



North Norfolk Local Plan HRA Addendum, August 2023

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Summary

The Conservation of Habitats and Species Regulations 2017 (as amended) require local authorities to assess the impact of their Local Plan on the internationally important sites for biodiversity in and around their administrative areas. Together, these Special Protection Areas (SPAs), Special Areas of Conservation (SACs) and Ramsar sites are known as European sites. The task is achieved by means of a Habitats Regulations Assessment (HRA).

This is an addendum to the HRA of the North Norfolk Local Plan that was originally undertaken to accompany the proposed submission version of the Local Plan (in 2021). This addendum should be read alongside the full submission version HRA and the addendum relates to a Main Modification proposed by the Council with respect to Policy CC13. It considers the conclusions made in the submission HRA and updates the findings to incorporate the modification.

The North Norfolk Local Plan proposed submission version was subjected to an appropriate assessment and integrity test according to the statutory provisions laid out in the Habitats Regulations 2017 as amended. That HRA concluded that the North Norfolk Local Plan was in conformity with the Habitats Regulations, and at a plan level a conclusion of no adverse effects, alone or in-combination, on European site integrity could be drawn.

The Main Modification to CC13 proposed by the Council does not change the finding of the submission version HRA and instead further strengthens the conclusions, in light of new evidence regarding nutrient neutrality. The policy makes a requirement for development within the catchments of the River Wensum SAC, the Broads SAC and the Broadland Ramsar to demonstrate nutrient neutrality. This ensures impacts are avoided. It means adverse effects alone from all the Plan Policies (and incorporating the Main Modification), with respect to water quality and European site integrity are eliminated. Given that there is no impact from development, in-combination effects are also ruled out.

The HRA has been updated at each stage of the Plan and will be finalised to accompany the Local Plan at adoption. Further modifications may be proposed as the examination progresses and it may be necessary to produce a complete update of the HRA.

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1. Introduction

- 1.1 This is an addendum to the 2021 Habitats Regulations Assessment (HRA) of the North Norfolk Local Plan (produced to accompany the submission version of the Plan). North Norfolk District Council has subsequently tabled a main modification to the Plan [A5.12] and requested that the Inspector consider making this modification. The modification relates to Policy CC13 and its supporting text, and specifically relate to water quality. This HRA addendum assesses the modification and has been produced by Footprint Ecology, with critical review and input from DTA Ecology. It considers the conclusions made in the submission HRA and updates the findings to reflect the new evidence and text in CC13.
- 1.2 The HRA has been updated at each stage of the Plan and will be finalised to accompany the Local Plan at adoption. Further modifications may be proposed as the examination progresses and it may be necessary to produce a complete update of the HRA. In the meantime, this document should be read in conjunction with the submission HRA [A4]. That document provides background and information on the HRA process, the North Norfolk Local Plan, relevant European sites, a complete screening of the submission version of the Local Plan and appropriate assessment. These are not repeated here.

Background to the Main Modification

- 1.3 The North Norfolk Local Plan was submitted for examination in January 2022 [A1]. Later that year, in March 2022, a Written Ministerial Statement (WMS) on Nutrient Levels in River Basin Catchments was issued. This signalled changes in the approach to the assessment of development proposals in catchments where water bodies that are protected through the Habitats Regulations are in unfavourable condition due to nutrient pollution.
- 1.4 At the same time, the Chief Planner sent a letter to the affected local planning authorities (LPAs) on nutrient pollution issues. Natural England also published advice and a nutrient neutral methodology on how to evidence that nutrient neutrality will be achieved in relevant new development in order to mitigate impacts on the protected habitats. Supporting documentation (catchment maps) identified that relevant development in large parts of Norfolk would result in impacts on protected water bodies in the River Wensum and The Broads Special Areas of Conservation (SACs) and in the Broadland Ramsar. This includes, but is not limited to, those types of development resulting in additional overnight stays including new homes.

1.5 The advice post-dated the publication of the proposed submission version of the North Norfolk Local Plan which made no reference to nutrient neutrality.

1.6 North Norfolk District Council has tabled a main modification to the Plan [A5.12] and requested that the Inspector consider making this modification. The modification proposes changes to Policy CC13 of the Plan and its supporting text which deals with Protecting Environmental Quality, including water quality.

1.7 The requested modification would add the following wording to the requirements of Policy CC13:

All qualifying development proposals located within the catchments of the River Wensum Special Area of Conservation (SAC), the Broads SAC and the Broadland Ramsar must provide evidence to enable the Local Planning Authority to conclude through a Habitats Regulations Assessment that the proposal will not have an adverse effect on the integrity of the habitats sites. Proposals that fail to demonstrate at least nutrient neutrality will not be permitted.

