

## Rochford District Core Strategy Examination

1.1 This statement has been prepared to clarify matters of agreement and the matters of dispute between Rochford District Council (RDC) and Natural England (NE) in relation to the soundness and legal compliance of the Rochford District Core Strategy submitted to the Secretary of State in January 2010.

### **Matters agreed**

- 1.2 Specifically, this joint statement is concerned with soundness and legal compliance in relation to EU Habitats Directive.
- 1.3 RDC's submitted Core Strategy was accompanied by a Habitats Regulation Assessment (HRA) as required by EU Habitats Directive.
- 1.4 The HRA was prepared by RDC with assistance from Enfusion (specialist environmental and sustainability consultants).
- 1.5 The Core Strategy HRA report is the culmination of work that has been ongoing since February 2009 that included HRA workshops (Council officers supported by specialist consultants Enfusion Ltd, 12th Feb & 8th July 2009), as well as discussions with NE with regard to the scope, approach, findings and recommendations of the HRA.
- 1.6 RDC sought comments on a draft version of the HRA from NE in December 2009, but NE were unable to provide comments within the extremely short timescale offered.
- 1.7 A draft was subsequently submitted to NE in January 2010, and comments provided by NE within the requested deadline of four working days.
- 1.8 These comments were addressed by RDC in Appendix 4 of the HRA.
- 1.9 The Council is required to ensure that HRA has occurred before the Core Strategy is given effect.
- 1.10 The Council is required to consult with NE in the preparation of the HRA and have regard to representations made by the organisation.
- 1.11 The DCLG guidance: *Planning for the Protection of European Sites: Appropriate Assessment* provides guidance for undertaking AA, however we note this guidance is out of date (it is archived on the DCLG website) and refers to an older version of the Habitats Regulations. The DCLG guidance carries no statutory weight and therefore, provided Council has met the requirements of the Conservation of Habitats and Species

Regulations 2010, there should be no compliance issue in regard to complying with the DCLG guidance.

### **Matters of dispute**

- 1.12 NE contend that The Habitats Regulations Assessment appears to have been done relatively late in the process of Core Strategy production and seems to have had little or no influence over the content of the Core Strategy. NE contend there is now no opportunity for changes to be made to the Core Strategy prior to submission for examination, and that the any changes are at the discretion of the Planning Inspector. Consequently, contend NE, it is not evident that the Council have adopted the measures proposed in the HRA.
- 1.13 RDC contend that the Core Strategy evidence base and specifically work on SA/SEA and HRA has identified European Sites relevant to the District. The known sensitivities of these sites has informed the development of policy, and specifically the spatial location of key development sites throughout the preparation of the document, focusing on the avoidance of adverse effect. RDC contend that the SA demonstrates this.
- 1.14 NE contend that there is some confusion (e.g. 1.11) as to whether, and if so on what basis, the HRA concludes no likely significant effect, as the wording is not clear and not expressed in the terms found in the Regulations or the Natural England guidance which the HRA cites.
- 1.15 RDC contend that the terms and language used in the Report conform with the Regulatory requirements and are in line with NE guidance. RDC note that this approach has recently been discussed and supported by Simon Stonehouse (NE National Policy lead) and Kyle Lischak (NE legal) in consultations with the Statutory Body on strategic HRAs supporting site and plan level assessment for National Policy Statements. RDC contend that, in relation to NE comments on the draft HRA that the wording used to conclude there would be no likely significant effect is not clear, NE's regional interpretation of guidance appears to differ from that advised at national level which supports the wording used in Rochford's HRA. NE contend that the comments on the HRA conform to national guidance.
- 1.16 NE contend that the HRA Screening Report is deficient. In particular, NE dispute the report's conclusion that there would be no likely significant effect on any European site, in the light of:
- a) The report not having considered the effects of increased water supply on an identified suite of 16 European sites outside the Essex Thames Gateway Water Cycle Study area;
  - b) Acknowledged uncertainties surrounding level of growth and impacts on water resources;
  - c) Insufficient mitigation measures to avoid water resources impacts on European sites;

- d) Reliance on water quality monitoring that would only show that an adverse effect was occurring after the event, and with no identified means of redressing any such impacts;
- e) Insufficient mitigation measures to avoid recreational disturbance impacts on European sites

In view of these uncertainties, the HRA Screening Report stated (para 4.4) that *“the assessment could not conclude with certainty that the level of development proposed in the Core Strategy and surrounding areas will not have likely significant in-combination effects on European sites via reduced water quality and increased water resource demand.”* The Report made a number of recommendations (paras 3.16-3.18) and concluded (para 4.6) that *“if the recommendations are incorporated into the Core Strategy and a review of HRA findings is carried out upon completion of the Essex Thames Gateway WCS, the Core Strategy will not have likely significant effects either alone or in combination on European sites”*. However, these recommendations have not yet been incorporated within the Core Strategy. NE therefore contend that, in its current form, the Core Strategy has not been shown not to have significant effects upon European sites and either the recommended additional text must be incorporated into the Core Strategy, or a full AA must be carried out.

