

Date: 19 July 2017
Our ref: 217607



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BY EMAIL ONLY

Dear Ms McClean,

**Habitats Regulations Assessment (HRA) of the Draft Colchester Local Plan, Part 2
Appropriate Assessment Report**

Thank you for your consultation on the above which was received by Natural England on 07 June 2017.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

SUMMARY OF ADVICE

The information provided in the Appropriate Assessment (AA) for the Essex Estuaries Special Area of Conservation (SAC) is incorrect and needs to be reassessed. Therefore, we currently cannot confirm if there is unlikely to be an adverse effect on the integrity (AEOI) of this site.

All of the individual site allocations within the part 2 plan will have a cumulative impact, which has not been included in this AA.

We agree with the conclusions that the Colchester Local Plan part 2 is likely to have an adverse effect on integrity for the Blackwater Estuary SPA and Ramsar site, Colne Estuary (Mid-Essex Coast Phase 2) SPA and site¹ and the Stour and Orwell Estuaries SPA and Ramsar site, in-combination with the Part 1 plan, Tendring and Braintree part 2 plans and the various other Local and Neighbourhood plans listed.

We support the commitment by Colchester Borough Council to implement a Recreation and Avoidance Mitigation Strategy (RAMS).

We have reviewed the HRA AA and have a number of comments to make, as set out in the sections below:

Direct disturbance from building activity

¹ Listed or proposed Wetlands of International Importance under the Ramsar Convention (Ramsar) sites are protected as a matter of Government policy. Paragraph 118 of the National Planning Policy Framework applies the same protection measures as those in place for European sites.

- *Colne Estuary (Mid-Essex Coast Phase 2) SPA and Ramsar site*
- *Blackwater Estuary SPA and Ramsar site*
- *Essex Estuaries SAC*

The AA concludes that no sites have been allocated in close proximity to any sites, however if any non-strategic sites come forward over the plan period they will be covered by the addition of policy wording: "Proposals in close proximity to a European site must demonstrate through HRA screening that the scheme will not lead to likely significant effects to the integrity of the European site. **Where this cannot be ruled out, a full appropriate assessment will be required to be undertaken.**"

We note for the Essex Estuaries SAC and in the conclusion and summary of recommendations section, second bullet point, the wording does not include a full appropriate assessment being required, where effects cannot be ruled out. For consistency and assurance we advise that the full wording as above for the Colne and Blackwater is included in policies OV1, OV2 and DM6 and amended in the Essex Estuaries SAC and conclusion sections of the HRA.

Recreational Disturbance

- *Colne Estuary (Mid-Essex Coast Phase 2) SPA and Ramsar site*
- *Blackwater Estuary SPA and Ramsar site*

Part 2 plan allocations

The AA has only assessed the allocations screened in alone, such as Mersea Island. The AA has not considered the part 2 plan allocations cumulatively with each other. The advice provided in our email response dated 17/01/2017 to the part 2 HRA screening assessment was as follows: '*For the allocations which have been screened out alone, you still need to consider whether the allocations need to be screened in "in-combination" (with other allocations in the plan and the Garden Communities / Part 1)*'.

As we previously advised, although screened out as individual allocations, all of the allocations need to be considered cumulatively as a collective whole plan housing figure within the zone of influence of European sites. In line with the part 1 AA, we advise that the total net increase of dwellings from the part 2 allocations, cumulatively, will have an adverse effect on integrity (in the absence of mitigation). Therefore the Recreation Avoidance and Mitigation Strategy (RAMS) will need to apply to all housing allocations coming forward, within the respective zone of influence for each European site.

We advise that the RSPB maps used are misleading and have not correctly identified the boundaries of the Colne and Blackwater Estuaries. Figure 2: Blackwater Estuary shows Mersea Island, however everything to the East of The Strood is the Colne Estuary, which is the majority of that map. The majority of high tide roosts have been identified, although some have been missed. The maps also suggest that only the roosts and feeding sites are high risk, however if birds are resting/loafing on mudflats or other areas and are disturbed, this is still high risk.

- *Essex Estuaries SAC*

Natural England advises that the information detailed in this section is incorrect. The same information has been used for the SAC, as for the Colne and Blackwater SPA's. The designations are notified for different features, and waterbirds are not a feature of the Essex Estuaries SAC. As identified in the HRA, the qualifying features are:

- Sandbanks which are slightly covered by sea water all the time; Subtidal sandbanks
- Estuaries
- Mudflats and sandflats not covered by seawater at low tide; Intertidal mudflats and sandflats
- *Salicornia* and other annuals colonising mud and sand; Glasswort and other annuals

- colonising mud and sand
- *Spartina* swards (*Spartinion maritimae*); Cord-grass swards
- Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)
- Mediterranean and thermos-Atlantic halophilous scrubs (*Sarcocornetea fruticose*); Mediterranean saltmarsh scrub

Recreational disturbance impacts would be from trampling and damage due to increased footfall/dogs to the above habitats, and increased water sports activities causing damage to the intertidal habitat areas.

