

Habitats Regulations Assessment

Report for:

Marden Neighbourhood Area

November 2020



Modified draft Marden Neighbourhood Plan HRA

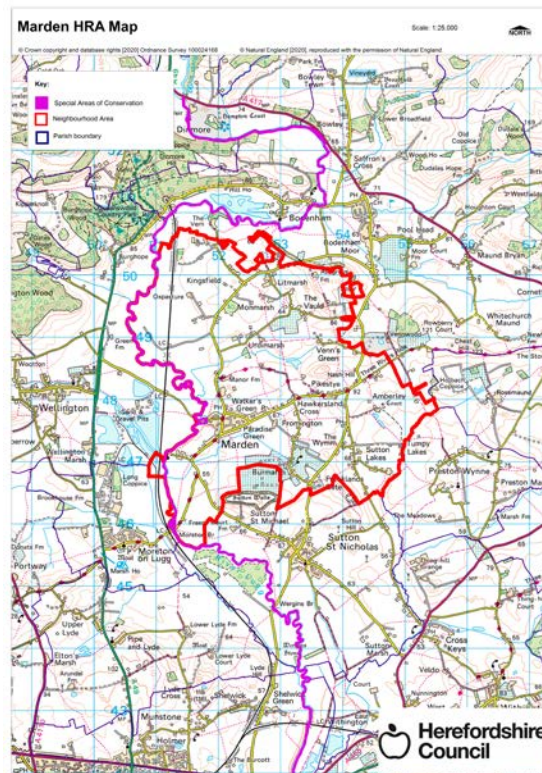
HRA Screening Assessment

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1 Introduction

- 1.1 This Screening Assessment relates to the modified draft Marden Neighbourhood Development Plan. The NDP is considered to be in general conformity with higher level strategic plans, such as the Herefordshire Core Strategy and the National Planning Policy Framework. The screening stage involves assessing broadly whether the final Neighbourhood Plan is likely to have a significant effect on any European site(s).
- 1.2 Marden Parish Council produced a Neighbourhood Development Plan for Marden which was made on 12 October 2016. The NDP set out the vision, objectives and policies for the development of the area up to 2031. The parish council have now decided that the made plan needs to be modified in order to address some of the issue which have arose since 2016 and during the implementation of the policies.
- 1.3 A number of objectives and policies within the NDP are proposed to be modified. There are also additional proposed sites allocations and minor alterations to the designated settlement boundaries to meet the growth requirements of the strategic policies. The modified plan will provide general criteria policies that clarify and given more detail to those within the Herefordshire Core Strategy. These modifications require a high level screening assessment to build upon the HRA Screening Assessment Report for the Core Strategy and that of the current Made Marden NDP. This report should be read in combination with the Core Strategy Habitat Regulations Assessment Report. The aim of the assessment is to ensure that there will not be any significant impacts upon Natura 2000 site.
- 1.4 The map below shows Marden Neighbourhood Area to with the European Sites highlighted.



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2 The requirement to undertake Habitats Regulations Assessment of neighbourhood plans

- 2.1 The requirement to undertake HRA of development plans was confirmed by the amendments to the "Habitats Regulations" published for England and Wales in July 2007 and updated in 2013. Therefore, when preparing its NDP, Marden Parish Council is required by law to carry out an assessment known as "Habitats Regulations Assessment". It is also a requirement in Regulation 32 schedule 2 of the Neighbourhood Planning Regulations 2012.
- 2.2 Article 6(3) of the EU Habitats Directive provides that:
Any plan or project not directly connected with or necessary to the management of the [European] site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.
- 2.3 HRA is an impact-led assessment and refers to the assessment of the potential effects of a neighbourhood plan on one or more European sites, including Special Protection Areas (SPAs) and Special Areas of Conservation (SACs):
- **SPAs** are classified under the European Council Directive 'on the conservation of wild birds' (79/409/EEC; 'Birds Directive') for the protection of **wild birds and their habitats** (including particularly rare and vulnerable species listed in Annex 1 of the Birds Directive, and migratory species).
 - **SACs** are designated under the Habitats Directive and target **particular habitats** (Annex 1) and/or species (Annex II) identified as being of European importance.
- 2.4 For ease of reference during HRA, general practice has been that these designations are collectively referred to as either **Natura 2000** or **European sites**. This means that a Screening Assessment is carried out with regard to the Conservation Objectives of the European Sites and with reference to other plans or projects to identify if any significant effect is likely for any European Site.
- 2.5 Herefordshire Council is aware of the recent judgement (People over Wind, Peter Sweetman vs Coillte). The Court of Justice of the European Union (CJEU) ruled that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures should be assessed within the framework of an appropriate assessment and that it is not permissible to take account of measures intended to avoid or reduce the harmful effects of the plan on a European site at the screening stage. The initial screening undertaken in November 2020 and concluded that a full HRA would be required. Mitigation was not taken into account at this stage and has not been taken into account within the assessments within this report.
- 2.6 The Co-operation Mobilisation (The Dutch case) ruling will also have an impact on Herefordshire in the areas within the catchment of the River Lugg. This will be covered in section 4. The Marden NDP is within the River Lugg hydrological catchment.
- 2.7 The purpose of this HRA report is to detail the findings of the screening of the proposed minor changes to policies following the parish council's decision to modify the made NDP. It will also take into account the implications of Sweetman and the Dutch Case as these judgment were made after the previous HRA was undertaken.

3 Methodology

- 3.1 Although the modified Marden NDP is not directly regarding the management of any European sites, it does include proposals for development which may affect European sites. Therefore, it is necessary under Regulation 102(1)(a) of the Habitats Regulations 2010 to undertake screening for likely significant effects on European sites.
- 3.2 The HRA of neighbourhood plans is undertaken in stages and should conclude whether or not a proposal or policy in a neighbourhood plan would adversely affect the integrity of the site in question. This is judged in terms of the implications of the plan for a site's 'qualifying features' (i.e. those Annex I habitats, Annex II species, and Annex I bird populations for which it has been designated) and are measured with reference to the conservation objectives for those qualifying features as defined by Natural England.
- 3.3 The first process is to undertake an initial screening report to determine the need to undertake the requirement for a HRA, this initial screening identifies whether the Plan could impact upon any European site that could be within the Neighbourhood Area or nearby.
- 3.4 If a European Site is within the Neighbourhood Area or the Neighbourhood Area could impact upon a European site then this will need to be taken into account and a full screening assessment will need to be undertaken.
- 3.5 The full screening stage consists of a description of the plan, identification of potential effects on European Sites, assessing the effects on European Sites. For Neighbourhood Plans the outcome should demonstrate there are no likely effects upon the European sites. If any likely effects occur then there will need to be amendments to the NDP made and be re-screened until all likely effects have been addressed.

