

**Herefordshire Council March 2020****Guidance Note and Checklist for applicants / agents relating to HRA and planning applications****Introduction:**

**Habitats Regulations Assessment (HRA)** is the process by which Herefordshire Council as the 'competent authority' are legally required to assess the potential impacts on internationally important sites of plans and projects (including planning applications) under the Conservation of Habitats and Species Regulations 2017, often known as the 'Habitats Regulations'. The requirements are set out within Regulations 63 and 64 of the Habitats Regulations, where a series of steps and tests are followed for plans or projects that could potentially affect a European site. The steps and tests set out within Regulations 63 and 64 are commonly referred to as the 'Habitats Regulations Assessment' process. The Habitats Regulations are law in England and Wales and transpose the European Union Council Directive 92/43/EEC on the '*conservation of natural habitats and of wild fauna and flora*' commonly known as the Habitats Directive.

The HRA must determine the impacts of "*any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other projects*" (Article 6(3) of the Habitats Directive) on Special Areas of Conservation 'SAC' Sites as well as 'Special Protection Areas' ('SPA's) designated for protection of wild birds under the Birds Directive 2009/147/EC, which brings together European Union obligations under the 'Ramsar Convention', the 'Bern Convention' and the 'Bonn Convention'. These are referred to together as 'Natura 2000' sites.

Herefordshire Council as competent authority, must carry out a Habitats Regulations Assessment screening on any relevant planning application. Where there is a 'Likely Significant Effect' the council must carry out an 'Appropriate Assessment' in order to be able to determine, with scientific certainty, that there would be no Adverse Effect on the Integrity of the designated site, from the plan or project, either alone or in combination with other plans and projects. The council takes this into account when determining whether planning permission can be granted. If it cannot be proven that there would not be an adverse effect on integrity, then planning permission cannot be granted without further stringent consideration under the Habitats Regulations.

When carrying out an Appropriate Assessment, the council has a legal requirement to consult Natural England, the statutory nature conservation advisory body and to have regard to their advice.

The council will require sufficient detailed information to be provided by the applicant prior to planning permission being determined, in order for them to be able to make the assessment. This will sometimes include specialist technical reports. The council must be able to consider the effects of the new development on its own merit as well as considering how the proposals could affect European sites 'in combination' with other developments that could have a similar effect on the site and are not yet within the existing background, or baseline, impacts (i.e. are within the planning system or are consented but not yet built or operational).

For applications in Herefordshire the relevant Natura 2000 sites which may be potentially affected are all Special Areas of Conservation (SACs):

**River Wye SAC** (incl. River Lugg up to Hampton Court Bridge)

**Wye Valley & Forest of Dean Bat SAC** (Wigpool Iron Mines SSSI)

**River Clun SAC**

**Wye Valley Woodlands SAC**

**Downton Gorge SAC**

The details of each designated site and its most recent condition assessments and goals are published here:

<https://designatedsites.naturalengland.org.uk/SiteSearch.aspx>

It should be noted that each SAC has one or more component SSSIs (Sites of Special Scientific Interest, any potential impacts to which, will also need to be assessed by the LPA (see <https://magic.defra.gov.uk/MagicMap.asp> for SSSI locations and assessment of Impact Risk Zones).

**SAC and associated SSSI notification for interest/notified features lists** are available on the Natural England pages of the Gov.UK website: <https://www.gov.uk/guidance/conservation-objectives-for-land-based-protected-sites-in-england-how-to-use-the-site-advice-together-with-condition-assessments-of-each-site>.

### **Submitting a planning application that may affect a SAC:**

The above information as well as Natural England's Impact Risk Zone map for the River Wye catchment will indicate whether your planning application may affect a SAC and therefore require a HRA. Different types of application will have different potential impacts and these will also depend on the SAC site and its special features that are potentially affected.

**Note that technical studies and reports may be required** to demonstrate the potential impacts of the proposals and how they can be avoided or mitigated. There will be a need to consider these impacts in their own right as well as **in combination** with similar potential impacts from other developments. Early consideration and identification of potential impacts and provision of technical information up front with a planning application submission will help facilitate timely processing of the application.

### **What will you need to provide with your planning application?**

#### **For all relevant schemes:**

- Where consideration has been given to minimising impacts to designated sites, include details of any alterations made to address this.
- If any in combination assessments have been carried out to support the application, then details of how these have been conducted and which other projects or plans have been included in the assessment should be supplied.
- Evidence must be provided in relation to this assessment as well as to the scheme itself for any relevant impact assessments; to include specialist air and water quality assessments where appropriate (addressing ammonia and phosphate impacts etc).

### **Guidance on specific requirements for each site:**

The **River Wye SAC** is designated for being one of the best examples of a natural watercourse in Europe and for its associated aquatic ecological interest. The council has to pay particular attention in its consideration and assessment process to any aspect of a development that may impact water quality or water flows, as well as the species for which the river is designated.