1.8 Supporting text includes background and context to the issue of nutrient neutrality and also references the mitigation work being undertaken. The supporting text includes:

To support nutrient neutral development, the Norfolk authorities are producing a "Nitrates and Phosphates Mitigation Strategy" for the River Wensum and The Broads SAC and Broadland Ramsar catchments. This will identify short-, medium- and long-term mitigation solutions. The strategy is likely to include a tariff system to fund mitigation measures that will offset additional nutrient discharges from new development. Applicants may propose other types of mitigation. The Norfolk Authorities impacted by this issue have published detailed guidance on the information requirements and process that applicants will need to follow.

Context to Nutrient Neutrality

1.9 A total of 74 Local Planning Authorities have received advice from Natural England relating to the need to carefully consider nutrient impacts and water quality associated with the new development. These authorities span 27 different catchments where European sites are already suffering from excess nutrient levels. This means that the problem of diffuse water pollution now affects a 14% of England's land area (Chapman and Broadbent, 2023). The issues are required as a result of years of underfunding of infrastructure and inadequate conservation management of SAC rivers and other wetlands.

1.10 Natural England's advice included the recommendation to rely on 'nutrient neutrality' methodology as a form of mitigation for the impacts associated with

new development. Nutrient neutrality involves calculating the additional nutrient loading from new development and then ensuring mitigation is in place to remove the equivalent nutrient load from the catchment, for example through landowners reducing the nutrient loading on their land.

- 1.11 The approach does not reverse the levels of pollution nor contribute to favourable conservation status of the relevant sites, it simply ensures new development does not further contribute to the problem. Nutrient neutrality has become a widely adopted part of decision-making yet it is not straight-forward to achieve. Current estimates are that there are around 120,000 new homes stalled in the planning system due to difficulties in delivering adequate mitigation, with Norfolk being one of the key areas affected (Connor-Streich, 2023).
- 1.12 At a national level and in response to the problems, the government has proposed a new legal duty on water companies via the Levelling Up and Regeneration Bill (LURB), to upgrade wastewater treatment works by 2030 in nutrient neutrality areas to the highest achievable technological levels. The Bill has yet to receive Royal Assent and, if it passes, the infrastructure requirements and resource implications for the water companies are considerable.
- 1.13 The government has also speeded up the process for developers to acquire mitigation through a national £30 million nutrient mitigation scheme¹. Natural England has established the scheme whereby nutrient credits can be sold to housebuilders, allowing developers to meet nutrient neutrality obligations and enable local authorities to grant planning permission. To date the scheme is only underway in the Tees catchment area.
- 1.14 On a more local level, The Norfolk Authorities working together as part of the Duty to Cooperate have commissioned Royal HaskoningDHV to provide the Authorities with expert technical advice. Royal HaskoningDHV have:
- Refined and defined the extent of the impacted catchments;
 - Produced a Norfolk specific nutrient calculator;
 - Identified those types of mitigation which would help to address the issue.
- 1.15 Five Norfolk Planning Authorities and Anglian Water have formed a not-for-profit Joint Venture, Norfolk Environmental Credits Ltd, with the remit to purchase and make available suitable accredited mitigation to the development industry. This

¹ See <https://www.gov.uk/government/publications/nutrient-pollution-reducing-the-impact-on-protected-sites/nutrient-pollution-reducing-the-impact-on-protected-sites>

will sit alongside and compliment the Natural England scheme and is expected to include a wide range of potential mitigations.

- 1.16 Norfolk Environmental Credits Ltd launched a call for sites/expressions of interest in June 2023. Once the schemes are ready to be implemented, it is expected that planning permissions for housing and other impacted developments will be able to be granted from that point onwards.