4 Results of the Initial Screening Report and qualifying features of the European Sites

- 4.1 The revised initial Screening report (October 2020), shown in Appendix 1, indicates that the River Wye (including the River Lugg) SAC is located less than 1km away from the western edge of the Marden neighbourhood area. The parish is also within the River Lugg catchment area. Therefore a full screening assessment is required.
- 4.2 There is also a duty under the Water Framework Directive to ensure that proposals for growth do not adversely affect the river water quality and this included the associated watercourses flowing into the rivers.

Site integrity of the River Wye (including the River Lugg) SAC

- 4.3 The issues associated with maintaining the sites integrity include water levels and flow, water quality, eutrophication (nitrogen enrichment), sedimentation, disturbance and species maintenance.
- 4.4 The River Wye (including the River Lugg) SAC can be sensitive to changes in water quantity and quality. As outlined within the Habitat Regulation Assessment to the Herefordshire Core Strategy, the water supply in this area comes from Dwr Cymru Welsh Water (DCWW) and no likely

significant effects on European sites as a result of changes in water quality are expected in relation to the proportional growth outlined with the Herefordshire Core Strategy.

- 4.5 Sections of the River Wye SAC where the water quality targets are already exceeding are subject to measure to reduce nutrients in line with the targets. This included the area of Marden which is within the River Lugg hydrological catchment. In light of the interpretation of the Dutch Case where a European Site is falling its water quality objectives and is classified as unfavourable condition, there is limited scope for the approval of additional damaging effects and measures that can't be relied or are uncertain.
- 4.6 In relation to water quality, Policy SD4 of the Herefordshire Core Strategy indicates that any development should not undermine the achievement of water quality targets within the county's rivers. This should ensure that developments within the area can be accommodated within existing water discharge permits would not be likely to have a significant effect upon the River Wye SAC. This position is confirmed within the HRA of the Core Strategy in April 2015.
- 4.7 Although as present the current Nutrient Management Plan for the River Wye SAC cannot be relied upon in light of the Dutch case, DCWW have indicated that phosphorus stripping was included at the local sewerage treatment works in AMP4 and this would be reviewed in AMP7 (2020 - 2025)

Summary of NDP effect on site integrity

- 4.8 For full details of the relevant SAC attributes which contribute to and define their integrity and vulnerable data see Appendix 1 of the Marden Initial Screening Report. The Initial Screening Report, October 2020, can be found in Appendix 1 of this HRA report.
- 4.9 This information made it possible to identify the features of each site which determine site integrity, as well as the specific sensitivities of each site, therefore enabling later analysis of how the potential impacts of the Marden Neighbourhood Plan may affect site integrity.
- 4.10 The initial screening assessment indicated that a full screening assessment is required to assess the likelihood of significant effects on the River Wye (including the River Lugg) SAC of the policies within the Marden NDP.
- 4.11 The current made Marden NDP is proposed to be modified to ensure that its policies are up to date and in response to issue arising since implementation. The current NDP been subject to an examination and a HRA and had some to meet all the legal requirements at the time. The modifications to the plan have been assess to taking into account recent case law and updated information.

5 Description of the modified Marden Neighbourhood Development Plan

- 5.1 The Marden NDP was made on 12 October 2016 following a successful examination and referendum. The parish council have decided that the current plan needs to be reviewed in light of new issues since 2016 and those presented whilst implementing the plan's policies. There are a number of minor modifications suggested and additional site allocations. The plan is essentially the plan as currently made which some minor modifications to update the plan.

- 5.2 The NDP vision for the parish over the Plan period has been subject to very minor wording update and a number of the objectives have also been slightly reworded. All the objectives have been assessed within this HRA for completeness.
1. To deliver a vibrant village centre through a level of housing growth that is proportionate to the size and scale of Marden village and the surrounding countryside so that it retains its rural and historic character.
 2. To ensure that housing development in the surrounding hamlets of Litmarsh, Burmarsh, The Vault and other hamlets is controlled appropriately and is proportionate to their size
 3. To ensure all new development is governed by best practices and by national and local environmental and climate change policies current at the time of development and is designed to be in keeping with the surrounding character of the parish while promoting a heterogeneous appearance, without impacting on highway safety.
 4. To ensure that new housing is provided in a suitable range of tenures, types, sizes, affordability ranges and is flexible in usage so that local people of all ages can continue to live in the parish in a suitable home, whilst families are attracted to the area and local housing needs are met.
 5. To ensure that Marden has the appropriate local and community facilities to support present demand, future projected growth and demographic change. Developments must make a positive and tangible impact on the range and availability of community facilities and infrastructure by creating a focal point for the village and wider parish.
 6. To support the retention and development of local businesses and services including homeworking that contribute to the quality of life for residents and visitors of all ages, including support for suitable diversifications and use of new technology. This includes support for sensitively sited and designed improved broadband and mobile phone services and renewable energy technologies. .
 7. To ensure that the natural and built environment of the parish is protected and enhanced for future generations through sustainable development by protecting key environmental and heritage assets (e.g. green spaces and landscapes, natural environment designations) and taking account of constraints and ensuring the dark skies of the parish are maintained.
- 5.3 The NDP is not starting for scratch and initial options for the strategy of the plan were considered in 2014 and assessed within the previous HRA. Therefore the modified plan options are primarily concerned with the potential site allocations for the revised NDP. These initial site options (refer to appendix 2) were assessed to determine any potential effect on the River Wye SAC. It should be noted that the dwelling numbers refer to the capacity of the site not the numbers of landowners have indicated.
- Site 1 – Land south of Brook Farm – 87 dwellings
 - Site 2 – Land to rear of Rosa Villa, Marden – 13 dwellings
 - Site 3 – Land adjacent to Old School House, Marden – 11 dwellings
 - Site 4 – Land adjacent to Drakely Cottage, Marden – 6 dwellings
 - Site 5 – Land opposite Nash Hill – 51 dwellings
 - Site 6 – Land adjacent to Fromington Cottage – 7 dwellings
 - Site 7 – Land adjacent to Burmarsh Cottage, Burmarsh – 4 dwellings
 - Site 8 – Land opposite The Franklands, Burmarsh – 4 dwellings
 - Site 9 – Land adjacent to Broxash, Litmarsh - 4 dwellings
 - Site 10 – Land and building at White Gate, Litmarsh – 21 dwellings
 - Site 11 – Land at Litmarsh – 6 dwellings
 - Site 12 – Land adjacent to New House Farm, Marden – 12 dwellings

- Site 13 – Land opposite Little Fromington – 9 dwellings
- Site 14 – Land adjacent to Little Fromington Cottage, Burmarsh – 12 dwellings
- Site 15 – Land at Rose Villa, Marden – 13 dwellings

5.4 As with the objective, the policies within the plan has been subject to some minor modification and updating and two new policies have been added.

