



# **Hailey Neighbourhood Plan (HNP) 2015-2031**

## **Habitats Regulations Assessment (HRA) Screening Report**

**October 2018**

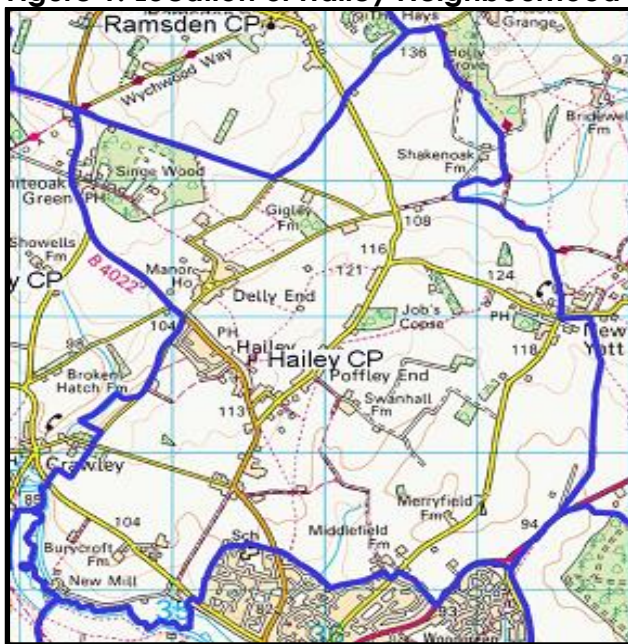


# Hailey Neighbourhood Plan 2015-2031 Habitats Regulations Assessment (HRA) Report

## 1.0 Background

- 1.1 The Hailey Parish Council is preparing a Neighbourhood Plan<sup>1</sup> that covers the Parish of Hailey in West Oxfordshire. The preparation of the HNP has been ongoing and iterative since 2015, including wide consultation and with support from the West Oxfordshire District Council (WODC). The location of the Hailey Neighbourhood Plan (HNP) area is as follows:

**Figure 1: Location of Hailey Neighbourhood Plan Area**



- 1.2 The local planning authority WODC, as part of its duty to advise or assist the neighbourhood planning group, undertook a screening assessment<sup>2</sup> to identify if the proposed HNP will require a strategic environmental assessment (SEA). The SEA Screening identified that the SEA would be required, primarily because the emerging HNP allocates sites for proposed development that have not been previously subject to sustainability appraisal (SA) incorporating SEA.
- 1.3 The SEA Screening was subject to formal consultation with the environmental bodies for 5 weeks (March – April 2018). Natural England (NE) is the relevant consultation body with regard to the European Directives<sup>3</sup> and UK Habitats Regulations<sup>4</sup>. In their response<sup>5</sup> to the HNP SEA Screening, NE advised that “We have checked our records and based on the information provided, we

<sup>1</sup> <https://haileywestoxon.org/neighbourhood-planning/>

<sup>2</sup> Enfusion for WODC (March 2018) Hailey Neighbourhood Plan SEA Screening Report

<sup>3</sup> (42/43/EEC) Conservation of Natural Habitats and Wild Flora and Fauna (Habitats Directive); (2009/147/EC) on the conservation of wild birds [the Birds Directive]

<sup>4</sup> Conservation of Habitats & Species Regulations (2004, as amended 2017)

<sup>5</sup> Letter to WODC dated 18 April 2018

*can confirm that in our view the proposals contained within the plan will not have significant effects on sensitive sites that NE has a statutory duty to protect.*" This indicated that NE did not have any concerns with regard to potential adverse effects on European sites from the draft HNP and therefore, no further work was undertaken, and a Habitats Regulations Assessment was not considered to be necessary. This is also in line with Government guidance<sup>6</sup> that generally neighbourhood plans are unlikely to result in significant effects.

- 1.4 The draft HNP was subject to SEA and the Environmental Report (June 2018)<sup>7</sup> prepared was subject to consultation in accordance with the SEA Regulations. No further comments were received from Natural England, confirming that they had no concern regarding effects from the HNP on sensitive nature conservation sites that NE has a duty to protect.
- 1.5 The Habitats Regulations afford a high level of protection to sites in a network of internationally important sites designated for their ecological status. These are referred to as Natura 2000 sites or European Sites and comprise Special Areas of Conservation (SACs) and Special Protection Areas (SPAs). In addition, Ramsar<sup>8</sup> sites are included within the HRA process - as required by the Regulations.
- 1.6 The HRA process comprises two stages: an initial screening stage considers whether a plan or project is likely to have a significant effect on a European site either alone or in combination with other plans or projects. If likely significant effects (LSEs) are identified through the screening stage, then the plan or project should be tested through a second stage – the appropriate assessment (AA). The role of the AA is to consider the implications of the plan or project for the conservation objectives of the relevant European sites and should determine whether they will have an adverse effect on the integrity of the site.
- 1.7 During the preparation of the draft HNP, the WODC Local Plan 2031 was undergoing independent examination<sup>9</sup>; the plan was then formally adopted on 27 September 2017. The Hailey NP, if made in due course, will become part of the local plan documents for West Oxfordshire. The Local Plan 2031 was subject to HRA and this was considered during the examination with the HRA Report provided as supporting evidence. At this time, it became apparent that a recent Court of Justice of the European Union (CJEU) Judgment<sup>10</sup> had implications for the established methods in the UK for undertaking HRA (and through which the Local Plan had been assessed).
- 1.8 The Judgment 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

