

*Working together*



## Malborough Draft Neighbourhood Plan

# Habitats Regulations Assessment Screening Report

May 2017

### **SCREENING OPINION**

The Council considers that there are no European Sites in the vicinity of Malborough that could be subject to significant effects from developments proposed in the Malborough Neighbourhood Plan and that therefore further assessment under the Habitats Regulations is not required. The full reasons are set out below.

*South Hams District Council 05/05/2017*

## 1.0. The HRA process

The legislative basis for the **Habitats Regulations Assessment (HRA)** is EU Habitats Directive Article 6(3) and Regulation 61 of the Conservation of Habitats and Species Regulations 2010 (as amended).

The 'Natura 2000 network' (more commonly referred to as 'European Sites') of sites are designated for the importance of habitats, species and birds (under the 'Habitats Directive' for Special Areas of Conservation, and the 'Birds Directive' for Special Protection Areas). The designation of European Sites was intended to provide legal protection for this flora and fauna of a European importance, requiring their maintenance or restoration in a favourable condition.

With respect to this HRA, all of the following designations, to which the HRA process applies, are referred to as 'European sites':

- **Special Areas of Conservation (SACs)** special protection to flora, fauna and habitats
- **Special Protection Areas (SPAs)** are areas of land, water or sea of international importance for the breeding, feeding, wintering or the migration of rare, vulnerable or migratory species of birds
- **Ramsar sites**, identified through the Convention on Wetlands of International Importance
- **Proposed and candidate SPAs and SACs** (pSPA, cSPA, pSAC, cSAC) that are being considered for designation

### 1.1. The HRA screening process for neighbourhood plans

There are particular requirements for plans and projects set out within the European Directives (and transposed into domestic legislation in England by the 'Habitats Regulations').

The process of HRA encompasses the requirements of the Habitats Directive and Habitats Regulations, and includes a decision on whether the plan (including Neighbourhood Plans) should be subject to appraisal. The 'screening' process is used to consider whether the plan would be likely to have significant effects on a European Sites, and if so whether further assessment is necessary.

Straightforward mitigation measures can be included at this screening stage, which may rule out the likelihood of significant effects. If likely significant effects remain after straightforward mitigation measures are applied, the HRA process should proceed to a second stage which is called an 'Appropriate Assessment.'

An Appropriate Assessment will consider the implications for the European Site in view of the conservation objectives (generally to restore or maintain the features which led to the designation of the site), and consider whether the plan could affect the integrity of the site. More detailed mitigation measures may be considered at this stage. A plan should only be agreed once the competent authority has established that the plan will not adversely affect the integrity of the European Sites.

With respect to Neighbourhood Plans, the Neighbourhood Planning (General) Regulations 2012 require a submitted neighbourhood plan to include a statement explaining how the proposed Neighbourhood Plan meets the basic conditions set out in paragraph 8 of Schedule 4B of the Town and Country Planning Act 1990. One of the basic conditions requires Neighbourhood Plans to be compatible with EU obligations and to demonstrate that it is not likely to have a significant effect on a European Site.

The Habitats Regulations do not prescribe a specific methodology for undertaking or reporting the appraisal of plans, however there is guidance within various documents and the following are most relevant:

- ODPM Circular 06/2005
- *The Habitats Regulations Assessment of Local Development Document (David Tyldesley and Associates for Natural England – final draft 2009)*
- *Habitats Regulations Appraisal of Plans, Guidance for Plan-Making bodies in Scotland (David*

*Tyldesley and Associates, 2012).*

As this Neighbourhood Plan is not directly connected with or necessary for the management of a European site for nature conservation purposes it must proceed through the HRA screening process.

## **2.0. Selecting European sites that should be considered in the HRA screening**

The decision about which European Sites should be considered in the Appraisal is based upon the checklist below (*adapted from Figure 2 of HRA of Plans, David Tyldesley and Associates, 2012*).