5.5 The NDP also sets out 14 general policies on various topics based on the objective above, these include:

- Policy M1: Scale and type of new housing development in Marden village
- Policy M2: Scale and type of new housing development in designated hamlets
- Policy M3: General design principles
- Policy M4: Extensions and development within residential curtilages including ancillary accommodation and annexes
- Policy M5: Ensuring an appropriate range of tenures, types and sizes of houses
- Policy M6: Protection/extension of local community facilities
- Policy M7: New local employment opportunities
- Policy M8: Supporting, enhancing and protecting existing local employment
- Policy M9: Supporting development of communications infrastructure
- Policy M10: Protection of Local Green Spaces
- Policy M11: Landscape character
- Policy M12: Flood Risk and Surface water runoff
- Policy M13: Public rights of way/connectivity
- Policy M14: Dark Skies

5.6 These policies have been reassessed for completeness and can be seen in Appendix 2.

6.0 Assessments undertaken to date of the emerging modified Marden NDP policies

6.1 Regulation 102 of the Habitats Regulations 2010 requires that a Screening Assessment be undertaken, in order to identify the 'likely significant effects' of an NDP. Accordingly, a screening matrix was prepared and this determined the extent to which any of the policies within the Marden NDP would be likely to have a significant effect on the River Wye (including the River Lugg) SAC.

6.2 Many of the policies have only had very minor modifications made to their wording, some of which may not have required a rescreening since the plan was made. However, in light of the *Sweetman* case all policies have been reviewed to ensure compliance with the ruling. The finding can be found in appendix 2.

6.3 The findings of the screening matrix can be found in the appendix. Positive or negative outcomes were used to record the outcome of likely impacts of the policies on the European site and its qualifying habitats and species as shown in the table 1 below.

Key of outcomes of HRA screening assessment	
Negative	There are likely to be significant effects
Positive	Significant effects are unlikely

- 6.4 Following the *Sweetman* judgement, it is not permissible to take account of measure intended to avoid or reduce the harmful effects of the plan on the River Wye SAC, at this screening stage. Any likely significant effects would require an Appropriate Assessment to be required.

Screening of the draft plan (Reg14)

- 6.5 None of the draft modified Marden Neighbourhood Plan policies were concluded to be likely to have a significant effect on the River Wye (including the River Lugg) SAC. Many of the policies had only had minimal amendments made to them since their adoption in 2016. A number of policies have also been strengthened to take account of issues concerning drainage within the River Lugg hydrological catchment. Criteria has been included in Policy M1, M2, M8 and M12.
- 6.6 Marden is within the River Lugg catchment area, therefore issues regarding water quality are relevant and it is important that any development does not lead to any increased effects on the failing water quality targets within the River Lugg. Policy SD4 of the Core Strategy indicates that development should not undermine the achievements of the water quality targets for rivers within the county.
- 6.7 As the development plan should be read as a whole, a legal opinion obtained following the *Sweetman* and *Dutch* case judgment is still relevant and it indicates that Policy SD4 would apply to all developments. There is a requirement for an NDP not to repeat policies which can be found in the Core Strategy. This means that no development proposed within a NDP can take place unless it meets the criteria requirements of Policy SD4. This legal opinion can be seen in appendix 3. It means that no mitigation is required within the NDP and an appropriate assessment of the NDP itself would not be requirement in light of the *Sweetman* or *Dutch* cases.
- 6.7 Policy LD2 of the Core Strategy indicates that any development should conserve, restore and enhance biodiversity and geodiversity assets of Herefordshire. Development within close proximity to internationally and local designated sites will need to incorporate sympathetic design components to enhance their nature conservation interests
- 6.8 A call for sites was undertaken by the parish council to ascertain possible sites for allocation for the modified NDP. This resulted in 15 sites being put forward. A site assessment was undertaken and the sites have been screened within this report. All of the sites are within the River Lugg hydrological catchment with varying distances from the SAC itself. The location and scale of the sites have been screened within the policy and seen to have an unlikely significant effect on the River Wye (including the River Lugg) SAC. Three sites have been included within the modified NDP. The parish has met its proportional growth requirement and the site allocations within the current made NDP now have the benefit of planning permission or are unable to be implemented. With this in mind, the parish are seeking to allocation small sites of around 1-4 dwellings. These proposed additional sites have been subject to a public consultation and selected based on an environmental selection criteria outlines within the site assessment report.
- 6.9 In addition, as any development of these site will be required to meet the criteria of Policy LD2 and Policy SD4, legal opinion has indicated that an AA is not required. The sites likely impact on the SACs can be determined further at planning application stage when further details of the proposed housing schemes are known.

- 6.10 Dwr Cymru Welsh Water (DCWW) have indicated that there is limited headroom to accommodate growth within the Core Strategy. Phosphorus stripping was included within AMP4 at the sewerage treatment works and this is due to be reviewed in AMP7 (2020-2025).
- 6.11 In addition, the review of the Nutrient Management Plan for the River Wye SAC which is currently being undertaken should ensure that development within Herefordshire which can be accommodated within existing water discharge permits would not be likely to have a significant effect upon the River Wye SAC during the lifetime of this NDP.
- 6.12 No mitigation measures have been included within the screening of the policies of the NDP. Policies of the Core Strategy and the NDP will form part of the development plans. A key requirement of the Core Strategy is to meet the Water Framework Directive.
- 6.13 This review has concluded that the policies are unlikely to result in significant effects on the River Wye (including the River Lugg) SAC. ***It is therefore concluded that the Modified Marden Plan will not have a likely significant effect on the aforementioned European Site.***

7 Identification of other plans and projects which may have ‘in-combination’ effects

- 7.1 There are a number of potentially relevant plans and projects which may result in in-combination effects with the Core Strategy across Herefordshire, these plans have been reviewed and can be found in Appendix 2 of the publication of the Herefordshire Local Plan Core Strategy Habitats Regulations Assessment (Oct 2015).
- 7.2 It is seen that as this NDP does not go over and beyond the requirements set out in the Core Strategy.
- 7.3 Adjacent neighbourhood plans (Wellington, Sutton St Nicholas, Bodenham) have been made. Moreton on Lugg are not producing a neighbourhood plan and growth in its areas will be guided by the Core Strategy. None of the proposals within these adjacent neighbourhood plans go over and above the requirements set within the Local Plan (Core Strategy) for their respective neighbourhood areas at this stage.
- 7.4 The HRA for the Core Strategy also identifies that both the Water Cycle Study for Herefordshire, which indicates the potential for planned water abstraction requirements combined with pressures on European Sites from the Core Strategy policies, and the review work on the Nutrient Management Plan, have both been considered as part of the in-combination assessment.
- 7.5 It is unlikely that the modified Marden Plan will have any in-combination effects with any plans from neighbouring parish councils as the level of growth proposed is the same as that proposed for the Hereford Housing Market Area in the Herefordshire Core Strategy.

