Natural England’s Representations on Suffolk Minerals and Waste Local Plan

A. Legal Compliance

Matter 1 – Duty to Co-operate and Legal Issues

Issue: Whether the Plan complies with all relevant legal requirements, including the Duty to Co-operate.

Duty to Co-operate

4. Please describe the nature and extent of any engagement with prescribed bodies other than the consultations that have taken place on Issues and Options, Preferred Options and at Pre-submission stage.

In addition to the formal consultations on the Plan, Natural England provided advice in a letter dated 4 September 2017 (our ref:220511) to Suffolk County Council (SCC), through our Discretionary Advice Service, on an internal draft copy of the Submission Draft Suffolk Minerals and Waste Local Plan.

Natural England provided advice in relation to earlier drafts of the Habitats Regulations Assessment (HRA) for the Suffolk Minerals and Waste Local Plan review (SM&WLP) in correspondence dated 8 December 2017 (our ref: 230240); 23 July 2018 (our ref: 249702), 12 October 2018 (our ref: 259232), 31 October 2018 (ref: 259232) and on 17 December 2018 (our ref:263364).

In view of the above, whilst we generally consider that the Duty to Co-operate with Natural England has been met, the lack of further proactive contact from the Council on significant outstanding concerns until only very recently in the run-up to the Examination in Public has hindered our ability to work with the Council to resolve these outstanding concerns.

8. Has further assessment been undertaken to address the concerns set out in Natural England’s (NE) letter of 17 December 2018?

Natural England was not approached to discuss the concerns that we raised until we were contacted via email on 7 May 2019 in relation to the draft Statement of Common Ground (SoCG). This presented significant difficulties for us to be able to provide meaningful further comment or progress matters as it appeared that no additional attempts had been made to resolve outstanding concerns. Consequently, in view of the limited time and apparent remaining difference of opinions, we elected to direct our remaining time towards our statements, for the benefit of the Examination in Public.

10. Does the judgement (C-461/17 Holohan and Others) have implications for the Habitats Regulations Assessment?

Although Natural England is aware of this ruling from the European Court of Justice, we have not yet been issued with internal guidance to offer a specific position on this question. The Inspector, as the competent authority, may wish to seek their own legal opinion on this matter. Natural England is unable to provide a legal interpretation.
Policy GP4 General environmental criteria

Natural England has advised adding to the wording of Policy GP4 General environmental criteria consistently throughout the various consultations on the Suffolk Minerals and Waste Local Plan (SMWLP), and also through our Discretionary Advice Service.

As currently worded Policy GP4:

- makes reference to protected landscapes but contains no reference to designated sites;
- does not make it clear that there is a hierarchy of avoiding, mitigating and then compensating significant harm (NPPF para 118);
- does not contain criteria against which any proposed development affecting designated sites will be judged (NPPF para 113);
- does not make clear the distinctions between the hierarchy of designated sites so that protection is commensurate with their status and gives appropriate weight to their importance (NPPF para 113); and
- does not make clear that the sustainable development presumption does not apply where development requiring appropriate assessment is required (NPPF para 119).

We note that the Plan does not make reference to either project level HRAs, or potential compensatory measures, as being required in relation to those allocations which have likely significant effects on European designated sites.

To ensure that the policy is compliant with both the NPPF and the Conservation of Habitats and Species Regulations 2017 (as amended) (‘the Habitats Regulations’) we recommend that the following text is added:

Recommended amendment to Policy GP4:

‘Any development that would be likely to have a significant effect on a European site, either alone or in combination with other plans or projects, will be subject to assessment under the Habitat Regulations at project application stage. If it cannot be ascertained that there would be no adverse effects on site integrity the project will have to be refused or pass the tests of regulation 62, in which case any necessary compensatory measures will need to be secured.’

This amendment is also necessary due to the way in which mitigation measures for various designated sites (identified in the Plan’s HRA), have been incorporated into the wording of the relevant policies in the Plan. See below for more details.

Policy MS2: Barnham

The allocation was screened in as having a likely significant effect in the HRA (see 2.5.1. page 6 of the HRA report) and various mitigation measures were identified under the Appropriate Assessment (see 3.2.11. page 8).
The wording of the policy under (j) should be amended to reflect this accurately rather than the present wording of ‘(j) potential impacts on nature conservation interest including Breckland SPA…etc’. In our previous consultation responses we advised on amending the wording to:

‘(j) likely adverse effects (either individually or in combination with other developments) on the notified special interest features of Breckland SPA, Breckland SAC, Breckland Farmland/Little Heath, Barnham/Thetford Heaths SSSIs…etc.’

Mitigation measures outlined (in 3.2.11 above) included an air quality assessment to address pollution and dust in relation to Breckland SAC. However under (k) of the policy it refers only to residential properties in relation to an air quality assessment. Similarly, phased working and restoration mitigation were identified. Under (g) of the policy it refers to a phased working and restoration scheme only in relation to landscape. Amendments are required to address these points.

