

**From:** [REDACTED]  
**Sent:** 24 April 2017 19:37  
**To:** [REDACTED]@canalrivertrust.org.uk

**Subject:** Walsall Site Allocation Document

Dear [REDACTED]

I am writing further to you and your colleague coming to Walsall on 3rd March.

At that meeting we discussed the Canal & River Trust's representations on Walsall's Pre-Submission Modifications on its SAD and AAP and most specifically in relation to SAD Policy EN4, the proposal for the restoration of the Hatherton Canal and the approach to the requirements of the Habitats Regulations.

I showed you a copy of officers' summary of your representation and the draft response. Now I have extracted a copy from our schedule and this is attached.

One of the main reasons for doing this is that the format of the published schedule did not enable me to provide the reference to the Court case I referred to in respect of developments that might generate more traffic on public roads (a situation I considered to be analogous to that relating to boat traffic on the canal network). This was *Wealden District Council v Secretary of State for Communities and Local Government & Anor* [2016] EWHC 247 (Admin) (17 February 2016) [http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2016/247.html&query=title+\(+wealden+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2016/247.html&query=title+(+wealden+)&method=boolean).

More recently and as reported in the 'Planning Resource', Wealden District Council has gone so far as to declare a moratorium on all development that might generate traffic that could lead to a significant effect on Ashdown Forest [http://www.planningresource.co.uk/article/1430589/council-puts-district-wide-block-traffic-generating-proposals?bulletin=planning-daily&utm\\_medium=EMAIL&utm\\_campaign=eNews%20Bulletin&utm\\_source=20170418&utm\\_content=www\\_planningresource\\_co\\_uk\\_art](http://www.planningresource.co.uk/article/1430589/council-puts-district-wide-block-traffic-generating-proposals?bulletin=planning-daily&utm_medium=EMAIL&utm_campaign=eNews%20Bulletin&utm_source=20170418&utm_content=www_planningresource_co_uk_art). I am not sure whether such a radical step represents v strong support for the Regulations or might be to show how onerous they are. I would not want to think we would get into any such situation in the West Midlands.

The second reason I thought our discussion was useful was that enabled me to explain that Habitats Regulations require the assessment of 'in combination' effects and in the northern part of Walsall we have a dormant minerals permission at Brownhills Common and a fireclay resource has been identified at Yorks Bridge close to the canal. In the circumstances we cannot avoid the in combination issues but hopefully if / when they come to be assessed we will be clearer as to the potential form and implications of any particular proposal(s).

Your representation and the response on behalf of the Council were reported (along with all the others) to Cabinet on 15th March:

<https://cmispublic.walsall.gov.uk/cmis/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/2343/Committee/328/Default.aspx>. See Item 9 – the Representations and Responses on the SAD are at Appendix Ai. See especially MM24, 26, 27 and 46 - pp19-30 of the Appendix – in respect of the Hatherton & Cannock Extension Canal issues.

More recently, the Council has agreed to submit the SAD and the AAP to the Secretary of State. See Council 10th April, Item 12:

<https://cmispublic.walsall.gov.uk/cmis/Meetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/2335/Committee/327/Default.aspx>.

When we do submit we will be in contact with you and the other interested parties. In the meantime, I hope this is useful.

Regards,

[REDACTED]