8 Conclusion

- 8.1 With reference to sections 6 to 7 above, the NDP **will not have a likely significant effect on the River Wye (including the River Lugg) SAC.**

9 Next steps

- 9 This report will accompany the draft version of the modified Marden NDP and be subject to consultation. Any further amendments to the policies will be rescreened if required and an addendum to this report will be produced.

Appendix 1

Initial Habitat Regulations Assessment and Strategic Environmental Assessment Screening Notification

The Neighbourhood Planning (General) (Amendment) Regulations 2015 (Reg. 32)

Conservation of Habitats and Species Regulations 2010 (d)

Neighbourhood Area:	Marden Neighbourhood Area
Parish Council:	Marden Parish Council
Neighbourhood Area Designation Date:	14 October 2013

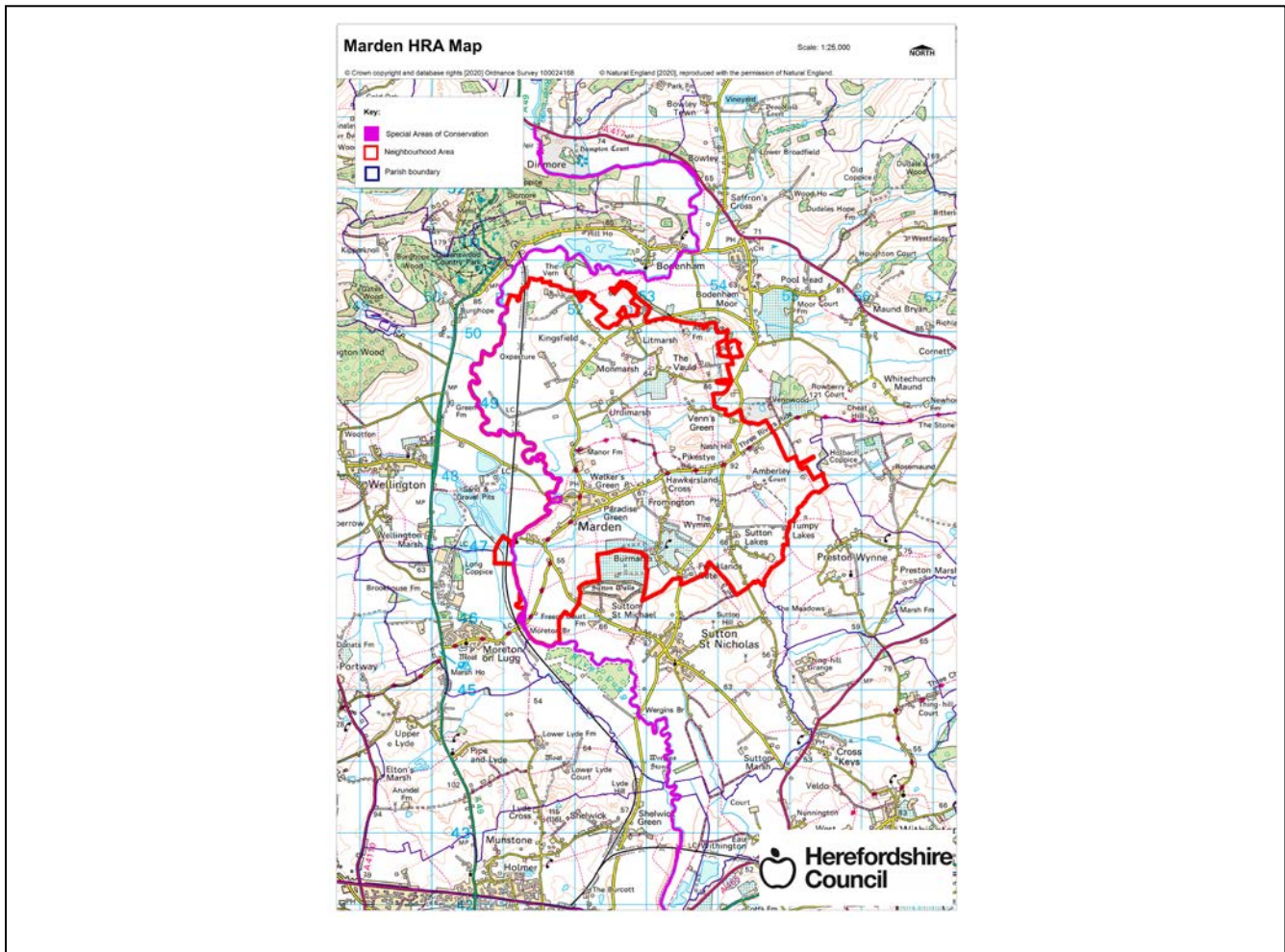
Introduction

This Initial Habitat Regulations Assessment (HRA) and Strategic Environmental Assessment (SEA) Screening has been undertaken to assess whether any European sites exist within or in proximity to the Neighbourhood Area which could be affected by any future proposals or policies.

Through continual engagement the outcomes of any required assessments will help to ensure that proposed developments will not lead to Likely Significant Effects upon a European site or cause adverse impacts upon other environmental assets, such as the built historic or local natural environment.

HRA Initial Screening

Map showing relationship of Neighbourhood Area with European Sites (not to scale)



River Wye (including the River Lugg) Special Area of Conservation (SAC):

Does the Neighbourhood Area have the River Wye (including the River Lugg) in or next to its boundary?	Y	The River Lugg flows along the western boundary of the neighbourhood area
Is the Neighbourhood Area in the hydrological catchment of the River Wye SAC?	Y	The neighbourhood area is within the River Lugg catchment area.
Is the Neighbourhood Area in the River Lugg hydrological catchment area?	Y	The neighbourhood area is within the River Lugg catchment area.
If yes above, does the Neighbourhood Area have mains drainage to deal with foul sewage?	Y	There is mains drainage at Moreton-on-Lugg

Downton Gorge SAC:

Is the Neighbourhood Area within 10km of Downton Gorge SAC?	N	Downtown Gorge SAC is 24km away from the neighbourhood area.
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River Clun SAC:

Does the River Clun border the Neighbourhood Area	N	The River Clun SAC does not border the neighbourhood area.
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Wye Valley & Forest of Dean Bat Sites SAC:

Is the Neighbourhood Area within 10km of any of the individual sites that make up the Wye Valley & Forest of Dean Bat Sites?	N	The Wye Valley and Forest of Dean Bat Sites SAC is 29km away from the neighbourhood area.
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Wye Valley Woodlands SAC:

Is the Neighbourhood Area within 10km of any of the individual sites that make up the Wye Valley Woodlands Site?	N	The Wye Valley Woodlands SAC is 31km away from the neighbourhood area
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HRA Conclusion:

The assessment above highlights that European Sites will need to be taken into account in the future Neighbourhood Development Plan for the Marden Neighbourhood Area and a Full HRA Screening will be required.

