

Letter to Sandra Scott, Place Strategy Manager  
Colchester Borough Council

cc Wivenhoe Town Council (via CBC)  
26 November 2018

Dear Sandra,

**Examination of the Wivenhoe Neighbourhood Plan  
Update on Habitats Assessment**

I am writing to set out what I understand to be the current position on neighbourhood plans and habitats assessments. This is an issue which has caused considerable uncertainty for all parties, including examiners, over recent months and unwelcome, but unavoidable delay to the examination process.

You will be aware that the Court of Justice of the European Union has made a number of recent judgments that have affected practice in relation to habitats assessments.

In the case of *People Over Wind, Peter Sweetman v Coillte Teoranta*, the Court ruled that Article 6 (3) of the Habitats Directive 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 appropriate assessment (AA). This means that it is not permissible to take account of measures intended to reduce or avoid any harmful effects of a plan or project on a European site at the screening stage. This meant that some screening opinions needed to be reviewed in the light of this judgment. In turn this resulted in some neighbourhood plans being 'screened in' (i.e. found to have likely significant effects) and needing to move to the next stage of habitats assessment – AA.

The Government has now indicated that it intends to make an amendment to regulations "to ensure that neighbourhood plans that are 'screened in' to the assessment process can continue to progress, following an AA. An AA would consider any impacts alongside mitigation measures, following the same process as assessments for Local Plans."

It is expected that an amendment will be laid in early December 2018. Subject to parliamentary approval, the new basic condition should take effect at the end of December 2018, probably on 28 December 2018. The Government has indicated this would not apply retrospectively.

The Government has also indicated its intention to issue guidance on the implications of the judgment and has shared the proposed amendment and memorandum:

**"Amendment to the Neighbourhood Planning (General) Regulations 2012**

3.—(1) The Neighbourhood Planning (General) Regulations 2012([\[1\]](#)) are amended as follows.

(1) In Schedule 2 (Habitats), for paragraph 1 substitute:

**Neighbourhood development plans**

1. In relation to the examination of neighbourhood development plans the following basic condition is prescribed for the purpose of paragraph 8(2)(g) of Schedule 4B to the 1990 Act([\[2\]](#))—

The making of the neighbourhood development plan does not breach the requirements of Chapter 8 of Part 6 of the Conservation of Habitats and Species Regulations 2017([\[3\]](#)).

**Explanatory memorandum:**

Regulation 3 amends the Neighbourhood Planning (General) Regulations 2012 to revise one of the basic conditions for making a neighbourhood plan. The revised basic condition requires that neighbourhood plans can only be made if they have followed the requirements of the Directive transposed into Chapter 8 of Part 6 of the 2017 Regulations (which set out the habitat assessment process for other land use plans, such as Local Plans). This assessment process is already applicable to neighbourhood plans, as they are defined as a ‘land use plan’ in regulation 111 of the 2017 Regulations. This amendment connects the basic condition for making neighbourhood plans to this process.”

As this Neighbourhood Plan has been ‘screened in’, it seems to me that it would be sensible for this issue (which largely appears to be a procedural matter) to be fully resolved before the examination is concluded.

Once both the local authority and the Parish Council have had an opportunity to consider the Government’s position, please contact me so we formally agree the key milestones for the way forward.

This letter is of course a matter of public record and should be placed on the relevant websites.

With many thanks,

Ann Skippers MRTPI  
Independent Examiner