

Council



Forest Heath
District Council

Title of Report:	Forest Heath Single Issue Review and Site Allocations Local Plan	
Report No:	URGENT BUSINESS COU/FH/18/024 The Chairman has agreed that this item can be considered as a matter of urgency, in accordance with S100B(4) of the Local Government Act 1972, in order that this matter can be resolved within the necessary timescale	
Report to and date/s:	Forest Heath Council	19 December 2018
Portfolio holder:	Lance Stanbury Portfolio Holder for Planning and Growth Tel: 07970 947704 Email: lance.stanbury@forest-heath.gov.uk	
Lead officer:	Marie Smith Strategic Planning Manager Tel: 01638 719260 Email: marie.smith@westsuffolk.gov.uk	
Purpose of report:	To note the submission from Newmarket Horseman's Group to the Inspectors who carried out the Examination into the Forest Heath Single Issue Review (SIR) and Site Allocations Local Plan (SALP). As a result of the submission. To endorse the Councils response and approach to the Habitat Regulations Assessment (HRA) matters raised. This will require an update and review of the Habitat Regulations Assessment in light of recent European judgements.	

Recommendation:	<p>It is recommended that Council:</p> <p>(1) Note the Newmarket Horseman’s Group submission to the Inspectors dealing with the Forest Heath Single Issue Review (SIR) and Site Allocations Local Plan (SALP) on matters relating to Habitat Regulations Assessment.</p> <p>(2) To endorse the Councils response and approach to the HRA matters raised that:</p> <p>(3) In light of the recent European judgements, the Council is now required to review and update the Habitat Regulations Assessment. This update may result in modifications to the SIR and SALP.</p> <p>(4) The Council expects that the updated HRA and any suggested modifications will be complete and submitted to the Inspectors March 2019.</p>
Key Decision:	<p><i>Is this a Key Decision and, if so, under which definition?</i></p> <p>No, it is not a Key Decision - <input checked="" type="checkbox"/></p>
Consultation:	N/A
Alternative option(s):	N/A. In light of the Newmarket Horseman’s Group submission. The Inspectors have requested the Council respond to the matters raised and a realistic timeframe for providing a response.
Implications:	
<p><i>Are there any financial implications? If yes, please give details</i></p>	<p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Updating the HRA and obtaining legal advice when appropriate will have a financial implication. The actual cost is not yet known.</p>
<p><i>Are there any staffing implications? If yes, please give details</i></p>	<p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>Existing resources together with the consultants used to prepare the HRA update will be required.</p>
<p><i>Are there any ICT implications? If yes, please give details</i></p>	<p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>

Are there any legal and/or policy implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> FHDC as the 'plan-making authority' is required to carry out a Habitats Regulations Assessment as required by The Conservation of Habitats and Species Regulations 2017.	
Are there any equality implications? If yes, please give details		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Risk/opportunity assessment:		The Local Development Scheme includes a risk assessment of issues that could affect the Councils ability to deliver the Local Plan(s) in accordance with the programme. Actions to manage the risks have also been identified.	
Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
Legal Challenge	High	As a measure of last resort anyone may issue a legal challenge within six week of adoption of the Local Plan. Officers will continue to seek to ensure that local plan documents are prepared within the legal framework in order to reduce the risk of successful legal challenge through retaining a planning solicitor through document preparation.	Medium
Ward(s) affected:		All Wards	
Background papers: <i>(all background papers are to be published on the website and a link included)</i>		None	
Documents attached:		Appendix A - Email and HRA Joint Opinion document. Newmarket Horseman's Group	