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<sup>6</sup> <https://www.gov.uk/guidance/strategic-environmental-assessment-and-sustainability-appraisal#strategic-environmental-assessment-requirements-for-neighbourhood-plans>

<sup>7</sup> <https://haileywestoxon.org/neighbourhood-planning/>

<sup>8</sup> Support internationally important wetland habitats and are listed under the Ramsar Convention on Wetlands of International Importance

<sup>9</sup> <https://www.westoxon.gov.uk/localplan2031>

<sup>10</sup> People over Wind & Sweetman v Coillte Teoranta Case C-323/17

intended to avoid or reduce the harmful effects of the plan or project on a European site at the screening stage.

- 1.9 The implication of this Judgment is that competent authorities cannot take account of any integrated/embedded or additional avoidance or reduction measures when considering at the Habitats Regulations Assessment (HRA) screening stage whether a plan or project is likely to have an adverse effect on a European Site. The Court's Ruling goes against established practice in the UK that takes into account mitigation measures, such as policy requirements for provision of green infrastructure, at the HRA screening stage.
- 1.10 The HRA Report for the West Oxfordshire Local Plan 2031 had been prepared before this CJEU was issued in April 2018. It had concluded that sufficient mitigation measures were provided through the embedded policies such that no significant effects are likely to occur, either alone or in-combination. Therefore, an updated HRA Report<sup>11</sup> was prepared for the local plan and this addressed the changes in the HRA process arising from the Sweetman Judgment.
- 1.11 The new HRA Report was prepared to include a likely significant effects analysis covering all relevant internationally designated sites and then an appropriate assessment of effects on those for which the potential for significant effect cannot be discounted. The mitigation measures are taken into account during the appropriate assessment to form a view regarding adverse effects on integrity. The updated HRA Report concluded that there will be no adverse effects on the integrity of any European site, including the Oxford Meadows SAC.
- 1.12 In consideration of the timings of the new Local Plan, its examination and the updated HRA analysis and reporting, and the timings of the Hailey Neighbourhood Plan with its accompanying assessment, this HRA Screening Report has been prepared. The HRA Screening Report seeks to demonstrate explicitly that the HNP is procedurally compliant with HRA requirements and has taken into account the implications of the Sweetman CJEU.

## 2.0 HRA Screening

- 2.1 The updated HRA Report for the West Oxfordshire Local Plan 2031 considered the potential for likely significant effects (LSEs) on relevant internationally designated sites, either alone or in-combination with other plans and projects. The revised HRA screening stage confirmed that the Local Plan will not have any LSEs due to the distance of the designated sites from the District boundary (nearest is nearly 14km away) and that there are no pathways of impact for sites, as follows:
  - North Meadow & Clattinger Farm SAC
  - Hackpen Hill SAC

<sup>11</sup> <https://www.westoxon.gov.uk/media/1867474/West-Oxfordshire-Local-Plan-2018-HRA-June-2018.pdf>

- Little Wittenham SAC
  - River Lambourn SAC
- 2.2 The revised HRA identified potential LSEs for certain Local Plan Policies with regard to the Oxford Meadows SAC and the Cothill Fen SAC – with potential pathways of impact for recreational pressures, changes in air quality and water quality/quantity. This included for Policy WIT4 Witney Sub-Area Strategy that covers the area in which the Hailey NP is located. These Policies and the two designated sites were taken forward for further investigation through appropriate assessment (AA).
- 2.3 The HRA concluded that there would be no adverse effects on Cothill Fen SAC as a result of the West Oxfordshire Local Plan 2031 either alone, or in combination with other plans and projects. Issues of recreational pressures, air quality and water quality/quantity were investigated with regard to the Oxford Meadows SAC. In consideration of the characteristics of the SAC, the potential impact pathways, the size and location of development allocations, it was concluded that the Local Plan would not have adverse effects on the integrity of the Oxford Meadows SAC alone or in-combination. However, the HRA did recommend that the Council should adopt a partnership approach to strategic monitoring of air quality arising from vehicle emissions over time.
- 2.4 The Oxford Meadows SAC is over 12km to the east of the Hailey NP area and the Cothill Fen is over 15 km to the south east. The very small scale of development proposed through the Hailey NP and its distance from the two relevant designated sites indicate through HRA screening that there will not be likely adverse effects with regard to recreational pressures, air quality, water quality/quantity, or habitat loss/fragmentation. There is no need for further assessment.

### 3.0 HRA Conclusions

- 3.1 The HRA screening concluded that there will not be any likely significant adverse effects on the integrity of the identified relevant designated sites (Oxford Meadows & Cothill SACs) from the Hailey Neighbourhood Plan, either alone or in-combination with other plans or projects.