

The Council House, Avenue Road, Malvern WR14 3AF

Please ask for: David Clarke
Telephone:
Our reference:
Date: 21st December 2018

Dear Chris,

Malvern Town Neighbourhood Development Plan Independent Examination

Thank you for drawing our attention to the changing basic condition relating to the Conservation of Habitats and Species and Planning Regulations which will come into force on 28 December 2018.

Officers from the District Council and Town Council have considered the changing condition and in our opinion the Malvern Town Neighbourhood Plan will meet this replacement basic condition without further actions in relation to the HRA Screening Opinion being necessary.

The District Council has reviewed the HRA Screening Opinion in light of the Sweetman rulings and considers that the HRA Screening Opinion for the Malvern Town Neighbourhood Plan remains valid and that a HRA AA is not required. The reasons for this are:

- (i) The distance of the Neighbourhood Area from internationally designated wildlife sites. There are no internationally designated wildlife sites located within the Malvern Town Neighbourhood Area. For the purposes of the HRA screening assessment, internationally designated wildlife sites that fall within 20km were considered. There are two sites identified within this range – Lyppard Grange Ponds SAC and Bredon Hill SAC which are approximately 11km north-east and 15km south-east of the Malvern Town Neighbourhood Area respectively.
- (ii) The HRA screening assessment does not seek to take account of any measures intended to reduce or avoid any harmful effects of the Plan on any European site, in part due to the fact that the Neighbourhood Plan does not propose any development sites.

Natural England have confirmed (see letter below) that they do not consider the People over Wind judgement to be relevant to the Malvern Town Neighbourhood Plan because the HRA Screening Opinion does not rely on mitigation to in order to reach the conclusion of *no likely significant effects*.

In relation to the replacement basic condition, our understanding is that the change will allow certain neighbourhood plans to progress to appropriate assessment and allow any mitigation measures needed to be fully considered. Since the HRA Screening Opinion for the Malvern Town Neighbourhood Plan does not rely on mitigation to reach the conclusion of no likely significant effects, the District Council and Town Council consider that the Malvern Town Neighbourhood Plan will meet this replacement basic condition without further actions being necessary.

Chief Executive: **Jack Hegarty**

www.malvernhills.gov.uk

The Council House, Avenue Road, Malvern WR14 3AF

Yours sincerely,

David Clarke
Planning Officer

Date: 19 December 2018
Our ref: 267081
Your ref: None



David Clarke
Planning Officer
Malvern Hills District Council
david.clarke@malvern hills.gov.uk

Customer Services
Hornbeam House
Crewe Business Park
Electra Way
Crewe
Cheshire
CW1 6GJ

BY EMAIL ONLY

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Dear Mr Clarke

**Review of HRA Screening Assessments in light of the People over Wind judgement:
Malvern Town Neighbourhood Development Plan
Broadwas & Cotheridge Neighbourhood Development Plan**

Thank you for your correspondence, dated 10 December and today.

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.

I am writing to confirm the situation regarding the recent 'People over Wind' judgement and its relevance to the Malvern Town NDP and the Broadwas & Cotheridge NDP. However, should the same question arise in relation to any other NDP's in the District then the advice given here would apply, unless there are any additional considerations of which I am currently unaware.

The People over Wind judgement

In April 2018, a judgment was handed down by the Court of Justice of the European Union ('the CJEU') which provides further authoritative interpretation of the Habitats Directive. People over Wind, Peter Sweetman v Coillte ([Case C-323/17 People Over Wind v Coillte Teoranta](#)).

The CJEU's judgment states that mitigation measures cannot be taken into account when deciding whether a plan or project is likely to have a significant effect on a European site. Rather, a competent authority must take account of measures intended to avoid or reduce the harmful effects of a plan or project as part of the appropriate assessment. Only then can a conclusion be drawn as to whether the plan or project will have an adverse effect on the integrity of the site.

This is particularly pertinent with regard to Neighbourhood Plans, as there is a basic condition in the Neighbourhood Planning Regulations (2012) which states that the making of the neighbourhood plan is not likely to have a significant effect on a European site (paragraph 1, Schedule 2 of the Neighbourhood Planning (General) Regulations 2012). This means that Neighbourhood Plans cannot proceed to the appropriate assessment stage of the Habitat Regulations Assessment process.

Relevance of the People over Wind judgement to Neighbourhood Development Plans in Malvern Hills District

Natural England advises that we do not consider the People over Wind judgement to be relevant to NDP's in the Malvern Hills District. As far as we are aware, none of the NDP's in the Malvern Hills District result in likely significant effects on European sites. The Habitat Regulations Assessment's

for the NDP's do not rely on mitigation in order to reach their conclusion of *no likely significant effects*; therefore the People over Wind judgement does not come into consideration.

Changes to the Neighbourhood Planning Regulations (2012) to allow Neighbourhood Plans to proceed to the Appropriate Assessment stage of the Habitat Regulations Assessment process

For your information, I understand that the Ministry of Housing, Communities and Local Government has received ministerial approval to amend legislation to allow certain development orders, neighbourhood plans and permission in principle to progress to appropriate assessment and allow any mitigation measures needed to be fully considered. These changes will be laid before parliament on 7 December 2018, coming into force on 28 December 2018. Supporting guidance will be made available as part of Planning Practice Guidance.

For any queries relating to the specific advice in this letter only please contact Hayley Fleming on [REDACTED]. For any new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

Yours sincerely

Hayley Fleming
Casework Manager - Planning
West Midlands Area Team