

Relevant correspondence received under the Duty to Cooperate

To meet statutory requirements, the Council has been carrying out consultations in several stages. Each of these is for a set period. We have to set deadlines so as to be able to have the chance to consider the representations received and to move on to the next stage. Maintaining such deadlines should give people a fair chance to comment.

However, the Localism Act 2011 introduced a requirement – ‘The Duty to Cooperate’ – for local planning authorities and certain other public bodies “to engage constructively, actively and on an ongoing basis” in respect of plan-making, as well as a requirement for local planning authorities to have regard to the views of certain other bodies. See Section 110 of the Act: <http://www.legislation.gov.uk/ukpga/2011/20/section/110>. Details of the bodies to which the duty applies are set out in Regulation 4 of The Town and Country Planning (Local Planning) (England) Regulations 2012 as amended: www.legislation.gov.uk/uksi/2012/767/regulation/4/made & <http://www.legislation.gov.uk/uksi/2012/2613/regulation/2/made>.

This means that Walsall Council continues to be in discussion and correspondence with ‘Duty to Cooperate bodies’ as necessary. Where correspondence received sets out a body’s position in respect of policy / allocation, or where it is directly relevant to the council’s response to representations then – with the agreement of the body concerned - the council will publish such correspondence here. **This correspondence should be read in conjunction with other published correspondence and representations received from each respective Duty to Cooperate body.**

Natural England Recommendations

SAD Policy M8: Brick Clay Extraction - Other Areas

MP9: Highfields North – Permitted Minerals Site (f, g & h)

Natural England has discussed with Walsall MBC whether the inclusion of the Highfields North site as an 'allocated' permitted minerals site in the emerging plan is appropriate given its SSSI designation, designated for its important wetland habitat. Natural England understands that the 1977 permission is 'dormant' and, therefore, however, cannot be implemented until a new schedule of modern working conditions is approved by the council.

On balance, we accept that the inclusion of a specific policy for the site (and the dormant permission) detailing clear set of requirements to be approved as part of the modern schedule of working conditions is the most appropriate way forward given the situation.

Natural England considers the specified requirements wholly reasonable in consideration of Jockey Fields SSSIs important biodiversity value.

Natural England agrees with the council (at 'f') in that '*Mineral extraction within this site willpermanently destroy at least some of the site's special features.*' We consider it unlikely, therefore, that suitable compensation measures will be possible. However, and understanding that the planning permission remains valid despite the sites designation, we accept that Policy M8 (MP9)'g'xi attempts to minimise the potential impact upon the valued special features of the SSSI and provide our support to this measure.

Natural England also supports the need for a ~~outline~~ restoration strategy and programme for the site, to be agreed in consultation with ourselves, and to form part of the policy criteria which must be approved ahead of any implementation of proposed works.

It is our consideration that an EIA is highly likely to be required to accompany any submission for a modern schedule of working conditions.

On balance, and in consideration of the dormant permission, Natural England considers the demands of policy M8 MP9 f-h) wholly reasonable, justified and the most appropriate way forward for the Plan. We consider the implementation of the permission difficult and complex. However, we consider the Policy sound.

SAD Policy M8: (l, j & k) Brick Clay Extraction – New Sites

Natural England understands the rationale for inclusion of the Area of Search ‘enabling policy’ for new mineral sites in the Plan. Indeed, and on balance, we welcome its inclusion which provides opportunity for working land of lesser environmental value within the brick clay resource area, as opposed to implementation of the existing permission at Highfields North. However, Natural England would resist any proposals which resulted in harm to special features of protected sites.

We recommend the following alterations to the Policy:

j) ii) delete words ‘...or minimise...’

SAD Policy M7: Brick Clay Extraction – Stubbers Green

MXA3: Stubbers Green Area of Search

Natural England understands that the SG AoS is based upon the former Walsall UDP MSA 1iii and includes the area covered by the existing permissions relating to Atlas Quarry (and proposed extension) and brickworks and Sandown Quarry & brickworks. The identification of further sites for extraction is therefore limited given that this largely comprises areas of current or historical mineral working and subsequent restoration (or programmes). Stubbers Green Bog SSSI and a small part of the Swan Pool & The Swag SSSI are also included in this AoS as we are told these are covered by the existing permissions. Natural England acknowledges these inclusions and considers the policy acceptable given that the policy wording of criterion (a), combined with other BCCS site protection policy, clearly protects the SSSIs from likely harm.

Stubbers Green Bog SSSI and the land to the east is owned by Pall Mall Estates who has a Conservation Enhancement Scheme (CES) agreement with NE in relation to the site.

MP2 Atlas Quarry (Permitted) & MXP3 Recordon Land (Potential)

Natural England accepts that this policy criteria seeks to set out a framework for considering new planning applications against (in the event they come forward). These are welcomed by NE.

MP7: Sandown Quarry (Permitted)

We welcome a policy (f, g & h) that invites the submission of restoration proposals for the site. However, we accept that such a submission may not occur during the Plan period given that the existing permission allows production until 2042. The sites restoration is also a priority for Natural England and would, like Walsall MBC, also

support proposals to restore the quarry within an earlier timeframe. This is large area which offers significant opportunities for habitat creation and restoration. Natural England would welcome a conversation with Wienerberger in this respect and supports the inclusion of this policy criteria highlighting the need for such a submission.

SAD Policy M9: Coal and Fireclay Extraction Brownhills

Yorks Bridge (g & h)

Further to our recent discussion, Natural England accepts that there is no specific site which may be assessed by a HRA and therefore accept that the requirement for a HRA may, in this case, be pushed down to project level via policy M9 h (xi) given that potential impacts are likely to be capable of mitigation through the development management process.