- Sites within the plan area
- Sites upstream or downstream of the plan area in the case of river or estuary
- Wetland sites with relevant hydrological links to land within the plan area
- Sites which have significant ecological links with land in the plan area (e.g. migratory birds/mobile species)
- Sites which may receive increased recreational pressure from the plan
- Sites that may be used for water abstraction
- Sites that could be affected by discharge of effluent from waste water treatment
- Sites that could be affected by significant increases in emissions from traffic

## EUROPEAN SITES THAT COULD POTENTIALLY BE AFFECTED BY THE MALBOROUGH NEIGHBOURHOOD PLAN

SOUTH HAMS EUROPEAN SITES			
Site Name & Designation	Qualifying Interests	Site vulnerabilities	Potential effects of plan
<b>Dartmoor SAC</b>	<p>Northern Atlantic wet heath with <i>Erica tetralix</i></p> <p>European dry heath</p> <p>Blanket bog</p> <p>Old sessile oak woodlands <i>Ilex</i> and <i>Blechnum</i> in the British Isles</p> <p>Southern damselfly <i>Coenagrion mercuriale</i></p> <p>Otter <i>Lutra lutra</i></p> <p>Atlantic salmon <i>Salmo salar</i></p>	<p>Visitor and recreational pressure including accidental and deliberate burning, trampling and erosion particularly of blanket bog, disturbance of otters by activity on/near rivers</p> <p>Nutrient/acid deposition causing habitat loss</p> <p>Water quality – effect on Atlantic salmon and Otter</p>	<p>Increased recreational pressure resulting from new development</p> <p>Air pollution associated with new development</p>
<b>Plymouth Sound and Estuaries SAC</b>	<p>Sandbanks which are slightly covered by sea water all the time</p> <p>Estuaries</p> <p>Mudflats and sandflats not covered by seawater at low tide</p> <p>Large shallow inlets and bays</p> <p>Reefs</p> <p>Atlantic salt meadows</p> <p>Shore dock</p> <p>Allis shad</p>	<p>Increased pressure for recreational moorings and facilities, port development, dredging</p> <p>Sensitivity to oil pollution</p> <p>Allis shad vulnerable to noise, vibration and degraded water quality</p>	<p>Increased recreational pressure - physical damage</p>
<b>South Dartmoor Woods SAC</b>	<p>Old sessile oak woodlands <i>Ilex</i> and <i>Blechnum</i> in the British Isles</p> <p>European dry heath</p>	<p>Visitor and recreational pressures</p> <p>Air pollution (associated with atmospheric nitrogen deposition from agriculture, industry, vehicles)</p>	<p>Increased recreational use – trampling and erosion/fires</p> <p>Air pollution associated with new development</p>
<b>Tamar Estuaries Complex SPA</b>	<p>Internationally important populations of Avocet and Little Egret</p>	<p>Disturbance to Avocet and Little Egret</p> <p>Habitat loss – water quality, acid and nitrate deposition in important wetland areas</p>	<p>Increased recreational pressure associated with development – visual and noise disturbance of Avocet and Little Egret</p> <p>Additional housing in vicinity of SPA increasing discharge of pollutants from waste water treatment works (non-toxic contamination)</p>

## 2.1. Conservation Objectives

Natural England publish Conservation Objectives for each European site. Conservation Objectives are intended to assist competent authorities with meeting their obligations under the Habitats Regulations, providing a framework to inform HRA, in particular the Appropriate Assessment stage of HRA.

Where Conservation Objectives are met for the Qualifying Species, the site is considered to exhibit a high degree of integrity and to be achieving a Favourable Conservation Status for that species or habitat.

With regards to the European sites, natural habitats and/or species for which the site has been designated (the Qualifying Features):

- *Avoid deterioration of the qualifying natural habitats and the habitats of qualifying species, and the significant disturbance of those qualifying species, ensuring the integrity of the site is maintained or restored as appropriate and the site makes a full contribution to achieving Favourable Conservation Status of each of the qualifying features.*
- *Subject to natural change, to maintain or restore:*
  - *The extent and distribution of qualifying natural habitats and habitats of qualifying species;*
  - *The structure and function (including typical species) of qualifying natural habitats and habitats of qualifying species;*
  - *The supporting processes on which qualifying natural habitats and habitats of qualifying species rely;*
  - *The populations of qualifying species;*
  - *The distribution of qualifying species within the site.*

## 2.2 Criteria with which to screen the Marlborough Neighbourhood Plan

The following table sets out criteria to assist with the screening process of policies and proposals within the Marlborough Neighbourhood Plan to consider their potential effects on European Sites. Policies and proposals that fall within categories A and B are considered not to have an effect on a European Site and are not considered further within the HRA process. Policies and proposals that fall within categories C and D are considered further, including an in-combination consideration. If straightforward mitigation measures cannot be applied to avoid any significant effects, then any remaining policies and proposals that would be likely to have a significant effect on a European site, either alone or in combination must be taken forward to an Appropriate Assessment.

