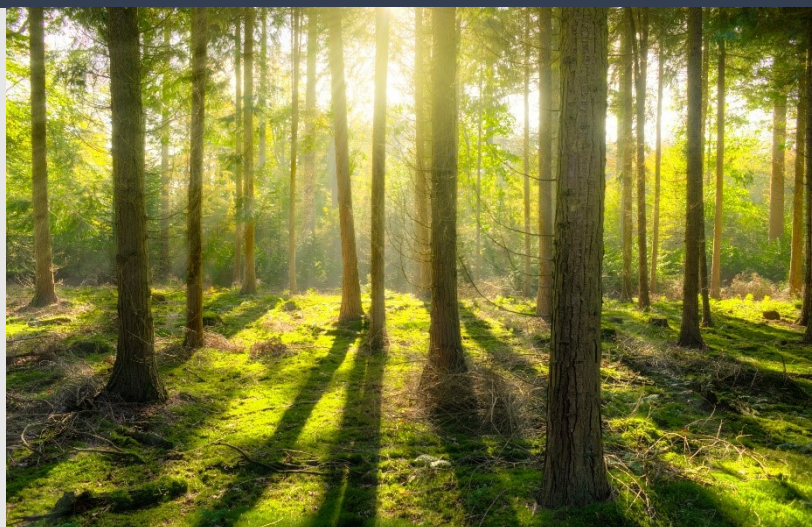


Producing Local Plans and Neighbourhood Plans near European environmental sites, the impact of changing case law and the need for mitigation strategies

Local authorities and communities producing Plans near European environmental sites are faced with many challenges in seeking to allocate sites for new housing. Recent changes to case law which guides the determination of HRA screening assessments, and ongoing difficulties associated with the production of mitigation strategies, are significantly delaying the progression of Local Plans and Neighbourhood Plans which could be delivering much needed new housing allocations across the country. DAC Planning investigates the increasing difficulties faced by local authorities and communities in progressing Plans near European environmental sites, and considers what could be done to improve the situation in the future.



Background

The Habitats Directive ensures the conservation of a wide range of rare, threatened or endemic animal and plant species across Europe. The Directive seeks to protect habitats through the designation of Special Areas of Conservation (SACs), Sites of Community Importance (SCI), and Special Protection Areas (SPAs), collectively referred to as 'European sites'¹.

Local Plans and Neighbourhood Plans which are likely to have a significant effect on a European site are required to undertake a Habitats Regulations Assessment (HRA) known as an Appropriate Assessment. To determine if a Plan requires the production of an Appropriate Assessment, and to satisfy the requirements of the Habitats Directive, a HRA screening exercise is undertaken to determine the likely environmental effects of a Plan.

Recent case law changes affecting Plan production near European sites

Prior to April 2018, a screening assessment could consider proposed mitigation measures alongside the likely effects of a Plan on a European site to determine the need for an Appropriate Assessment. Therefore, if a Plan would be likely to have a significant effect on a European site, but the screening assessment could determine that the effects would be appropriately mitigated through avoidance or reduction measures, an Appropriate Assessment would not be required.

On the 12th April 2018 the Court of Justice of the EU (CJEU) concluded² that considering proposed mitigation measures within a screening exercise compromises the 'practical effects' of the Habitats Directive and the purpose of Appropriate Assessments. The CJEU therefore determined that proposed mitigation measures should not be considered within a screening assessment, and should instead only be considered within an Appropriate Assessment. Therefore, if a Plan would be likely to have a significant effect on a European site, an Appropriate Assessment would be required irrespective of any proposed mitigation measures.

Impacts of the CJEU judgement

There may be a need to review screening assessments

Plans which are currently in production and have undertaken a screening exercise which identified likely significant environment effects, but did not recommend the production of an Appropriate Assessment based on proposed mitigation measures, will be required to undertake a revised screening assessment to remove any consideration of proposed avoidance or reduction measures.

Increased need for Appropriate Assessments

There are 88 SPAs and 254 SACs in England. The CJEU judgement will therefore affect a significant number of emerging Plans across the country, and will undoubtedly increase the number of Plans which require an Appropriate Assessment.

Delays to the plan-making process

Revising screening assessments will require additional work to be undertaken to update screening reports, undertake a further period of consultation, and update the Plan and associated evidence base documents based on the outcomes of the screening process.

Where a Neighbourhood Plan has a significant effect on a European site which has not been assessed as part of a Local Plan, either because the Plan is proposing more development than that allocated in the Local Plan or because the Neighbourhood Plan is progressing ahead of the Local Plan and a District-wide HRA has not yet been produced, the Neighbourhood Plan will be required to produce an Appropriate Assessment.

Where an Appropriate Assessment is needed to support a Plan, this will require additional information gathering, the assessment of impacts and potential avoidance and mitigation measures, and further consultation with relevant organisations. The production, consultation, and publication of an Appropriate Assessment will therefore significantly increase the time required to produce a Plan.



Increased plan production costs

The additional work required to revise a screening assessment and where required produce an Appropriate Assessment is likely to incur additional costs related to staff time, obtaining external consultants were required, and consultation costs associated with printing, postage and advertisements. There will also be cost implications on consultees that will be required to review and respond to consultation on the Appropriate Assessment.

Neighbourhood Plan groups often have limited budgets. Government funding is available to support the production of Neighbourhood Plans, however the financial support in its current form does not cover all costs associated with Plan production, and no additional Government funding has been made available at this point in time to assist Neighbourhood Plan groups in undertaking Appropriate Assessments.

