

**Appropriate Assessment  
of  
The Bournemouth, Dorset & Poole  
Pre-Submission Draft Waste Plan**

**Presented as an Addendum to the Original  
Assessment (October 2017) under the  
Conservation of Habitats and Species  
Regulations, 2017 (WPSD 07)**

**Prepared in response to recent case law:  
People Over Wind, Peter Sweetman v Coillte  
Teoranta**

**Prepared for the  
Waste Planning Authority in Dorset**

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## Introduction

In light of a recent Court of Justice of the European Union (ECJ) ruling: *People Over Wind, Peter Sweetman v Coillte Teoranta*, the Planning Inspectorate issued the following note in mid-May to the Waste Planning Authority representing Dorset County Council, Poole Borough Council and Bournemouth Borough Council:

*'On 12 April 2018, the Court of Justice of the European Union issued a judgment (C-323/17) 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 Habitats Regulations Assessment (HRA) reports on the Waste Plan and Minerals Sites Plan include information that identifies likely significant effects on European sites and their designated features but conclude that they can be mitigated through avoidance or reduction measures, and does not go on to the AA stage.*

*I am writing to ask that the Councils confirm the extent to which they consider their HRA reports are legally compliant in light of the judgement and in doing so re-visit the screening assessments. If the revised screening assessments conclude that AA(s) is/are required these should be carried out.'* Nick Palmer, via email, 16/5/18

The Waste Planning Authority has considered this new information and concluded that the HRA (document reference WPSD-07) submitted alongside the Pre-Submission Draft Waste Plan (hereafter referred to as the Waste Plan) was consistent with accepted UK practice at the time of submission but, in the light of the above judgement, it is necessary to re-visit the screening assessment and conduct an Appropriate Assessment (AA) for those parts of the Plan (Site Allocations, Vision, Objectives, Spatial Strategy, Policies) which, without mitigation, would lead to a Likely Significant Effect on the relevant European sites. This will ensure the HRA is legally compliant when considered in the context of the ECJ judgement.

The Appropriate Assessment is presented below.

## 1. Appropriate Assessment

Article 6(3) of the European Council Directive on the Conservation of Natural Habitats and Wild Flora and Fauna, the Habitats Directive, (92/43/EEC) states that:

*'Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions.....the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned....'*

This directive is translated into UK law via the Conservation of Habitats and Species Regulations, 2017. Land Use Plans, such as the Waste Plan, are covered by Regulations 105 and 107, as detailed in the Waste Plan HRA. The Regulations refer to Special Areas of Conservation and Special Protection Areas, and UK National Planning Policy Framework, 2012, para 118, affords international Ramsar sites (and potential Ramsar sites) the same protection. For the purposes of this Appropriate Assessment all sites are referred to as European sites, as is the case in the Waste Plan HRA.

Consultation with Natural England (NE) specifically relating to this Appropriate Assessment has been carried out as advised by PINS note (The Planning Inspectorate, 05/2018, Consideration of avoidance and reduction measures in Habitats Regulations Assessment: People over Wind, Peter Sweetman v Coillte Teoranta):

*'9. Further consultation may be required on any revised screening assessment or AA. The Habitats Regulations require the competent authority to consult the appropriate statutory nature conservation body and have regard to any representations made by that body.'*

## 2. Parts of the Plan where Likely Significant Effect would occur in the absence of mitigation.

Prior to People Over Wind, Peter Sweetman v Coillte Teoranta (C-323/17), previous case law (Hart District Council v. Sect. of State for Communities and Local Government, CO/7623/2007) allowed mitigation to be included at the screening stage of a Habs Regs Assessment. In the case of the Waste Plan, the inclusion of mitigation resulted in the screening out of several Policies and Site Allocations which may otherwise have led to a Likely Significant Effect on the relevant European sites. The pathways by which this could occur are discussed in Section 7 of the HRA.

Appendix 1 below summarises those parts of the Waste Plan where Likely Significant Effects would occur in the absence of mitigation, with a summary of the mitigation. These Policies and Site Allocations are those which are now considered in the Appropriate Assessment.

Consultation with Natural England has confirmed that the mitigation information provided at the screening stage of this assessment is sufficient to inform the Appropriate Assessment.

## 3. The European Sites

An Appropriate Assessment must consider whether there would be an adverse impact on the integrity of the European sites relevant to the development. This must be specifically linked to the conservation objectives of these sites. The European sites relevant to the Waste Plan

are identified in Section 6 of the HRA, and their features/attributes are set out in Appendix 1 of the same document.