In the second paragraph the justification says: “Disturbance to mudflats tends to occur on hot and busy weekends when there is a low tide. This disturbance thus avoids the sensitive over-wintering and spring breeding periods.”

This is still describing direct disturbance to the mudflats, during busy summer periods. Therefore there is an adverse effect on the integrity of the Essex Estuaries SAC.

Figure 1 for the Colne has also been included, with findings from the RSPB, which is incorrect for the SAC. The first paragraph below this figure then says: “Water based recreational activities including sailing, motorboats, and jet skis have also been identified as resulting in disturbance to SPA/Ramsar bird species.” The second paragraph after figure 1 then goes on to say: “The Section 1 appropriate assessment (paragraphs 6.29-6.30) concluded that the effect of water based recreation on SPA/Ramsar birds is difficult to predict and manage but studies from elsewhere in the UK suggest that people will travel relatively far to partake in such activities and that they are more prevalent in the summer months.”

This again implies that during busy summer periods there will be more recreational disturbance, which in turn means more trampling/damage to the sensitive habitats.

Loss of offsite functionally linked land is also not relevant to the SAC.

Therefore the impacts from recreational disturbance to the SAC features need to be reassessed, and appropriate mitigation implemented.

Caravans

- *Colne Estuary (Mid-Essex Coast Phase 2) SPA and Ramsar site*
- *Blackwater Estuary SPA and Ramsar site*

We support the precautionary approach, that if caravan site owners do not wish to participate in the RAMS process then any future extensions will require their own HRA and where required AA. This would need to demonstrate both alone, and in combination effects with other plans and projects, and appropriate mitigation measures would need to be secured to ensure their project would not have a likely significant effect or adverse effect on the above sites.

Water quality and quantity

- *Stour and Orwell Estuaries SPA and Ramsar site*
- *Colne Estuary (Mid-Essex Coast Phase 2) SPA and Ramsar site*
- *Blackwater Estuary SPA and Ramsar site*
- *Essex Estuaries SAC*

The AA concludes that the safeguards which will be included within the Part 2 Local Plans (e.g. policy safeguards such as a commitment to ensure that phasing of development does not exceed infrastructure capabilities and that the necessary upgrades are in place prior to development coming

forward) will ensure that a given development will not proceed until the necessary infrastructure upgrades have been provided as necessary in accordance with Anglian Water and Environment Agency advice. In addition, we strongly recommend that the advice of Anglian Water and the Environment Agency continues to be sought on this issue.

Provided each of the above safeguards are fully incorporated into the relevant policies, Natural England agrees that the Plan will not lead to AEOI of the aforementioned designated sites.

Loss of offsite functional habitat

- *Colne Estuary (Mid-Essex Coast Phase 2) SPA and Ramsar site*

For part 1 the Tendring and Colchester Borders Garden Community development site is identified as being of potential value as offsite functional habitat (also known as 'functionally linked land') for golden plover and lapwing which are qualifying designated site species. As a result, safeguards are recommended in the form of further survey and assessment as part of any development proposal, and commitment to phasing of development and provision of suitable migratory habitat as appropriate

The AA for part 2 has concluded that provided the mitigation measures above are incorporated into Section 1 of the plan, section 2 will not lead to a likely significant effect to European sites.

Urbanisation

- *Colne Estuary (Mid-Essex Coast Phase 2) SPA and Ramsar site*
- *Blackwater Estuary SPA and Ramsar site*
- *Essex Estuaries SAC*

We welcome the inclusion of wording in policy DM6 (Economic development in rural areas and the countryside), which will state "that any planning application within 400 metres of a European site must provide mechanisms to prevent fly tipping, the introduction of invasive species and vandalism.

One minor amendment is required in the Blackwater AA section, which repeats that there are no residential or employment allocations within 400 metres of the Colne Estuary, which should say Blackwater.

Other

- *Colne Estuary (Mid-Essex Coast Phase 2) SPA and Ramsar site*

Policy DM25 promotes District Heating projects in the garden communities. As these are innovative projects and the impacts are unknown we welcome the inclusion of a project level HRA and if necessary AA. We also welcome the amendment to policy ENV1 which now includes wording consistent with the above to ensure compliance with the Habitats Regulations.