Submission HRA conclusions

- 1.17 The submission version of the HRA identified likely significant effects alone for hydrological issues with respect 3 strategic policies and 6 allocations and related to the Norfolk Valley Fens SAC, the Broads SAC/Broadland SPA/Ramsar and the River Wensum SAC.
- 1.18 Adverse effects on integrity, alone or in-combination for specific allocations were eliminated with respect to water quality and the Broads SAC/Broadland SPA/Ramsar through the inclusion of specific policy wording that ensured development could only take place once any necessary sewer infrastructure improvements and capacity at the Water Recycling Centres (WRCs) were in place.
- 1.19 Anglian Water confirmed that based on the trajectory of the local plan they considered there was sufficient headroom at Fakenham WRC based upon the existing permit to accept foul flows until circa 2032. For all the Fakenham allocations, specific allocation policy wording ensured that any growth beyond 2032 was dependent on headroom being available, ensuring adverse effects on integrity for the River Wensum SAC could be ruled out alone or in-combination. At Fakenham, allocation F10 was identified as posing particular risks to the River Wensum SAC due to the proximity of the allocation boundary to the SAC. Allocation policy wording ensured that the allocation is dependent on the necessary survey work and site design and project-level HRA, allowing a conclusion of no adverse effects on-integrity alone or in-combination at plan level.
- 1.20 Similarly, for two allocations at Holt, the plan-level HRA identified that project-level HRA would be necessary to show that sustainable drainage would be sufficient to mitigate impacts to the SAC and evidence would need to demonstrate that the long-term maintenance of the appropriate drainage is secured as a planning condition at the site design stage. The necessary details would only be possible to check once detailed design had been undertaken. Allocation policy wording within the Plan ensures this is in place.
- 1.21 For any growth outside the allocations, adverse effects on integrity from hydrological issues was ruled out alone for all European sites due to the

protective policy ENV4 which ensures the need to rule out adverse effects on integrity before permission is granted. This ensured that any specific risks associated with particular locations and relating to WRC capacity, surface drainage or other hydrological issues are addressed at the point where such details can be set out and identified in the necessary detail.

Further context

- 1.22 Since the HRA was produced, Anglian Water has published its Drainage and Wastewater Management Plan (DWMP)². This sets out how wastewater systems, and the drainage networks that impact them, are to be maintained, improved and extended over the next 25 years, covering the period 2025-2050. It includes predictions for housing growth across the entire Anglian Water area and climate change predictions. The DWMP identifies the need for a 25-year spend of up to £5 billion to manage the risk from growth, climate change and to meet storm overflow targets. The DWMP has not been subject to HRA.

² See <https://www.anglianwater.co.uk/about-us/our-strategies-and-plans/drainage-wastewater-management-plan/final-plan/>

2. Screening for likely significant effects

- 2.1 This section documents the screening stage (stage 1 of the 4 stage HRA process), where the modification is screened for likely significant effects.

What constitutes a likely significant effect?

- 2.2 When undertaking screening of a Plan, a likely significant effect is identified on the basis of clear evidence of risk to European site interest, or where there could be a scientific and plausible justification for concluding that a risk is present, even in the absence of direct evidence.
- 2.3 The screening looks at policies prior to any avoidance/reduction/mitigation measures in line with People Over Wind³; measures intended to avoid or reduce effects on a European site can only be considered at Appropriate Assessment stage. People Over Wind clarified the need to carefully explain actions taken at each HRA stage, particularly at the screening for likely significant effects stage. The Judgment highlights the need for clear distinction between the stages of HRA, and good practice in recognising the function of each. The screening for likely significant effects stage should function as a screening or checking stage (regardless of avoidance, reduction/mitigation measures), to determine whether further assessment is required. Assessing the nature and extent of potential impacts on European site interest features, and the robustness of mitigation options, should be done at the appropriate assessment stage.

Screening

- 2.4 In the submission version of the HRA, Policy CC13 was screened out for likely significant effects, as it related to general plan-wide environmental protection. Following the main modification, the supporting text to the policy now contains area specific wording and reference to bespoke mitigation relating to European sites. Following the ruling in People over Wind this policy cannot be taken into account in the formal screening and must therefore be screened in for further consideration as part of an appropriate assessment.
- 2.5 The modification to CC13 leads to a conclusion that, without mitigation, all qualifying development proposals located within the catchments of the River Wensum Special Area of Conservation (SAC), the Broads SAC and the Broadland

³ People Over Wind: European Court Case C-323/17 People Over Wind & Peter Sweetman v Coillte Teoranta 12 April 2018

Ramsar will have a likely significant effect alone on the respective European sites.

2.6 Allocations that fall into these catchments are summarised in Table 1 and Map 1. All these allocations in Table 1, with the exception of BR01/02, were identified in the submission version of the HRA as triggering likely significant effects alone, due to the limited headroom at the WRCs.

2.7 In addition to these allocations, likely significant effects alone are identified for the overall quantum of growth, as set out in:

- DS1 Development site allocations;
- HOU1 Delivering sufficient homes (which in addition to the allocations includes windfall and small growth villages, together these comprise 1000-1200 new dwellings that are anticipated within the catchments of either the Wensum SAC or the Broads SAC/Broadland Ramsar);
- SS1 Spatial strategy.