For the purposes of this AA, the key sites are the Dorset Heathlands SPA and Ramsar and the Dorset Heaths SAC. Poole Harbour SPA and Ramsar are also included as potential effects on these sites were raised by Natural England in their consultation response to the Waste Plan (see section 4 below). The conservation objectives of these sites are set out in Table 1:

**Table 1: the relevant European sites and their conservation objectives**

European Site	Conservation Objectives
Dorset Heaths SAC	<p>Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the Favourable Conservation Status of its Qualifying Features, by maintaining or restoring;</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The extent and distribution of qualifying natural habitats and habitats of qualifying species</li> <li><input type="checkbox"/> The structure and function (including typical species) of qualifying natural habitats</li> <li><input type="checkbox"/> The structure and function of the habitats of qualifying species</li> <li><input type="checkbox"/> The supporting processes on which qualifying natural habitats and the habitats of qualifying species rely</li> <li><input type="checkbox"/> The populations of qualifying species, and,</li> <li><input type="checkbox"/> The distribution of qualifying species within the site.</li> </ul>
Dorset Heathlands SPA	<p>Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The extent and distribution of the habitats of the qualifying features</li> <li><input type="checkbox"/> The structure and function of the habitats of the qualifying features</li> <li><input type="checkbox"/> The supporting processes on which the habitats of the qualifying features rely</li> <li><input type="checkbox"/> The population of each of the qualifying features, and,</li> <li><input type="checkbox"/> The distribution of the qualifying features within the site.</li> </ul>
Poole Harbour SPA	<p>Ensure that the integrity of the site is maintained or restored as appropriate, and ensure that the site contributes to achieving the aims of the Wild Birds Directive, by maintaining or restoring;</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> The extent and distribution of the habitats of the qualifying features</li> <li><input type="checkbox"/> The structure and function of the habitats of the qualifying features</li> <li><input type="checkbox"/> The supporting processes on which the habitats of the qualifying features rely</li> <li><input type="checkbox"/> The population of each of the qualifying features, and,</li> <li><input type="checkbox"/> The distribution of the qualifying features within the site.</li> </ul>

#### 4. Consideration of Adverse Impact

In accordance with People Over Wind, Peter Sweetman v Coillte Teoranta, the mitigation considered in the original HRA now forms part of this Appropriate Assessment. The mitigation

is summarised in Appendix 1 below, and a full discussion of this and the potential impacts on the European sites can be found in Sections 7 and 8 of the HRA. Impacts were limited to:

- Uncertainty over whether adverse effects would occur due to weak policy wording.
- Proximity effects related to gaseous emissions from allocated sites (Inset 7, Eco Sustainable Solutions, Parley and Inset 10, Binnegar Environmental Park)
- Species effects related to those on species typical of the European sites, due to disturbance or habitat loss (Inset 1, Woolsbridge Industrial Estate and Inset 10, Binnegar Environmental Park)

These potential adverse effects on integrity have been mitigated by:

- Making amendments to policies and accompanying text to secure protection of the European sites. These have been incorporated into the Waste Plan at previous iterations.
- Identifying mitigation measures for the relevant site allocations (set out in Appendix 1 below) to be secured through planning conditions or planning obligations through plan/project level Appropriate Assessment as appropriate in consultation with Natural England. These mitigation measures have been incorporated into the Waste Plan at previous iterations.

In addition to the above, Natural England (Pre-Submission Draft Waste Plan consultation response, Natural England, 31/1/18) raised the need to consider adverse effects on the integrity of Poole Harbour SPA and Ramsar. This is because Inset 10, Binnegar Environmental Park, is within the catchment of Poole Harbour. The range of activities for which the site is allocated have the potential to lead to additional levels of aerial pollutants such as ammonia and nitrogen compounds either from increased levels of transportation, from on-site waste management/processing or from other processes such as Energy from Waste. These pollutants could impact on Poole Harbour SPA and Ramsar via the River Piddle which lies adjacent to Inset 10.

However, potential adverse effects arising from these activities are mitigated by inclusion of the wording detailed in Appendix 1 which was added to Policies 3 and 18, as well as a specific clause regarding the need for Appropriate Assessment at the project level in the Development Considerations for Inset 10. It is also the case that an established mitigation option in the form of the Nitrogen Reduction in Poole Harbour SPD, already adopted by all relevant authorities, would be applied if Appropriate Assessment at the project level showed this to be necessary. For this reason, no further mitigation is needed to avoid adverse impacts on the integrity of Poole Harbour SPA and Ramsar.