Recreational impacts in-combination

- *Colne Estuary (Mid-Essex Coast Phase 2) SPA and Ramsar site*
- *Blackwater Estuary SPA and Ramsar site*
- *Stour and Orwell Estuaries SPA and Ramsar site*

The AA concludes that SANG's are generally an effective mitigation measure, however, also acknowledges that it is difficult to recreate an estuarine habitat as found at the Colne, Blackwater

and Stour and Orwell SPA's and Essex Estuaries SAC. The draw of the coast will always attract visitors, which means there will still be a residual effect, which requires additional mitigation, above SANGs provision.

The AA recommends that this issue is mitigated through the implementation of a cross-authority strategic solution (Colchester Borough, Braintree District and Tendring District Councils), referred to as a Recreation Avoidance and Mitigation Strategy (RAMS). As per our previous advice on this issue, we fully support this recommendation and consider that such an approach is the most effective and efficient means for planning authorities, developers and Natural England to ensure that housing growth is sustainably integrated alongside nature conservation in the long term.

On the specifics of the strategic solution, the AA recommends that two separate RAMS are produced with respect to the North Essex Authorities (NEA) Strategic Part 1 Plan and the authority-specific Part 2 Plans. However, we advise that the best approach would be to develop a single cross-authority RAMS to include all relevant designated sites. We strongly recommend that a consultant is commissioned to undertake this work as soon as possible and that they and the relevant authorities meet with Natural England at the earliest opportunity to discuss the scope and progression of the strategy. As alluded to in the AA, a policy commitment must be made to the production of a RAMS, which will need to be prepared and agreed with Natural England by the time the Local Plan is adopted. This is required to ensure that there is a sufficient level of certainty that the RAMS will be delivered and, subsequently, that the Plan can be considered sound in terms of the Habitats Regulations.

With regards the related issue of open space provision within residential development sites, we support the requirement in policy DM18 (Provision of Public Open Space) for new development to provide for the recreational needs of new communities. We welcome that sites over 5ha are required to provide a strategic area of open space, and that every new dwelling will have open space provision. We support the general principle of implementing high quality natural and semi-natural informal open space which, among its many functions, helps absorb day-to-day recreational activities such as routine dog walking thereby reducing the frequency of visits made to the above designated sites. In order to serve this function, such open space must be of a suitable size and include circular walks of sufficient length for daily dog walking (i.e. 2.7 km), dogs-off-lead areas and waste bins etc.

Conclusion and summary of recommendations

The additions to paragraph 5.4 of the supportive text to Policy ENV1, only refers to the Wivenhoe Neighbourhood Plan, and some of the allocations in part 2 such as Mersea Island. As explained above in the Recreational Disturbance section, Part 2 Plan allocations, cumulatively will have an effect, and should therefore also be included in the policy wording changes.

We note within section 5.5 – “The strategies, where necessary, will require new residential development, that is likely to affect the integrity of the Colne, Blackwater and Stour European Sites, to pay for the implementation of the mitigation. The appropriate mechanism will be identified in the strategies.”

We advise that ‘where necessary’ is removed from this paragraph. It has been concluded that the RAMS is required and we advise that the part 2 plan housing growth will have an adverse effect on integrity of the designated sites, in-combination with the part 1 plan and adjacent North Essex authorities. The additional policy wording is currently too ambiguous and the RAMS strategic solution will apply to all housing growth within the zones of influence in Colchester for both the part 1 and part 2 plans. This means all proposed residential developments within the zones of influence will be required to pay a mitigation tariff (to be decided in the RAMS SPD), which will avoid any confusion for developers when the RAMS is implemented. We advise this is updated within the AA and the relevant policies/supportive text of the local plan.

Zones of Influence

Natural England notes the zones of influence for recreational disturbance that have been used in this HRA and the Part 1 Local Plan HRA. It should be noted however, that these may change as the RAMS is developed (this has been our experience elsewhere). For example further monitoring work will be required as part of the RAMS which may include comprehensive visitor surveys to ensure the zones of influence are robust and accurately reflect the distances the majority of visitors are likely to travel to access the sites concerned.

This concludes Natural England's advice which I hope you will find helpful.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries relating to the specific advice in this letter only please contact Kayleigh Cheese on 02080 260981. For any new consultations, or to provide further information on this consultation, please send your correspondences to consultations@naturalengland.org.uk.

Yours sincerely

Miss Kayleigh Cheese
Essex Local Delivery Team