<b>Category A: No negative effect</b>	
A1	Options / policies that will not themselves lead to development e.g. because they relate to design or other qualitative criteria for development, or they are not a land use planning policy.
A2	Options / policies intended to protect the natural environment, including biodiversity.
A3	Options / policies intended to conserve or enhance the natural, built or historic environment, where enhancement measures will not be likely to have any negative effect on a European Site .
A4	Options / policies that positively steer development away from European sites and associated sensitive areas.
A5	Options / policies that would have no effect because no development could occur through the policy itself, the development being implemented through later policies in the same plan,

	which are more specific and therefore more appropriate to assess for their effects on European Sites and associated sensitive areas.
<b>Category B: No significant effect</b>	
B	An option or policy or proposal that could have an effect but would not be likely to have a significant (negative) effect because the effects are trivial or 'de minimis', even if combined with other effects.
<b>Category C: Likely significant effect alone</b>	
C1	The option, policy or proposal could <b>directly affect</b> a European site because it provides for, or steers, a quantity or type of development onto a European site, or adjacent to it.
C2	The option, policy or proposal could <b>indirectly affect</b> a European site e.g. because it provides for, or steers, a quantity or type of development that may be very close to it, or ecologically, hydrologically or physically connected to it or it may increase disturbance as a result of increased recreational pressures.
C3	Proposals for a <b>magnitude of development</b> that, no matter where it was located, the development would be likely to have a significant effect on a European site.
C4	An option, or policy that makes provision for a quantity / type of development (and may indicate one or more broad locations e.g. a particular part of the plan area), but the effects are uncertain because the detailed location of the development is to be selected following <b>consideration of options in a later, more specific plan</b> . The consideration of options in the later plan will assess potential effects on European Sites, but because the development could possibly affect a European site a significant effect cannot be ruled out on the basis of objective information.
C5	Options, policies or proposals for developments or infrastructure projects that could <b>block options or alternatives</b> for the provision of other development or projects in the future, which will be required in the public interest, that may lead to adverse effects on European sites, which would otherwise be avoided.
C6	Options, policies or proposals which <b>depend on how the policies etc are implemented</b> in due course, for example, through the development management process. There is a theoretical possibility that if implemented in one or more particular ways, the proposal could possibly have a significant effect on a European site.
C7	Any other options, policies or proposals that would be <b>vulnerable to failure</b> under the Habitats Regulations at project assessment stage; to include them in the plan would be regarded by the EC as 'faulty planning.'
C8	Any other proposal that may have an adverse effect on a European site, which might try to pass the tests of the Habitats Regulations at project assessment stage by arguing that the <b>plan provides the imperative reasons</b> of overriding public interest to justify its consent despite a negative assessment.

**Category D: Likely Significant effect in combination**

<b>D1</b>	The option, policy or proposal alone would not be likely to have significant effects but if its effects are combined with the effects of other policies or proposals <b>provided for or coordinated by the Joint Local Plan</b> the <b>cumulative</b> effects would be likely to be significant.
<b>D2</b>	Options, policies or proposals that alone would not be likely to have significant effects but if their effects are <b>combined with the effects of other plans or projects</b> , and possibly the effects of other developments provided for in Our Plan as well, the combined effects would be likely to be significant.
<b>D3</b>	Options or proposals that are, or could be, part of a <b>programme or sequence of development</b> delivered over a period, where the implementation of the early stages would not have a significant effect on European sites, but which would dictate the nature, scale, duration, location, timing of the whole project, the later stages of which could have an adverse effect on such sites.

### 3.0. Malborough Neighbourhood Plan screening

**Table 1: HRA Screening**

<b>Policy/Proposal</b>	<b>Category (A,B,C,D)</b>	<b>Reason for category (unless clear)</b>	<b>Potential impacts on European sites</b>	<b>European sites affected</b>	<b>Mitigation required</b>
2 – 8, 11- 15, 17, 19- 43	A				
1, 9, 10,16,18	B				

#### 3.1. Additions/revisions required to the Malborough Neighbourhood Plan

None

#### 3.2. HRA CONCLUSION AND SCREENING OPINION

The HRA that has been done for the SHWD Joint Local Plan reflects that there are no European Sites in the vicinity of Malborough that could be subject to significant effects from proposed developments in Malborough. The South Devon Shore Dock SAC and Start Point to Plymouth Sound and Eddystone SCI are some 2km to the south of Malborough. However, it is not considered that there are impacts pathways (recreational disturbance, pollution, direct impact from development footprint) linking proposed development in Malborough to these European Sites (namely due to geographical separation). No further HRA screening is required – Likelihood of significant effects from the proposed development on European Sites can be screened out.