The prepared HRA document which now forms part of this Appropriate Assessment provides the authorities with detailed considerations of the effects of the policies and allocations (listed below) which are considered to have a Likely Significant Effect in the absence of further modification or detailed mitigation evidence. This Appropriate Assessment, which has been drawn up in consultation with Natural England, concludes that the Waste Plan, incorporating the safeguarding modifications and mitigation brought forward in the original HRA (and listed in Appendix 1 below) provides sufficient certainty for the authorities to be sure that there will be no adverse effect on the integrity of the European sites.

Table 2 below summarises this by listing the relevant European sites, setting out whether there would be a Likely Significant Effect and whether inclusion of mitigation would subsequently avoid adverse effect on the integrity of the European sites, in light of their conservation objectives.

**Table 2: The relevant European sites, LSE and avoidance of adverse effects.**

European Site	LSE Yes/No	Adverse Effects on integrity avoided for all features with mitigation, Yes/No
Dorset Heaths SAC	Yes	Yes
Dorset heathlands SPA	Yes	Yes
Dorset Heathlands Ramsar	Yes	Yes
Poole Harbour SPA	Yes	Yes
Poole Harbour Ramsar	Yes	Yes

## 5. Conclusion

Having concluded that the Waste Plan will have a likely significant effect in the absence of avoidance and mitigation measures on the above European sites, this Appropriate Assessment is presented by Dorset County Council as the Competent Authority in accordance with requirements under Reg 105 of the Conservation of Habitats and Species Regulations, 2017, and Article 6(3) of the Habitats Directive.

The AA concludes that, subject to suitable mitigation measures, there will be no adverse effect on the integrity of the relevant European sites, either individually or in combination with other plans or projects.

**Appendix 1: Policies and Site Allocations in the Waste Plan which would lead to Likely Significant Effect on the relevant European Sites, plus proposed mitigation.**

<b>Proposed Policy/Site Allocation</b>	<b>Likely Significant Effect concluded without mitigation?</b>	<b>Mitigation proposed</b>
Policy 1 – Sustainable Waste Management	Yes	Insert additional sentence in supporting text stating: <i>‘To ensure that European wildlife sites are safeguarded from any effects of development, proposals should comply with Policy 18 (Chapter 12).’</i>
Policy 2 – Integrated Waste Management Facilities	Yes	Insert additional sentence in supporting text stating: <i>‘To ensure that European wildlife sites are safeguarded from any effects of development, proposals should comply with Policy 18 (Chapter 12).’</i>
Policy 3 – Sites allocated for waste management development	Yes	Insert additional sentence into the text of Policy 3 stating: <i>‘Proposals will be permitted where.....possible effects (including those related to proximity, species and displacement of recreation) that might arise from the development would not adversely affect the integrity of European and Ramsar sites either alone or in combination with other plans or projects’</i> Insert additional sentence in supporting text: <i>‘To ensure that European wildlife sites are safeguarded from any effects of development, proposals should comply with Policy 18 (Chapter 12).’</i>
Policy 4 – Applications for waste management facilities not allocated in the waste plan.	Yes	Insert additional sentence into the text of Policy 4 stating: <i>‘Proposals will be permitted where.....possible effects (including those related to proximity, species and displacement of recreation) that might arise from the development would not adversely affect the integrity of European and Ramsar sites either alone or in combination with other plans or projects’</i>  Insert additional sentence in supporting text: <i>‘To ensure that European wildlife sites are safeguarded from any effects of development, proposals should comply with Policy 18 (Chapter 12).’</i>
Policy 5 – Facilities to enable the recycling of waste	Yes	Insert additional sentence into the text of Policy 5 stating: <i>‘Proposals will be permitted where.....possible effects (including those related to proximity, species and displacement of recreation) that might arise from the development would not adversely affect the integrity of European and Ramsar sites either alone or in combination with other plans or projects’</i>