**Policy MS4: Cavenham**

The allocation was screened in as having a likely significant effect in the HRA (see 2.5.1, page 6 of the HRA report) and various mitigation measures were identified under the Appropriate Assessment (see 3.3.7. page 11). Under 3.3.12 it states that restoration to high quality stone curlew nesting habitat would be an essential part of any future application. However, this finding is not mirrored in the policy wording or accompanying text.

The wording of the policy under (e) should be amended to reflect this accurately rather than the present wording of ‘(e) potential impacts on nature conservation interest including Breckland SPA…etc’. In our previous consultation responses we advised on amending the wording to:

‘(e) likely adverse effects (either individually or in combination with other developments) on the notified special interest features of Breckland SPA, Breckland SAC, Breckland Farmland/Cavenham-Icklingham Heaths SSSIs and Cavenham Heath NNR…etc.’

Mitigation measures outlined (in 3.3.11 above) included an air quality assessment to address pollution and dust in relation to Breckland SAC. However under (f) of the policy it refers only to residential properties in relation to an air quality assessment (although it does refer to ‘identified habitats’ under 11.24 of the accompanying text on the policy). Similarly, phased working and restoration mitigation were identified. Yet, under (b) of the policy it refers only to a phased restoration scheme in relation to landscape only. Amendments are required to address these points.

The HRA inappropriately assesses the likely significant effect to stone curlews at the Breckland SPA in this location. The SPA interest feature is the specific bird species, rather than the habitat supporting them. Whilst the two are clearly linked, the HRA should assess the impacts upon the population (with reference to the site’s conservation objectives) in terms of likely number of nesting pairs, rather than as a proportion of habitat available.
**Policy MS7: Wangford**

The allocation was screened as having a likely significant effect in the HRA (see 2.5.1, page 6 of the HRA report) and these were identified under 3.5.8. Evidence submitted indicated that there would be no risk (see 3.5.10 in relation to Minsmere-Walberswick SPA birds using the proposed allocation as a high tide roost) and that appropriate measures would be needed to avoid or mitigate any hydrological or water chemistry changes (see 3.5.11-3.5.15 page 14).

The wording of the policy under (d) should be amended to reflect this accurately rather than the present wording of ‘(d) the potential for direct and indirect impacts upon nature conservation interest including Suffolk Coast & Heaths AONB, Minsmere-Walberswick SPA…etc’ In our previous consultation responses we advised on amending the wording to:

‘(d) likely adverse effects (either individually or in combination with other developments) on the notified special interest features of Minsmere-Walberswick SPA/Ramsar site, Minsmere to Walberswick Heaths & Marshes SAC, Minsmere-Walberswick Heaths & Marshes SSSI and Suffolk Coast NNR…etc.’

We advised, too, to remove the reference to the AONB under (d) since it is designated primarily for its landscape and visual attributes, and this point concerns nature conservation.

As the HRA did not identify air pollution or dust as causing a likely significant effect for any of the designated sites potentially affected by this allocation, it is unclear why the air quality assessment refers to statutory habitats under (g).

Amendments are required to address these points.

**Policy WS1: Sizewell A Nuclear Power Station**

The assessment of the allocation in the HRA process is unclear. It was screened in for likely significant effects in the draft HRA, dated August 2018 but omitted entirely in the final version of the HRA, dated November 2018.

We previously commented in our responses that it was difficult to make specific comment without further details on the proposal. We indicated that specific likely impact pathways should be identified as they were probably different to minerals operations list that was cut and pasted into Table Two – Discussion and Assessment contained in Appendix Two: HRA screening & Appropriate Assessment, dated August 2018.

Whilst noting our comments above about the HRA, we do welcome Suffolk County Council’s decision (contained in its Statement of Common Ground with us) to amend the wording of points (b) and (c) of Policy WS1 and change the wording to that proposed in our previous responses of:

‘(b) likely adverse effects (either individually or in combination with other developments) on the notified special interest features of Sizewell Marshes SSSI, Leiston-Aldeburgh SSSI, Sandlings SPA, Minsmere-Walberswick Heaths & Marshes... etc.’
SSSI, Minsmere-Walberswick SPA/Ramsar, Minsmere to Walberswick Heaths & Marshes SAC, .... etc.

c) Detailed assessment of the impacts on the special qualities of Suffolk Coast & Heaths AONB and on Suffolk Heritage Coast; mitigation of identified landscape and visual impacts and reinstatement which is in keeping with local landscape character.’

In relation to the proposed amendment to the wording under point (b) of Policy WS1, it is unclear why similar wording ie ‘likely adverse effects (either individually or in combination with other developments) on the notified special interest features of XXX site(s)…’ cannot be adopted for all the other policy allocations mentioned above that require avoidance or mitigation measures, since all are equally applicable.