European Site

(List only those which are relevant)

River Wye (including the River Lugg) Special Area of Conservation (SAC)

Strategic Environmental Assessment Initial Screening for nature conservation landscape and heritage features

The following environmental features are within or in general proximity to the Marden Neighbourhood Area and would need to be taken into account within a Strategic Environmental Assessment. In addition, the NDP will also need to consider the other SEA topics set out in Guidance Note 9a to ensure that the plan does not cause adverse impacts.

SEA features	Within Neighbourhood Area		Bordering Neighbourhood Area	
	Total number	Name(s)	Total number	Name(s)
Ancient Woodland	2	Burling Coppice; Sally Bed.	5	Dinmore Hill Wood; Wellington Wood; Venns Wood; Holbatch Coppice; Long Coppice.
Areas of Outstanding Natural Beauty	0	-	0	-
Conservation Areas	0	-	3	Bodenham; Wellington; Sutton.
Flood Areas	Flood Zones 2 & 3 run along the northern and western borders of the Parish.			
Geoparks	0	-	0	-
Listed Buildings	There are numerous listed buildings throughout the neighbourhood area.			
Local Geological Sites	4	The Vault, Marden; Sutton Walls; Franklands Gate, Sutton; Kingsfield, Marden.	1	Bodenham Tufa Falls.
Local Wildlife Sites	1	River Lugg.	8	Dinmore Hill and adjoining woodland; Gravel Pits at Bodenham;

				Venns Wood; Upper Maund Common; Maund Common; Sutton Hill Gravel Pit; Wellington Marsh; Wellington Woods and adjoining woodland.
Mineral Reserves	3	Area around Wellington constrained by 200m zone & area to north of Wellington outside 200m zone; East of Burmarsh, west of Sutton Lakes; Upper Paradise Farm to Marden Court, Marden.	3	Bodenham Moor, northwest of Maund Bryan; Area 1 Moreton on Lugg and Wellington; South of Moreton on Lugg.
National Nature Reserve	0	-	0	-
Nature Trails	1	Three Rivers Ride.	0	-
Registered Parks and Gardens	0	-	0	-
Scheduled Ancient Monuments	0	-	3	Sutton Camp; Deserted medieval village, Sutton St Michael; Freens Court magnate's residence, moat and fishpond, Sutton St Michael.
Sites of Importance in Nature Conservation	0	-	0	-
Special Areas of Conservation	1	River Lugg.	0	-
Unregistered parks and gardens	1	Venn Wood.	4	The Vern; Bodenham Manor;

				Sutton Court; Dinmore Manor.		
			SSSI Status		SSSI Status	
Sites of Special Scientific Interest (SSSI)	1	River Lugg.	Unfavourable - Recovering.	2	Wellington Wood; Dinmore Hill Woods.	Unfavourable – No Change Favourable (part), Unfavourable – Recovering (part).

Decision Notification:

The initial screening highlights that the Neighbourhood Development Plan for the Marden Neighbourhood Area will require further environmental assessment for Habitats Regulations Assessment and Strategic Environmental Assessment.

Assessment date: 14 October 2020

Assessed by: James Latham

Appendix 1: European Sites

The table below provides the name of each European Site, which has been screened in for the purposes of neighbourhood planning in Herefordshire. This is based on the sites individual features of integrity and their vulnerabilities, which could include distance criteria. This has been used in identifying which parishes are likely to require a full HRA Screening of their future Neighbourhood Development Plan, to establish if their plan might have Likely Significant Effects on a European Site.

Downton Gorge
Site Features: <i>Tilio-Acerion</i> forests of slopes, screes and ravines
Vulnerability data: 10km for air quality associated with poultry units or other intensive agricultural practices.
River Clun
Site Features: Freshwater pearl mussel <i>Margaritifera margaritifera</i>
Vulnerability data: Water quality is important to maintain the site feature. Parishes either side of the River Clun will be affected.
River Wye
Site Features: Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation. Transition mires and quaking bogs. White-clawed (or Atlantic Stream) crayfish <i>Austropotamobius pallipes</i> . Sea lamprey <i>Petromyzon marinus</i> . Brook lamprey <i>Lampetra planeri</i> . River lamprey <i>Lampetra fluviatilis</i> . Twaite shad <i>Alosa fallax</i> . Atlantic salmon <i>Salmo salar</i> . Bullhead <i>Cottus gobio</i> . Otter <i>Lutra lutra</i> . Allis shad <i>Alosa alosa</i>
Vulnerability data: Proximity: Developments should not be within 100m of the designated bank. Some developments beyond 100m may also have impacts based on proximity and these issues should be addressed where possible when developing NDP policy and choosing site allocations. Water Quality: Within the whole catchment of the River Wye, which includes the River Lugg, mains drainage issues with regards to water quality are being resolved through the Core Strategy / Local Plan and development of a Nutrient Management Plan. Welsh Water should be consulted to ensure that the proposed growth will be within the limit of their consents. Otters: “An otter will occupy a ‘home range’, which on fresh waters usually includes a stretch of river as well as associated tributary streams, ditches, ponds, lakes and woodland. The size of a home range depends largely on the availability of food and shelter, and the presence of neighbouring otters. On rivers, a male’s home range may be up to 40km or more of watercourse and associated areas; females have smaller ranges (roughly half the size) and favour quieter locations for breeding, such as tributary streams. Otters without an established home range are known as ‘transients’. They are mostly juveniles looking for a territory of their own, or adults that have been pushed out of their territories. Transient otters may use an area for a short while, but they will move on if conditions are not suitable or if they are driven away by resident otters. Transients will have been important in extending the range of otters, but they are very difficult to

identify from field signs.

Within a home range an otter may use many resting sites. These include above-ground shelters, such as stands of scrub or areas of rank grass, and underground 'holts' – for example, cavities under tree roots and dry drainage pipes.”

Wye Valley and Forest of Dean Bat Sites

Site Features: Annex II species that are a primary reason for site selection: Lesser horseshoe bat *Rhinolophus hipposideros*. Greater horseshoe bat *Rhinolophus ferrumequinum*

Vulnerability data: Lesser Horseshoe bats are known to migrate between 5km and 10km between their summer and winter roosts. The Lesser Horseshoe Bat is vulnerable to disturbance; light pollution; and habitat loss. Check with the planning ecologist for other issues.

Greater Horseshoe bats are known to migrate between 20-30km between their summer and winter roosts.

NDPs closest to the European Site will need to consider:
Woodland habitat buffer.

Lesser Horseshoe Bat: Old buildings; woodland locations; sheltered valleys, extensive deciduous woods or dense scrub, close to roost sites. In areas of fragmented habitats, linear habitats such as hedgerows are important corridors. Vulnerable to loss or disturbance of both summer and winter roosts and removal of linear habitat.

Greater Horseshoe Bat: Large buildings, pasture, edge of mixed deciduous woodland and hedgerows. Mixed land-use especially south-facing slopes, favours beetles, moths and insects they feed on. During the winter they depend on caves, abandoned mines and other underground sites for undisturbed hibernation. A system/series of sites required. Vulnerable to loss of insect food supply, due to insecticide use, changing farming practices and loss of broad-leaved tree-cover and loss / disturbance of underground roosts sites.