		Insert additional sentence in supporting text: <i>'To ensure that European wildlife sites are safeguarded from any effects of development, proposals should comply with Policy 18 (Chapter 12).'</i>
Policy 6 – Recovery Facilities	Yes	<p>Insert additional sentence into the text of Policy 6 stating: <i>'Proposals will be permitted where.....possible effects (including those related to proximity, species and displacement of recreation) that might arise from the development would not adversely affect the integrity of European and Ramsar sites either alone or in combination with other plans or projects'</i></p> <p>Insert additional sentence in supporting text: <i>'To ensure that European wildlife sites are safeguarded from any effects of development, proposals should comply with Policy 18 (Chapter 12).'</i></p>
Policy 7 – Final disposal of non-hazardous waste	Yes	Insert additional sentence in supporting text stating: <i>'To ensure that European wildlife sites are safeguarded from any effects of development, proposals should comply with Policy 18 (Chapter 12).'</i>
Policy 8 – Inert waste recovery and disposal	Yes	Insert additional sentence in supporting text stating: <i>'To ensure that European wildlife sites are safeguarded from any effects of development, proposals should comply with Policy 18 (Chapter 12).'</i>
Policy 9 – Special types of waste	Yes	Insert additional sentence in supporting text stating: <i>'To ensure that European wildlife sites are safeguarded from any effects of development, proposals should comply with Policy 18 (Chapter 12).'</i>
Policy 11 – Sewage Treatment Works	Yes	Insert additional sentence in supporting text stating: <i>'To ensure that European wildlife sites are safeguarded from any effects of development, proposals should comply with Policy 18 (Chapter 12).'</i>
Inset 1 – Woolsbridge Industrial Estate, Three Legged Cross.	Yes	<p>Creation of a buffer between the allocated site and the adjacent European sites to prevent dust and disturbance.</p> <p>Carrying out habitat enhancement works on land adjacent to the allocated site (including Woolsbridge Farm Carr SNCI).</p> <p>Insertion of the following text within Policy 3: <i>Allocated Sites Applications on Inset 1 and 10 should include Phase 2 surveys for species typical of the European Sites</i></p>

		<p><i>(in particular nightjar, woodlark and Dartford warbler) that must assess the effects of development on the populations on site and in surrounding areas. If it is shown that the development proposals would have a significant effect on species listed in Annex 1 of the Birds Directive (those for which SPAs may be designated) then mitigation to reduce this to non-significant levels must be designed in to any development in order for it to take place.</i></p> <p>Inserting wording into the accompanying text stating that Policy 3 must comply with Policy 18 (Biodiversity and Geological Interest)</p> <p>Including 'Appropriate Assessment in accordance with the Conservation of Habitats and Species Regulations 2017' as one of the development considerations in the Inset 1 site assessment</p>
Inset 7 – Eco-Sustainable Solutions, Parley	Yes	<p>Creation of a buffer zone in the south east section of the site adjacent to European heathlands to help ensure no hydrological effects on the European Sites and ensure carefully designed surface water drainage system is integral to site design.</p> <p>Insertion of the following text within Policy 3: Allocated sites <i>Applications on Inset 7 and Inset 10 should include studies that demonstrate that emissions from development will not impact on the features (species and habitats including lichens and bryophytes) of the nearby European sites. If it is shown that the development proposals would have a significant effect on the critical pollutant load/level of the European sites then avoidance/mitigation to reduce this to non-significant levels must be designed in to any development in order for it to take place.</i></p> <p>Inserting wording into the accompanying text stating that Policy 3 must comply with Policy 18 (Biodiversity and Geological Interest)</p> <p>Including 'Appropriate Assessment in accordance with the Conservation of Habitats and Species Regulations 2017' as one of the development considerations in the Inset 7 site assessment</p>
Inset 10 – Binnegar Environmental Park, East Stoke	Yes	<p>Insertion of the following text within Policy 3: Allocated Sites</p> <p><i>Applications on Inset 1 and 10 should include Phase 2 surveys for species typical of the European Sites (in particular nightjar, woodlark and Dartford warbler) that must assess the effects of development on the populations on site and in</i></p>

		<p><i>surrounding areas. If it is shown that the development proposals would have a significant effect on species listed in Annex 1 of the Birds Directive (those for which SPAs may be designated) then mitigation to reduce this to non-significant levels must be designed in to any development in order for it to take place.</i></p> <p><i>Applications on Inset 7 and Inset 10 should include studies that demonstrate that emissions from development will not impact on the features (species and habitats including lichens and bryophytes) of the nearby European sites. If it is shown that the development proposals would have a significant effect on the critical pollutant load/level of the European sites then avoidance/mitigation to reduce this to non-significant levels must be designed in to any development in order for it to take place.</i></p> <p>Inserting wording into the accompanying text stating that Policy 3 must comply with Policy 18 (Biodiversity and Geological Interest)</p> <p>Including 'Appropriate Assessment in accordance with the Conservation of Habitats and Species Regulations 2017' as one of the development considerations in the Inset 10 site assessment</p>
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