

## Habitats Regulations Assessment

### Review of the implications of the People over Wind, Peter Sweetman v Coillte Teoranta judgement

#### Lewes Neighbourhood Development Plan



1. The People Over Wind, Peter Sweetman v Coillte Teoranta judgement (Sweetman II judgement) was issued in April 2018 by the Court of Justice of the European Union (CJEU) and provides important new case law for the treatment of mitigation measures when undertaking Habitats Regulations Assessment (HRA). The Court ruled that Article 6(3) of the Habitats Directive<sup>1</sup> 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 mitigation measures for the plan or project on a European site at the screening stage.
2. Prior to this judgment, case law<sup>2</sup> in England and Wales had established that mitigation measures that form part of a proposal could be taken into account when considering whether the plan or project would be likely to have a significant effect on a European site. If the risk of a significant effect could be excluded on the basis of objective information, there was no need to undertake an AA.
3. To identify if the judgement would have implications for the Lewes Neighbourhood Development Plan (LNDP), the South Downs National Park Authority (SDNPA) has reviewed the findings of the HRA work undertaken for the LNDP. The HRA Screening Report for the LNDP explored a range of potential impacts the LNDP *could* have: these were recreational disturbance and impacts on air quality arising from traffic.
4. The LNDP HRA Screening Report concluded that there are not likely to be significant effects arising from the proposals on the Lewes Neighbourhood Plan, alone or in combination, with regard to the integrity of Lewes Downs Special Area of Conservation, Castle Hill Special Area of Conservation and Ashdown Forest Special Area of Conservation. The requirement for the LNDP to undertake further HRA work was therefore screened out.
5. The determination was made using evidence and analysis from the Submission HRA Report for the South Downs Local Plan, and this determination was able to be made without any consideration of or need for mitigation measures.
6. In conclusion, the HRA Screening Report for the LNDP remains appropriate and no changes are considered necessary in light of the People Over Wind judgement.

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<sup>1</sup> Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora

<sup>2</sup> Hart DC v SSCLG, Luckmore Limited & Barratt Homes Limited [2008] EWHC 1204 (Admin)