- 1.17 RDC are of the view (which is supported by Enfusion) that the HRA is not deficient. The scope of the HRA was agreed with NE and the report recognises and supports NE’s comment (Paragraph 3.1, footnote 5) that distance is not a definitive guide to the likelihood or severity of an impact as factors such as the prevailing wind direction, river flow direction, and groundwater flow direction will all have a bearing on the relative distance at which an impact can occur. Therefore the 15km search area was used as a guide in determining the scope of the assessment and did not preclude the consideration of more distant sites.
- a) Advice on the scope of the HRA was sought from NE and agreed. It was also agreed in principal with NE that the mitigation measures proposed in paragraphs 3.16 to 3.18 address the potential in-combination effects of increased water abstraction on the European sites scoped into the assessment.
  - b) Concerns expressed vis-à-vis uncertainty is addressed in the HRA through the recommendations proposed in paragraphs 3.16 to 3.18
  - c) The mitigation identified in paragraph 3.15 is part of a suite of mitigation measures proposed by the HRA and should not be considered in isolation. The HRA proposes further mitigation measures in paragraphs 3.16 to 3.18.
  - d) The issue of reliance on water quality monitoring was raised following consultation with the NE on the draft HRA and the HRA was amended accordingly (paragraph 3.23). The mitigation measures identified in paragraph 3.32 are included to show the full range of mitigation offered by individual policies in relation to predicted recreational pressures and, therefore, the mitigation provided by the Core Strategy on this issue as a whole. Paragraph 3.33 discusses the majority of mitigation measures

proposed by the Core Strategy policies in general and then goes on to identify the specific mitigation provided by Policy URV1 (Upper Roach Valley). Recent work with NE in other districts, e.g. Winchester, has highlighted the role and importance that NE places on a strategic/ holistic approach to Green Infrastructure (i.e. a package of mitigation measures across the plan area) in managing recreational impacts on European sites. The HRA therefore considers the Council's policy requirement for the provision of open space and recreational areas to accompany new residential development as being highly relevant in mitigating increased levels of recreation on European sites. It is noted that NE's own Green Infrastructure Guidance (2009) supports the fact that Green Infrastructure' can have positive effects on European sites through providing alternative areas for recreation and therefore mitigating potential increased levels of disturbance. The assessment acknowledges (paragraph 3.31) that the Estuarine European sites provide a unique recreational opportunity, however, NE commented<sup>4</sup> that other Local Authorities in the area have addressed this issue by proposing a large area of open space to provide an alternative area for recreation. Policy URV1 proposes such an open space to provide informal recreational opportunities for local residents. This advice was taken forward in the HRA and therefore we would be grateful for clarification from NE as to why their advice differs in this instance.

### **Changes that Natural England considers necessary to make the DPD legally compliant and sound**

1.18 NE is of the opinion that the Core Strategy, and in particular Chapter 4 (Housing), should be subject to a complete revision, in which it can be demonstrated that the choices made are properly informed by an adequate Habitats Regulations Assessment. RDC is of the opinion that this is not an appropriate course of action as, as set out above, such considerations formed part of the plan-making process.

### **Policies H1, H2 and H3**

1.19 NE recommends that the suggested wording provided in paragraph 3.16 of the HRA Screening Report should be inserted into Policies H1, H2 and H3 (not its supporting text). In addition, a further sentence should be inserted, dealing with the need to provide adequate measures to minimise recreational disturbance.

1.20 RDC contend that PPS 12 clearly states that policy should not repeat or reformulate national & regional policy and regulatory requirements. The inclusion of recommended wording on water issues in the supporting text within the Core Strategy highlights the strategic sensitivities of water issues in relation to local circumstances. This approach has been supported and endorsed by NE in relation to Core Strategy development in other regions, for example in relation to the HRAs of Core Strategies in the PUSH (partnership for Urban South Hampshire) area. However,

although RDC believe that the suggested amendments to policy are unnecessary, RDC would not object to their inclusion.

### **Policy ENV6**

1.21 Natural England recommends that the first bullet point of Policy ENV6 should be modified by the insertion of '*and adjacent to*' before '*areas designated for,*' as recommended in our letter of 9 November 2009.

1.22 RDC does not object to such an amendment.

### **Policy ED4**

1.23 Natural England recommends that the suggested wording provided in paragraph 3.16 of the HRA Screening Report should be inserted into Policy ED4 (not its supporting text).

1.24 RDC contend that PPS 12 clearly states that policy should not repeat or reformulate national & regional policy and regulatory requirements. However, although RDC believe that the suggested amendments to policy are unnecessary, RDC would not object to their inclusion.

### **In summary**

1.25 RDC and NE agree that the Core Strategy can be made sound and legally compliant through suggested changes, without the need to revisit a previous stage in the Core Strategy process.