Wye Valley Woodlands

Site Features: Annex I habitats that are a primary reason for site selection: Beech forests *Asperulo-Fagetum*, *Tilio-Acerion* forests of slopes, screes and ravines, *Taxus baccata* woods of the British Isles. Annex II species present as a qualifying feature, but not a primary reason for site selection: Lesser horseshoe bat *Rhinolophus hipposideros*, 51-100 residents

Vulnerability data: Lesser Horseshoe bats are known to migrate between 5km and 10km between their summer and winter roosts. The Lesser Horseshoe Bat is vulnerable to disturbance; light pollution; and habitat loss. Check with the planning ecologist for other issues. NDPs closest to the European Site will need to consider: Woodland habitat buffer. Lesser Horseshoe Bat: Old buildings; woodland locations; sheltered valleys, extensive deciduous woods or dense scrub, close to roost sites. In areas of fragmented habitats, linear habitats such as hedgerows are important corridors. Vulnerable to loss or disturbance of both summer and winter roosts and removal of linear habitat.

Appendix 2

Site options considered within the modified Marden NDP

- Site 1 – Land south of Brook Farm – 87 dwellings
- Site 2 – Land to rear of Rosa Villa, Marden – 13 dwellings
- Site 3 – Land adjacent to Old School House, Marden – 11 dwellings
- Site 4 – Land adjacent to Drakely Cottage, Marden – 6 dwellings
- Site 5 – Land opposite Nash Hill – 51 dwellings
- Site 6 – Land adjacent to Fromington Cottage – 7 dwellings
- Site 7 – land adjacent to Burmarsh Cottage, Burmarsh – 4 dwellings
- Site 8 – Land opposite The Franklands, Burmarsh – 4 dwellings
- Site 9 – Land adjacent to Broxash, Litmarsh - 4 dwellings
- Site 10 – Land and building at White Gate, Litmarsh – 21 dwellings
- Site 11 – Land at Litmarsh – 6 dwellings
- Site 12 – Land adjacent to New House Farm, Marden – 12 dwellings
- Site 13 – Land opposite Little Fromington – 9 dwellings
- Site 14 – Land adjacent to Little Fromington Cottage, Burmarsh – 12 dwellings
- Site 15 – Land at Rose Villa, Marden – 13 dwellings

Appendix 3

NDP objectives and policies	HRA Screening of modified Marden NDP objectives and policies				
	Likely activities (operations) to result as a consequence of the objective/option/policy	Likely effect if option implemented. Could they have Likely Significant Effects (LSE) on European Sites?	European Sites potentially affected	Would it be possible that it would result in any LSE?	Requirement for an Appropriate Assessment
Objectives					
Objective 1	Objective to support housing development in line with Core Strategy targets. Increase in vehicle traffic. Increased demand for water abstraction and sewage treatment.	Unlikely that there will be any significant effects on the European Site.	River Wye (including the River Lugg) SAC	No.	No, the criteria is not likely to directly lead to development that would affect the SAC.
Objective 2	Objective to support housing development in line with Core Strategy targets. Increase in vehicle traffic. Increased demand for water abstraction and sewage treatment.	Unlikely that there will be any significant effects on the European Site.	River Wye (including the River Lugg) SAC	No.	No, the criteria is not likely to directly lead to development that would affect the SAC.
Objective 3	Objective to promote the principles of climate change in developments	Unlikely that there will be any significant effects on the European Site.	River Wye (including the River Lugg) SAC	No.	No, the criteria is not likely to directly lead to development that would affect the SAC.

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Objective 4	Objective to promote a range of type and tenure in housing stock	Unlikely that there will be any significant effects on the European Site.	River Wye (including the River Lugg) SAC	No.	No, the criteria is not likely to directly lead to development that would affect the SAC.
Objective 5	Objective to support community facilities within the parish Increase in vehicle traffic. Increased demand for water abstraction and sewage treatment.	Unlikely that there will be any significant effects on the European Site.	River Wye (including the River Lugg) SAC	No.	No, the criteria is not likely to directly lead to development that would affect the SAC.
Objective 6	Objective to support economic development in line with Core Strategy Increase in vehicle traffic. Increased demand for water abstraction and sewage treatment.	Unlikely that there will be any significant effects on the European Site.	River Wye (including the River Lugg) SAC	No.	No, the criteria is not likely to directly lead to development that would affect the SAC.
Objective 7	Objective to protect the landscape and surrounding environment	Unlikely that there will be any significant effects on the European Site.	River Wye (including the River Lugg) SAC	No.	No, the criteria is not likely to directly lead to development that would affect the SAC.
Policies					
Policy M1	The policy is seeking to compliment Policy RA2 of the Core Strategy and make provision for the indicated proportional growth	Unlikely that there will be any significant effects on the European Site. Phosphorous removal scheme at the STW	River Wye (including the River Lugg) SAC	No.	No, implementation of Core Strategy policy SD4, LD2, SD1 and to grant planning permission will ensure water quality issues are addressed.

	<p>Increase in vehicle traffic.</p> <p>Increased demand for water abstraction and sewage treatment.</p>	<p>completed in AMP4 and will be reviewed in AMP7</p>			
Policy M2	<p>The policy is seeking to compliment Policy RA2 of the Core Strategy and make provision for the indicated proportional growth</p> <p>Increase in vehicle traffic.</p> <p>Increased demand for water abstraction and sewage treatment.</p>	<p>Unlikely that there will be any significant effects on the European Site.</p> <p>Phosphorous removal scheme at the STW completed in AMP4 and will be reviewed in AMP7</p>	River Wye (including the River Lugg) SAC	No.	No, implementation of Core Strategy policy SD4, LD2, SD1 and NDP policy M12 to grant planning permission will ensure water quality issues are addressed.
Policy M3	<p>Policy to promote design principles includes specific reference to drainage</p>	<p>Unlikely that there will be any significant effects on the European Site.</p>	River Wye (including the River Lugg) SAC	No.	No: this policy itself will not lead to development, instead it relates to criteria based objective, that sets outs criteria to safeguard the natural and built environment maintaining the character of the neighbourhood area.
Policy M4	<p>Policy regarding extensions and annexes to existing dwellings</p>	<p>Unlikely that there will be any significant effects on the European Site.</p>	River Wye (including the River Lugg) SAC	No.	No: this policy itself will not lead to development, instead it relates to criteria based objective, that