The following information is likely to be required:

- Information on any works within the vicinity of the watercourse and its tributaries that may cause alteration or disturbance, including from light or noise.
- Details of any potential water quality impacts including pollution prevention measures where necessary as well as impacts to the river bank.
- Confirmation of how any foul or surface water will be managed.
- Clear scale plan showing:
  - Location of mains sewer and connection point OR
  - Location of treatment plant and soakaway drainage field
- Confirmation that DCWW or Severn Trent can accept the connection and the additional flows where mains sewage applies.
- Plans to show any pumping, mound systems required. These need to clearly show all adjacent watercourse, ditches, woodland or other habitats.
- Details of how surface water will be managed – location of soakaway/SuDS – if mains sewer is proposed then confirmation that DCWW or Severn Trent will accept flows is required.
- Percolation testing (to relevant industry standards) with calculations to show drainage field size matches max flows from system proposed.
- Copies of any EA discharge licence with EA's HRA AA as approved by NE.

Note that:

- Septic Tank discharging to a direct outfall to watercourse will not be acceptable under any circumstances (Water Regs 2020)

### **Wye Valley & Forest of Dean Bat SAC (Wigpool Iron Mines SSSI)**

This site is designated for its important populations of the rare Greater and Lesser Horseshoe bat species that use a range of breeding and hibernation sites.

Possible impacts to the designated site could include loss of bat feeding areas or disturbance to bats within the roost sites, as well as, whilst moving between roosts. Lighting impacts and breaking up or 'fragmentation' of habitat areas may need to be assessed.

<https://www.fdean.gov.uk/residents/planning-building/planning-applications/biodiversity-planning-applications/>

<https://www.fdean.gov.uk/media/5420/wye-valley-and-forest-of-dean-bat-strategy-may-2016.pdf>

## **River Clun SAC**

This site is designated for its Freshwater Pearl Mussel, one of the few remaining lowland populations. The mussels rely on migratory salmon and trout for part of their lifecycle, with adults typically living in gravels on the river bed. Applicants should note that the River Clun SAC is exceeding its phosphate limits.

For proposals that would drain to the River Clun, the same information is required as for the River Wye SAC:

- Information on any works within the vicinity of the watercourse and its tributaries that may cause alteration or disturbance, including from light or noise.
- Details of any potential water quality impacts including pollution prevention measures where necessary as well as impacts to the river bank.
- Confirmation of how any foul or surface water will be managed.
- Clear scale plan showing:
  - Location of mains sewer and connection point OR
  - Location of treatment plant and soakaway drainage field
- Confirmation that DCWW or Severn Trent can accept the connection and the additional flows where mains sewage applies.
- Plans to show any pumping, mound systems required. These need to clearly show all adjacent watercourse, ditches, woodland or other habitats.
- Details of how surface water will be managed – location of soakaway/SuDS – if main sewer is proposed then confirmation that DCWW or Severn Trent will accept flows is required.
- Percolation testing (to relevant industry standards) with calculations to show drainage field size matches max flows from system proposed.
- Copies of any EA discharge licence with EA's HRA AA as approved by NE.

## **Wye Valley Woodlands SAC and Downton Gorge SAC**

**The Wye Valley Woodlands** are an extensive and near continuous area of semi-natural woodland along the River Wye gorge, designated for lime rich woodland which is present in a mosaic with other types including beech with locally rare herbs. An important population of Lesser Horseshoe bats is also present. Guidance as relates to the Wye Valley Woodlands and Forest of Dean Bat SAC (see above) are applicable.

**Downton Gorge** is designated for its mixed woodland with small and large leaved lime trees on slopes, screes and ravines with rich fern species in this narrow river cutting along part of the River Teme corridor.

- Air quality impacts details including technical assessments and reports where relevant, for example from livestock units.
- Information on any works within the vicinity of the site that may cause alteration or disturbance, including from light or noise.

**Avoidance or mitigation measures** must be able to be relied upon to avoid adverse effects on site integrity over the full lifetime of the plan or project. The appropriate assessment should be able to demonstrate that such measures are known to be effective, reliable, timely, guaranteed and of sufficient duration. As a result, the inclusion of such measures should be supported by evidence with confidence that they will be effective and that they can be legally enforced to ensure they are strictly implemented by the project proposer.

For each measure (and for any overall package of measures) the competent authority needs to be able to understand and confirm:

- (a) What the measure is, and how it would avoid or reduce harmful effects on the site (considering the predicted duration of the effects).
- (b) How it would be implemented, and by whom.
- (c) The degree of confidence in its likely success over time.
- (d) The timescales of when it would be implemented, maintained and managed.
- (e) How the measure would be secured, monitored and enforced.
- (f) If the measure failed, how the failure would be rectified.

#### **Useful links:**

#### **The detailed citations and conservation objectives for the sites can be found on Natural England's website:**

Conservation objectives for European Sites: West Midlands  
<http://publications.naturalengland.org.uk/category/5134123047845888>

Conservation objectives for European Sites: South West  
<http://publications.naturalengland.org.uk/category/537400207160115>

The Government has produced core guidance for competent authorities and developers to assist with the Habitats Regulations Assessment process. This can be found on the Defra website:  
<https://www.gov.uk/government/publications/guidance-on-competent-authority-coordination-under-the-habitats-regulations>

Simple Calculation of Atmospheric Impact Limits (SCAIL) is a simple modelling system which can be used free of charge:  
<http://www.scail.ceh.ac.uk/>

Farmscoper - a decision support tool that can be used to assess diffuse agricultural pollutant loads on a farm and quantify the impacts of farm mitigation methods on these pollutants:  
<https://www.adas.uk/Service/farmscoper>

Natural England provide guidance for assessing the effects of small increments of nitrogen:  
<http://publications.naturalengland.org.uk/publication/5354697970941952>