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<p>85 Canal &amp; River Trust 3539</p>	<p><i>The Trust's earlier comments appear to have been taken on board and the following amendments made:</i></p> <p><i>At part b) v. "applicable" has been replaced with "appropriate".</i></p> <p><i>At part d) v. "canal side" has been replaced with "canalside".</i></p> <p><i>At part e) "water course" has been replaced with "watercourse".</i></p> <p>The policy has been further amended to expand reference to and requirements for the restoration of the Hatherton Canal. The Trust welcomes the requirements for any future restoration projects to fully consider the environmental impact however though we would wish to engage further with the LPA and Natural England to determine whether the additions to the policy are necessary.</p>	<p>As stated previously the navigation along the Cannock Extension Canal is the responsibility of the Canal &amp; River Trust and it is not considered appropriate for a planning policy to specifically restrict boat movements. The impact of any additional boat movements could be subject to further assessment.</p> <p>The Trust is aware of the requirements to be a 'Competent Authority' under the Habitats Regulations (2010) and the desire of the Local Authority to be consistent with adjoining authorities such as Cannock Chase District Council. The policy however appears to go further in relation to the requirements placed on the Hatherton Restoration than other adjoining Authorities.</p> <p>The Trust are keen to ensure that the restoration line is safeguarded within the SAD but wish to confirm that the policy requirements as set out are justified and based on up-to-date assessments of the location and likely impacts of the restoration line. This is not clear in the submission and therefore we would seek discussion with the LPA and Natural England on these modifications.</p>			<p>No further change to the Council's proposed modification is considered necessary.</p> <p>Welcome support for the modifications to parts b)v, d)v and e) of the Policy.</p> <p>With regard to the technical requirements set out in EN4b). It was the expectation of stakeholders at the time of the BCCS being adopted in 2011 that the project would have progressed sufficiently so that at Site Allocation Document stage a detailed Habitats Regulations Assessment could be undertaken of the project. Unfortunately this has proven not to be the case and as will be clear from the SAD and from the other representations and responses that the Lichfield &amp; Hatherton Canals Restoration Trust is still working on the scheme. In that context it is considered important to be able to safeguard the route whilst making sure that the impacts of the proposed restoration can be identified and properly addressed.</p> <p>Among the authorities affected by and/or involved in the Hatherton Canal and the Lichfield Canal restoration proposals it does seem to be agreed on the main issues, including that a proper water supply needs to be ensured and that any adverse impacts on the Cannock Extension Canal SAC can be avoided or properly mitigated. The approach of adjoining authorities may differ to an extent from that of Walsall Council's as their approaches relate to part 1 of their respective Local Plan Strategies (they are now at the early stages of their part 2 Local Plan allocations). It is the role of Local Site Allocation Documents, such as Walsall's</p>
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					<p>SAD, to provide greater detail than the Local Plan Strategy regarding the constraints and assets that will form considerations for both promoters of projects and decision makers as part of the planning application process.</p> <p>As a 'competent authority' under the Habitats Regulations the Council, along with Natural England, must be of the opinion that there will be no adverse effects resulting from proposals with the potential to affect a European designated site. In order to reach such a view on this project EN4b) provides some factors including boat movements (this is not an exhaustive list - as a detailed HRA of the project might identify others) that must be addressed in order to be able to reach a conclusion on the effects of the project.</p> <p>In addition, reference to restricting additional boat movements was in the Publication Document so is not a proposed modification. However, whilst it is recognised that the planning authority cannot directly restrict boat movements on the existing network, proposals for additional links that will inevitably lead to additional movements are within its control and their potential impact on legally protected habitats must be assessed. The situation might be seen as analogous to that at Ashdown Forest (a SAC and also a Special Protection Area), where the local planning authorities have to consider effects from developments that include the impacts of vehicle emissions (even though those vehicles are driving on public roads)<sup>1</sup>.</p>
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<sup>1</sup> Wealden District Council v Secretary of State for Communities and Local Government & Anor [2016] EWHC 247 (Admin) (17 February 2016) [http://www.bailii.org/cgl-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2016/247.html&query=title+\(+wealden+\)&method=boolean](http://www.bailii.org/cgl-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2016/247.html&query=title+(+wealden+)&method=boolean)

					<p>Furthermore, the inclusion of the need to consider cumulative impacts on the SAC follows the legal requirement (Regulation 61 of The Conservation of Habitats and Species Regulations 2010) for HRA assessment to take account of the “<i>in combination</i>” effects of the project with other projects and plans. In this case, the dormant minerals permission at Brownhills Common and potential mineral extraction in the Yorks Bridge area of Brownhills have been identified as potentially impacting on the Cannock Extension Canal SAC (see the representation from Natural England (3624) in respect of MMSAD46, below).</p> <p>See also the other representations and responses in respect of MMSAD24, MMSAD26, MMSAD27 and MMSAD46.</p> <p>There have been ongoing discussions between the Council and the Canal &amp; Rivers Trust about the points raised through these representations.</p>
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