	<p>Increase in vehicle traffic.</p> <p>Increased demand for water abstraction and sewage treatment.</p>				<p>sets outs criteria to safeguard the natural and built environment maintaining the character of the neighbourhood area.</p>
Policy M5	<p>Policy regarding type and tenure mix within developments</p>	<p>Unlikely that there will be any significant effects on the European Site.</p>	<p>River Wye (including the River Lugg) SAC</p>	<p>No.</p>	<p>No: this policy itself will not lead to development, instead it relates to criteria based objective, that sets outs criteria to safeguard the natural and built environment maintaining the character of the neighbourhood area.</p>
Policy M6	<p>Policy to protect community facilities within the parish</p>	<p>Unlikely that there will be any significant effects on the European Site.</p>	<p>River Wye (including the River Lugg) SAC</p>	<p>No.</p>	<p>No: this policy itself will not lead to development, instead it relates to criteria based objective, that sets outs criteria to safeguard the natural and built environment maintaining the character of the neighbourhood area.</p>

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<p>Policy M7</p>	<p>Objective to support economic development in line with Core Strategy targets.</p> <p>Increase in vehicle traffic.</p> <p>Increased demand for water abstraction and sewage treatment.</p> <p>Specific criteria is included within the policy regarding the River Lugg catchment</p>	<p>Unlikely that there will be any significant effects on the European Site.</p>	<p>River Wye (including the River Lugg) SAC</p>	<p>No.</p>	<p>No. The implementation of Core Strategy policy SD4, LD2, SD1 to grant planning permission will ensure water quality issues are addressed. Further assessment of impact on SACs will be determined at planning application stage when further details of the scheme are known.</p>
<p>Policy M8</p>	<p>Objective to support economic development in line with Core Strategy targets.</p> <p>Increase in vehicle traffic.</p> <p>Increased demand for water abstraction and sewage treatment.</p>	<p>Unlikely that there will be any significant effects on the European Site.</p>	<p>River Wye (including the River Lugg) SAC</p>	<p>No.</p>	<p>No. The implementation of Core Strategy policy SD4, LD2, SD1 and NDP policy M12 to grant planning permission will ensure water quality issues are addressed. Further assessment of impact on SACs will be determined at planning application stage when further details of the scheme are known.</p>
<p>Policy M9</p>	<p>Policy to support telecommunications infrastructure within developments</p>	<p>Unlikely that there will be any significant effects on the European Site.</p>	<p>River Wye (including the River Lugg) SAC</p>	<p>No.</p>	<p>No. The implementation of Core Strategy policy SD4, LD2, SD1 and NDP policy M12 to grant planning</p>

					permission will ensure water quality issues are addressed. Further assessment of impact on SACs will be determined at planning application stage when further details of the scheme are known.
Policy M10	Policy to protect 6 Local Green Spaces within the parish	Unlikely that there will be any significant effects on the European Site.	River Wye (including the River Lugg) SAC	No.	No: this policy itself will not lead to development, instead it relates to criteria based objective, that sets outs criteria to safeguard the natural and built environment maintaining the character of the neighbourhood area.
Policy M11	Policy to support the protection of the landscape area of the parish	Unlikely that there will be any significant effects on the European Site.	River Wye (including the River Lugg) SAC	No.	No: this policy itself will not lead to development, instead it relates to criteria based objective, that sets outs criteria to safeguard the natural and built environment maintaining the character of the neighbourhood area.
Policy M12	Policy to reduce the risk of flooding and surface water run off within the parish.	Unlikely that there will be any significant effects on the European Site.	River Wye (including the River Lugg) SAC	No.	No this policy is specifically aimed about reducing flood risk and surface water run-off. It has specific

	Criteria is specifically aimed at adding issues within the River Lugg catchment				criteria regarding the River Wye SAC catchment.
Policy M13	<p>Policy to promote the protection and improvement of public rights of way</p> <p>Increase pedestrian traffic in the countryside</p>	Unlikely that there will be any significant effects on the European Site.	River Wye (including the River Lugg) SAC	No.	No: this policy itself will not lead to development, instead it relates to criteria based objective, that sets outs criteria to safeguard the natural and built environment maintaining the character of the neighbourhood area.
Policy M14	Policy to promote dark skies across the parish	Unlikely that there will be any significant effects on the European Site.	River Wye (including the River Lugg) SAC	No.	No: this policy itself will not lead to development, instead it relates to criteria based objective, that sets outs criteria to safeguard the natural and built environment maintaining the character of the neighbourhood area.
Site options					
<p>Site 1</p> <p>Land south of Brook Farm</p>	<p>Increase in vehicle traffic.</p> <p>Increased demand for water abstraction and sewage treatment.</p>	<p>Unlikely that there will be any significant effects on the European Site.</p> <p>Phosphorous removal scheme at the STW</p>	River Wye (including the River Lugg) SAC	No.	No, implementation of Core Strategy policy SD4, LD2, SD1 and to grant planning permission will ensure water quality issues are addressed.

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		completed in AMP4 and will be reviewed in AMP7			
Site 2 Lane to the rear of Rosa Villa	Increase in vehicle traffic. Increased demand for water abstraction and sewage treatment.	Unlikely that there will be any significant effects on the European Site. Phosphorous removal scheme at the STW completed in AMP4 and will be reviewed in AMP7	River Wye (including the River Lugg) SAC	No.	No, implementation of Core Strategy policy SD4, LD2, SD1 and NDP policy M12 to grant planning permission will ensure water quality issues are addressed.
Site 3 Land adjacent to Old School House	Increase in vehicle traffic. Increased demand for water abstraction and sewage treatment.	Unlikely that there will be any significant effects on the European Site. Phosphorous removal scheme at the STW completed in AMP4 and will be reviewed in AMP7	River Wye (including the River Lugg) SAC	No.	No, implementation of Core Strategy policy SD4, LD2, SD1 and to grant planning permission will ensure water quality issues are addressed.
Site 4 Land adjacent to Drakely	Increase in vehicle traffic. Increased demand for water abstraction and sewage treatment.	Unlikely that there will be any significant effects on the European Site. Phosphorous removal scheme at the STW completed in AMP4 and will be reviewed in AMP7	River Wye (including the River Lugg) SAC	No.	No, implementation of Core Strategy policy SD4, LD2, SD1 and NDP policy M12 to grant planning permission will ensure water quality issues are addressed.
Site 5 Land opposite Nash Hill	Increase in vehicle traffic.	Unlikely that there will be any significant effects on the European Site.	River Wye (including the River Lugg) SAC	No.	No, implementation of Core Strategy policy SD4, LD2, SD1 and to grant planning

	Increased demand for water abstraction and sewage treatment.	Phosphorous removal scheme at the STW completed in AMP4 and will be reviewed in AMP7			permission will ensure water quality issues are addressed.
Site 6 Land adjacent to Fromington Cottage	Increase in vehicle traffic. Increased demand for water abstraction and sewage treatment.	Unlikely that there will be any significant effects on the European Site. Phosphorous removal scheme at the STW completed in AMP4 and will be reviewed in AMP7	River Wye (including the River Lugg) SAC	No.	No, implementation of Core Strategy policy SD4, LD2, SD1 and to grant planning permission will ensure water quality issues are addressed.
Site 7 Land adjacent to Burmarsh Cottage	Increase in vehicle traffic. Increased demand for water abstraction and sewage treatment.	Unlikely that there will be any significant effects on the European Site. Phosphorous removal scheme at the STW completed in AMP4 and will be reviewed in AMP7	River Wye (including the River Lugg) SAC	No.	No, implementation of Core Strategy policy SD4, LD2, SD1 and to grant planning permission will ensure water quality issues are addressed.
Site 8 Land opposite The Franklands Burmarsh	Increase in vehicle traffic. Increased demand for water abstraction and sewage treatment.	Unlikely that there will be any significant effects on the European Site. Phosphorous removal scheme at the STW completed in AMP4 and will be reviewed in AMP7	River Wye (including the River Lugg) SAC	No.	No, implementation of Core Strategy policy SD4, LD2, SD1 and NDP policy M12 to grant planning permission will ensure water quality issues are addressed.