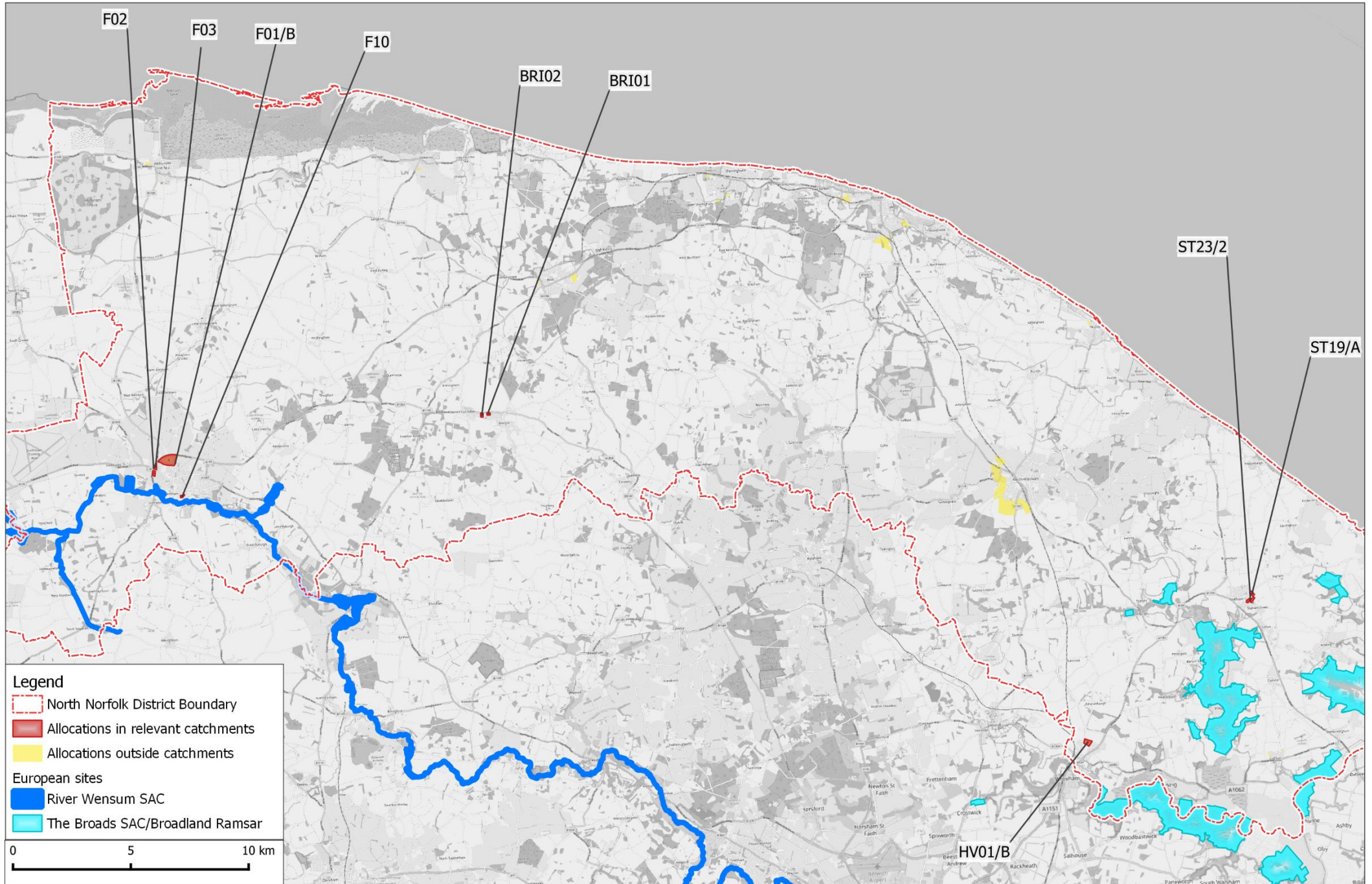
2.8 The above policies also triggered likely significant effects with respect to hydrology in the submission version of the HRA.

2.9 When added to the applications currently held (approx. 1,400 dwellings), North Norfolk District Council have assessed that around 3,500 -3,700 dwellings in total will require mitigation. This equates to slightly less than 30% of the growth proposed in the Local Plan.

Table 1: Developments likely to require mitigation (Data from N. Norfolk District Council and dated June 2023).