Increased difficulties in producing Neighbourhood Plans

The production of Neighbourhood Plans is a complex task for local communities to undertake, where in many cases Neighbourhood Plan groups have very limited previous experience in planning and the production of planning documents. The requirement to produce an Appropriate Assessment significantly adds to the complexity of the task, and could present an obstacle to the progression of some Plans which cannot be overcome without further assistance from planning professionals. This will undoubtedly lead to a greater demand upon local authority resources to provide

support to Neighbourhood Plan groups struggling with this issue.

Neighbourhood Plan groups have limited budgets and limited time which volunteers can offer to support the production of a Plan. The potentially significant requirements on both costs and time required to complete an Appropriate Assessment for a Neighbourhood Plan will present a barrier which many Neighbourhood Plan groups will struggle to overcome.

Where an Appropriate Assessment is required based on proposed policies within a Neighbourhood Plan, communities that are unable to produce the Assessment may instead be required to delay the progression of the Neighbourhood Plan until the completion of a Local Plan, District-wide HRA, and a mitigation strategy for the European site which can support policies in the Plan. This can create long delays to the production of the Neighbourhood Plan.

Alternatively, if a Neighbourhood Plan group do not want to delay the production of the Plan, policies within the Plan which are the source of the likely significant effects on the European site can be removed. This may create Plans which do not fully meet the aims, objectives and needs of the local community, and result in a reduction in Plans which seek to allocate additional housing in their areas.



The need for mitigation strategies

In areas where proposed growth would be likely to have a significant effect on a European site, a mitigation strategy must be produced to demonstrate how the effects of new development on the European site should be avoided and mitigated.

Not all European sites in England have a mitigation strategy in place. In areas with no mitigation strategy it is difficult for emerging Plans to assess and demonstrate likely effects on a European site. In this instance, a mitigation strategy must be completed before emerging Plans can be progressed. This is resulting in significant delays to the production of Plans and determination of planning applications in areas located near to a European site without an up to date mitigation strategy in place.

Conclusions

It is widely acknowledged that the UK is currently in a housing crisis which requires more new homes to meet demand, and particularly more new affordable homes. The National Planning Policy Framework³ highlights the Government's objective of boosting the supply of homes. At this time, the planning system should be doing everything it can to support the delivery of new homes.

It is therefore extremely concerning that there are many areas of the country that will face extended delays and significant difficulties in the production of their Plans through the increased need for Appropriate Assessments and mitigation strategies. Indeed, many Neighbourhood Plan groups may decide against allocating housing growth within their Plans to avoid the complex, costly, time consuming production of an Appropriate Assessment. Delays in the production of Plans which could be bringing forward much needed new housing allocations, and a system which makes it obstructively difficult to allocate housing within Neighbourhood Plans located close to a European site, are doing little to resolve the housing crisis and

meet the Government's objective to boost the supply of homes.

The NPPF notes⁴ that neighbourhood planning provides communities with the opportunity to develop a shared vision for their area which can shape, direct and help to deliver sustainable development. However, in reality many communities in areas close to a European site are unable to shape and direct development due to the difficulties faced in progressing Neighbourhood Plans. Even without housing allocations Plans may still be stalled awaiting the completion of a mitigation strategy where likely significant effects to a European site have been identified. Unable to purchase additional consultancy support to produce an Appropriate Assessment, reducing availability of volunteers, and delays associated with the inability to progress the Neighbourhood Plan until the completion of an emerging Local Plan, District-wide HRA, and mitigation strategy, has left many local communities disenchanted in the process and no longer interested in neighbourhood planning.

European sites provide vital habitats for many species, and it is important that these areas are protected from the potential impacts of new development. However, do we currently have the right balance in place between protecting European sites and still allowing Plans to progress and bring forward much needed new development? Those local communities and local authority planners seeking to progress Plans in areas close to a European site would be highly likely to call for change.

How can Government support the progression of Plans in areas close to European sites?

1. The process of allocating housing in Plans located close to a European site needs to be made easier. It is unreasonable to require local communities to spend significant amounts of time and money on producing Appropriate Assessments. The planning system needs to do everything it can to encourage communities to allocate housing where appropriate. Currently there are too many obstacles which are difficult for local communities overcome.
2. Provide additional support to local authorities and communities in areas close to a European site where an Appropriate Assessment is required. This could include guidance notes, an online network, training events, and direct financial support. Additional financial support could benefit local authorities in providing guidance to groups producing Neighbourhood Plans and benefit local communities in seeking planning consultancy support to produce an Appropriate Assessment.
3. Provide additional support to local planning authorities and national bodies involved in the production of mitigation strategies. Increasing resources into the production of mitigation strategies could reduce the significant delays currently faced by many Plans which cannot progress until a strategy is completed.

Further information about the services provided by DAC Planning is available through our website www.dacplanning.com

Please do not hesitate to contact us if you would like to discuss how DAC Planning can support the successful progression of Local Plans and Neighbourhood Plans.



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Notes:

1. The term European sites includes proposed SPAs and SACs, and listed or proposed RAMSAR sites.
2. See the People Over Wind and Sweetman v Coillte Teoranta, 12th April 2018, Case C-323/17
3. Paragraph 59, National Planning Policy Framework, July 2018
4. Paragraph 29, National Planning Policy Framework, July 2018