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<p>Site 9</p> <p>Land adjacent to Broxash Litmarsh</p>	<p>Increase in vehicle traffic.</p> <p>Increased demand for water abstraction and sewage treatment.</p>	<p>Unlikely that there will be any significant effects on the European Site.</p> <p>Phosphorous removal scheme at the STW completed in AMP4 and will be reviewed in AMP7</p>	<p>River Wye (including the River Lugg) SAC</p>	<p>No.</p>	<p>No, implementation of Core Strategy policy SD4, LD2, SD1 and to grant planning permission will ensure water quality issues are addressed.</p>
<p>Site 10</p> <p>Land and buildings at White Gates Litmarsh</p>	<p>Increase in vehicle traffic.</p> <p>Increased demand for water abstraction and sewage treatment.</p>	<p>Unlikely that there will be any significant effects on the European Site.</p> <p>Phosphorous removal scheme at the STW completed in AMP4 and will be reviewed in AMP7</p>	<p>River Wye (including the River Lugg) SAC</p>	<p>No.</p>	<p>No, implementation of Core Strategy policy SD4, LD2, SD1 and NDP policy M12 to grant planning permission will ensure water quality issues are addressed.</p>
<p>Site 11</p> <p>Land at Litmarsh</p>	<p>Increase in vehicle traffic.</p> <p>Increased demand for water abstraction and sewage treatment.</p>	<p>Unlikely that there will be any significant effects on the European Site.</p> <p>Phosphorous removal scheme at the STW completed in AMP4 and will be reviewed in AMP7</p>	<p>River Wye (including the River Lugg) SAC</p>	<p>No.</p>	<p>No, implementation of Core Strategy policy SD4, LD2, SD1 and to grant planning permission will ensure water quality issues are addressed.</p>
<p>Site 12</p> <p>Land adjacent to New House Farm</p>	<p>Increase in vehicle traffic.</p> <p>Increased demand for water abstraction and sewage treatment.</p>	<p>Unlikely that there will be any significant effects on the European Site.</p> <p>Phosphorous removal scheme at the STW</p>	<p>River Wye (including the River Lugg) SAC</p>	<p>No.</p>	<p>No, implementation of Core Strategy policy SD4, LD2, SD1 and to grant planning permission will ensure water quality issues are addressed.</p>

		completed in AMP4 and will be reviewed in AMP7			
Site 13 Land opposite Little Fromington	Increase in vehicle traffic. Increased demand for water abstraction and sewage treatment.	Unlikely that there will be any significant effects on the European Site. Phosphorous removal scheme at the STW completed in AMP4 and will be reviewed in AMP7	River Wye (including the River Lugg) SAC	No.	No, implementation of Core Strategy policy SD4, LD2, SD1 and NDP policy M12 to grant planning permission will ensure water quality issues are addressed.
Site 14 Land adjacent to Little Fromington	Increase in vehicle traffic. Increased demand for water abstraction and sewage treatment.	Unlikely that there will be any significant effects on the European Site. Phosphorous removal scheme at the STW completed in AMP4 and will be reviewed in AMP7	River Wye (including the River Lugg) SAC	No.	No, implementation of Core Strategy policy SD4, LD2, SD1 and to grant planning permission will ensure water quality issues are addressed.
Site 15 Land at Rose Villa	Increase in vehicle traffic. Increased demand for water abstraction and sewage treatment.	Unlikely that there will be any significant effects on the European Site. Phosphorous removal scheme at the STW completed in AMP4 and will be reviewed in AMP7	River Wye (including the River Lugg) SAC	No.	No, implementation of Core Strategy policy SD4, LD2, SD1 and NDP policy M12 to grant planning permission will ensure water quality issues are addressed.

Appendix 4

Habitat Regulation Assessments (HRA) of Neighbourhood Development Plans

Statement in relation to CASE 293/17 COURT OF JUSTICE OF THE EUROPEAN UNION

Cooperation Mobilisation for the Environment v Verenigin Leefmilieu (Dutch Nitrogen)

Update following Counsel Advice

13 December 2018

Herefordshire Council has sought Counsel advice in light of the implication of the recent European judgment *the case of People Over Wind and Sweetman v Coillte Teoranta (C-323/17)* ("*Sweetman*") and the representations from Natural England to a number of Habitat Regulation Assessment consultations undertaken post the judgment.

Additional advice has now been sought regarding the judgment on *Cooperation Mobilisation for the Environment v Verenigin Leefmilieu (Dutch Nitrogen)* which was published on the 7 November 2018 (after the previous advice was issued).

The Herefordshire Core Strategy was subject to a detailed Appropriate Assessment (AA). Being prior to *Sweetman* the various stage of the AA addressed mitigation and built that mitigation into the Core Strategy to avoid significant effect including Policy SD4. It assessed the position of Policy RA1 and RA2 given Policy SD4 and assumes that SD4 will be applied correctly to any application including the provision of phasing and Appropriate Assessments of individual planning applications.

However, in stark contrast to *Dutch Nitrogen* the Core Strategy does not given a green light to the development envisaged in it. Development under the Core Strategy is expressed subject to specific restrictions which will remove any likely significant effects, this is the whole premise of Policy SD4. No permission could be granted (reg 63(5)) without meeting the requirements of Policy SD4.

The advice indicates that Policy SD4 as a measure to prevent harm is sufficiently certain to meet the Dutch Nitrogen tests. Compliance with it is a fundamental requirement before any permission could be granted.

The proposed Neighbourhood Development Plans do not undermine or change this and in screening the NDPs, the proper application under current case law of Policy SD4 (under s38(6) and reg 63(5)) will ensure that the NDP provides no pathway to adverse effects on the integrity.

The advice concludes that the overall package will ensure that the NDP is not adopted in breach of reg 63(5) and that, assuming SD4 is properly applied, any permission under Policy RA1, RA2, SD4 and compliant neighbourhood development plans would not breach reg 63(5).