Site Ref/Source	Address	Dwellings impacted	Comments/position	European site
BRI01/02	East and west of Astley School, Briston	65 across two allocations	Site is part of a larger farm located on the upper reaches of the river Bure. Prospective developer is exploring on farm mitigation options.	River Wensum SAC
F01/B	Land North of Rudham Stile Lane, Fakenham	560	Local Plan trajectory concludes that development is unlikely before 2030 when need for mitigation will be substantially reduced.	River Wensum SAC
F02	Land adjacent PFS, Fakenham	70	Currently assessed as requiring off site mitigation	River Wensum SAC
F03	Land at junction of A148/B1146	65	Currently assessed as requiring off site mitigation	River Wensum SAC
F10	Land south of Baron's Hall Close, Fakenham	55	Considered likely to deliver on site mitigations within POS	River Wensum SAC
HV01/B	Land East of Tunstead Road, Hoveton	150	Totals assume LPAs proposed modifications are accepted. Currently assessed as likely to require off site mitigation (check position at Belugh WRC)	Broads SAC/Broadland Ramsar
ST19/A	Ingham Road, Stalham	70	Currently assessed as requiring off site mitigation	Broads SAC/Broadland Ramsar
ST23/2	Yarmouth Road, Stalham	80	Currently assessed as requiring off site mitigation	Broads SAC/Broadland Ramsar
Total impacted allocations		1,115		
Windfall Developments and small growth villages	All areas within defined nutrient catchments	1,000-1,200	Mainly comprises small scale development which are currently assessed as requiring off site mitigation largely via third party tariff schemes.	
Planning applications on hold.		1,400	Includes 900 dwellings at Fakenham (Trinity College Site F01 in adopted Site Allocations Plan). Trinity actively investigating mitigation options to expedite delivery.	
TOTALS		3,515-3,715		

Map 1: Allocations within the relevant catchments



3. Appropriate Assessment

- 3.1 The Main Modification to CC13 results in strengthened wording regarding the need for selected developments to address water quality impacts. The Modification to CC13 now ensures clear criteria in the policy that development will not be permitted unless nutrient neutrality at least is demonstrated. This will be determined by the Council through project level HRA. The criteria applies to all development requiring overnight stays and located within the catchments of the River Wensum SAC, the Broads SAC and the Broadland Ramsar.
- 3.2 The Policy does not rely on particular mitigation measures, and this is important. For plan-level HRA, case law demonstrates that the Local Planning Authority needs to be satisfied that the mitigation being relied upon is achievable in practice. For example, in the case of the New Adastral New Town Ltd (NANT)⁴, the important question for the court of appeal was whether there was sufficient information at the Plan stage to enable the Council to be duly satisfied that the proposed mitigation could be achieved in practice.
- 3.3 In this instance there is some uncertainty around whether the mitigation can be delivered and when. It would seem likely the LURB, once it receives Royal Assent, will give some confidence that the necessary upgrades to treatment works can be relied on. Natural England are developing mitigation options and the work by Royal HaskoningDHV and commissioned by the Norfolk Local Planning Authorities provides evidence for a range of mitigation options. At this stage therefore, it would seem likely that mitigation is achievable, however at this point in time it is not secured and cannot be relied on.
- 3.4 The Modification to Policy CC13 therefore addresses the uncertainty, as the presumption is that development will not take place, rather than stating development will be permitted with particular mitigation in place.
- 3.5 Natural England have agreed a Statement of Common Ground with the Council. This demonstrates the support of the Statutory Nature Conservation Body. The statement shows their agreement that the inclusion of the revised Policy (CC13) would prevent development resulting in an impact on designated watercourses and hence allows the LPA to demonstrate that the North Norfolk Local Plan addresses the requirements of the Habitat Regulations.

⁴ No Adastral New Town Ltd (NANT Ltd) v Suffolk Coastal District Council, Court of Appeal, 17 Feb 2015

4. Formal integrity test

- 4.1 This addendum should be read alongside the submission version HRA. The North Norfolk Local Plan proposed submission version (Publication Stage, Regulation 19 version, October 2021) was subjected to an appropriate assessment and integrity test according to the statutory provisions laid out in the Habitats Regulations 2017 as amended. That HRA concluded that the North Norfolk Local Plan was in conformity with the Habitats Regulations, and at a plan level a conclusion of no adverse effects, alone or in-combination, on European site integrity could be drawn.
- 4.2 The Main Modification to CC13 proposed by the Council does not change the finding of the submission version HRA and instead further strengthens the conclusions, in light of new evidence regarding nutrient neutrality. The policy requirement for development to demonstrate nutrient neutrality within the catchments of the River Wensum SAC, the Broads SAC and the Broadland Ramsar ensures impacts are avoided. This means adverse effects alone from all the Plan Policies (and incorporating the Main Modification), with respect to water quality and European site integrity are eliminated. Given that there is no impact from development, in-combination effects are also ruled out.

References

- Chapman, C., Broadbent, R., 2023. Restoring our rivers - looking beyond nutrient neutrality. Habitats Regulations Assessment Journal 6–15.
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