1. Key issues and reasons for recommendation(s)

- 1.1 The Forest Heath Single Issue Review and Site Allocations Local Plan are nearing completion of their Examination. The post-modification hearings sessions concluded on the 27 June 2018 and the Council has been waiting for the Inspectors to issue the Reports. This is the final stage of the process before adoption.
- 1.2 On the 26 November 2018, Pegasus Planning acting on behalf of the Newmarket Horseman's Group issued a legal opinion to the Inspectors who carried out the Examination into the SIR and SALP. The legal opinion references a series of decisions in the European Court relating to the preparation of the Habitat Regulations Assessment (HRA) (Appendix A), most of which were decided after the close of the hearing sessions and after the Habitats Regulations Assessment had been written.
- 1.3 The opinion considers that in light of these decisions, the HRA and Addendum prepared to inform and support the SIR and SALP Local Plans, is now not considered legally compliant.
- 1.4 In response, on the 12 December 2018, the Inspectors have requested the Council make the opinion and accompanying email public and have requested the local planning authority provide a considered response to the matters raised in the document and for the Council to provide a realistic timeframe for providing a response.
- 1.5 The information was placed on the council's website on the 17 December 2018.
- 1.6 As a result of submission and request from the Inspectors, the Council have sought legal advice which has confirmed that in light of these recent decisions the Habitat Regulations Assessment requires updating to ensure that all of the issues identified by the European Court are explicitly addressed.

Issues

- 1.7 When preparing a Local Plan, in this case the Single Issue Review (SIR) and Site Allocations Local Plan (SALP), FHDC as the 'plan-making authority' is required to carry out a Habitats Regulations Assessment as required by The Conservation of Habitats and Species Regulations 2017. The Habitats and Birds Directives protect sites of exceptional importance in respect of rare, endangered or vulnerable natural habitats and species within Europe. These sites are referred to as 'European Sites' and on land consist of Special Areas of Conservation (SACs) and Special Protection Areas (SPAs).
- 1.8 Following a CJEU judgment (*People Over Wind & Sweetman v Coilte Teoranta [2018] PTSR 1668*) the HRA was carefully reviewed and the Council prepared an HRA Addendum (June 2018) which was subsequently adopted by Full Council 26 September 2018.

- 1.9 Since then, a series of further judgements have been issued. These are set out within the opinion submitted to the Inspectors by the Newmarket Horseman's Group. Broadly speaking, the cases expand the scope of the matters that need to be included in a HRA report, emphasise the importance of being able to demonstrate that plans or projects will not adversely affect the integrity of the protected sites, and require further explanations to be provided for the conclusions reached in the HRA report. These decisions mean an update to the Habitat Regulations Assessment and Addendum is required. This update may lead to modifications to the SIR and SALP as currently written in order to ensure that adequate protections are in place.

Current Position

- 1.10 The Inspectors are not in a position to issue the Inspectors Report into the SIR and SALP until the Council has provided a considered response to the opinion that has been submitted.
- 1.11 Officers recently met with counsel and the consultants who carried out the HRA to discuss the content of the opinion. The advice is that the HRA should be updated to meet the requirements of the recent judgements. It is anticipated that updating the HRA in light of these new judgements will take approximately 8 weeks (with completion expected early March 2019). The updated HRA together with any modifications which may be required will be submitted to the Inspectors who will consider our response and set out how they wish to proceed.
- 1.12 Therefore, the Forest Heath Single Issue Review and Site Allocations Local Plan is not capable of being progressed until this work has been completed and submitted to the Inspectors. In the meantime, the status quo will continue. Forest Heath will not have an adopted up to date Local Plan. The emerging Plans carry some to significant weight in decision making given the Plans are at an advanced stage.

Risks and Next Steps

- 1.13 The Council has a legal obligation to ensure that both the SIR and the SALP are compliant with the Habitats Directive (and the domestic 2017 Regulations) prior to being able to adopt those documents. This is a mandatory requirement. To that end it is recommended that the Council prepares a response to the Inspectors, informing them:
- 1.14 In light of the recent European judgements, the Council is now required to review and update the Habitat Regulations Assessment. This update may result in modifications to the SIR and SALP.
- 1.15 The Council expects that the updated HRA and any suggested modifications will be complete and submitted to the Inspectors March 2019.

- 1.16 This work will allow the SIR and SALP to progress and minimise the risk of challenge following adoption, having prepared an HRA in light of the recent European judgments.
- 1.17 Once the SIR and SALP is adopted, the Council will have an adopted Local Plan safeguarding the District from speculative development. The Council is unable to prepare a detailed timetable at this time. Following the updated HRA, the Inspectors will review the documentation and set out the next steps.