

218452) Plumpton Parish Council - Neighbourhood Plan (Lewes DC)

Dear Sir/Madam,

Thank you for consulting Natural England on your Pre-Submission Neighbourhood Plan.

General comments

Habitats Regulations Assessment –Air Quality

Wealden judgment (CO/3943/2016 Wealden District Council v Secretary Of State For Communities and Local Government)
<http://www.bailii.org/ew/cases/EWHC/Admin/2017/351.html>

As you are aware, Lewes District Council, South Downs National Park Authority and CLG were the subject of a Judicial Review by Wealden District Council on how air quality was assessed within the Habitats Regulations Assessment of the Local Plan. The Planning Policy department of the South Downs National Park is fully aware of the potential issues that have arisen from Justice Jay's ruling on this so Natural England recommend that you discuss this issue with the planning Policy Department of the SDNPA to ensure that the Neighbourhood Plan is compliant with SDNPA's overall approach.

This judgment has implications for the screening of air quality impacts on European Sites under the Habitats Regulations, and therefore for the Plumpton Neighbourhood Plan

Background

The judgment clarifies a limitation on the use of guideline thresholds in ruling out the likelihood of significant effects either alone or in combination with other plans or projects as part of a Habitats Regulations Assessment (HRA) of Development Plans. Specifically, the use of the 1000 average annual daily traffic (AADT) proxy for changes requiring further assessment outlined in Highways England's Design Manual for Roads and Bridges was covered.

The Judgment found that the use of 1000 AADT and equivalent 1% of critical level/load guidelines as the sole means of catering for in-combination effects lacks coherence, particularly where other figures are known which, when added together, would cause that threshold to be exceeded.

From that, the Court concluded that where the likely effect of an individual plan or project does not itself exceed the threshold of 1000 AADT (or 1%), its effect must still be considered alongside the similar effects of other live plans and projects to check whether their added or combined effect on a site could be significant.

The threshold itself was not criticised. The fault was found in the use of the threshold to rule out the likelihood of significant effect both alone and in combination, without looking any further.

Implications for Plumpton Neighbourhood Plan

For both the screening (for likely significant effects) and appropriate assessment stages of an HRA, the likely effects of a plan or project need to be considered individually and in combination with other relevant plans or projects. This is a legal requirement of the Habitats Regulations 2010 (as amended) which aims to ensure that European sites are not inadvertently damaged by the additive effects of multiple plans or projects.

If there are issues I have not covered, please let me know and I will respond as quickly as possible. If discussion would be helpful, please give me a call.

If you wish to comment on the service provided by Natural England, please use the appended form.

Yours sincerely,

**Rebecca Bishop MRTPI
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