We concur that HRA screening Assessment of the SAD should include an evaluation of the potential risks to the integrity of the SAC.

SAD Policy EN4: Canals

Natural England is still unaware as to whether there is the water supply availability in order to service the proposed Hatherton Canal scheme. We are supportive of the principle of the scheme, however, your authority must ensure that the policy is (a) deliverable (and therefore 'sound') and (b) if implemented, will not harm the Cannock Extension Canal SAC. It is important that we get any issues clarified now so that the safeguarding of the route, and the project, is not lost.

To clarify, Natural England considers the following necessary in order to support the policy and its accompanying HRA as it stands:

- WMBC / NE to clarify water supply availability for the project with EA. [**Action: WMBC & NE re: 'b'(i)**]
- Evidence to be provided in relation to existing boat movements on the SAC and on the main canal at the junction with the SAC. (Note: We have contacted CRT in this respect and it seems the boat counter may be broken). Also, we note CRT's comments with regard to 'b'(ii), however, it is for CRT / Hatherton Canal project to provide the evidence to ensure the appropriateness of the proposals. This may include removal of short-term moorings within the SAC. [**Action- NE to check SSSI files in respect of 2009 monitoring scheme that BW agreed with NE. We need to confirm numbers of permanent and temp/short-term moorings on the SAC – JL currently looking for**]. It is likely that existing vegetation in the SAC would be okay with current levels but, potentially, sensitive to increase in traffic.

- An assessment as part of the HRA which considers the in combination effects of increased boat movements with the opening of the Chasewater valve upon sediment flow. That is, there is a lot of sediment in the W&E canal and in the central section of the SAC. Natural England is currently attempting to remove the sediments in the SAC via the CES agreement we have with CRT. CRT tells us that there is a strong flow when the valve at CW is opened so we need to think about effects of this in-combination with more movements on the W&E canal disturbing undredged sediments and these being, potentially, pushed up the SAC . CRT only dredge their canals for boat passage so with more movements there is likely to more disturbance of remaining sediments.

It is clear that there is still some evidence needed in order to support the policy as it currently stands. We consider, therefore, that your authority could approach the situation in one of two ways:

- (1) Assuming an 'adequate' water supply availability is proven possible, (i.e. not necessarily proven but a possibility within the time period) the policy be retained yet including an amended '(ii)' which requires the support of technical work demonstrating that '*there is unlikely to be a significant effect on the designated features of the CEC SAC via additional boat movements (including in combination effects);*' As it is unlikely the evidence either way could be found to support a HRA for this now, this pushes the provision of the required evidence down to the project level.

Or

- (2) Consider, that the safeguarding of the Hatherton Restoration project route alignment as a green route may be the most appropriate given the lack of evidence required for an accompanying HRA to the policy.

We will endeavour to get back to you with regard to the outstanding actions as soon as possible, however, in the meantime, should you wish to redraft the policy and related supporting text we would be happy to consider and provide comment.

Further Natural England Recommendations

SAD Policy M8: Brick Clay Extraction – Other Areas

MP9: Highfields North – Permitted Minerals Site

Further to the comments already submitted, Natural England wishes to make further recommendations in respect of this policy, specifically in respect of site restoration and criterion g)xv.

Natural England recommends that this criterion be re-worded to read as follows:

‘The entirety of the worked areas must be restored as recreated wildlife habitats as those habitat types currently present within Jockey Fields SSSI, and of similar and enhanced value...’

This, to ensure the restoration positively enhances the SSSI from its existing condition, following its clearance and destruction to accommodate the mineral workings permission in accordance with the requirements of the Wildlife and Countryside Act 1981 (As amended) and your authority’s biodiversity duty (NERC 2006). Furthermore, the entirety of the area should be included as part of the SSSI restoration given that much of the land includes identical habitat which, should the site be re-notified, would now be included within the SSSI.

Additionally, we consider the proposed after uses provided at g)xv incompatible with the SSSI and its special features. These relate to proposed restoration as agreed at the time of the application and are, therefore, no longer appropriate. In particular, horse grazing will be damaging, as will conventional agricultural practices. The last 2 options (c and d) are potentially more compatible but conservation land management of any recreated habitats should be the priority. Moreover, when Walsall MBC agreed to revoke the planning permission on Jockey Fields SSSI, it was agreed that the land should be transferred to Walsall to management for wildlife. Natural England would seek to ensure the after-use of the land is secured for this purpose.

We would recommend inclusion of text referring to the gifting of the site to a conservation trust or conservation community group to manage.

From: [REDACTED]
Sent: 13 July 2016 08:38
To: [REDACTED]
Cc: [REDACTED]
Subject: SAD Policy M9: Yorks Bridge (g & h) - NE response

[REDACTED]

Further to your email of 28 June 2016 we provide our comments as follows:

SAD Policy M9: Coal and Fireclay Extraction Brownhills - Yorks Bridge (g & h)

Natural England understands from the representations of Resource UK (agents acting for Potters Clay & Coal Company) that they support the defining of a boundary for the Area of Search for fireclay extraction (to include Yorks Bridge) within the SAD. They say they have evidence to support viable working here, however, cannot confirm that they are likely to bring this forward within the Plan period.

In consideration of this lack of certainty, we consider that the best way forward for the Plan would be to retain emerging Policy M9 (g & h) as featured within the Publication Draft. BCCS Policies MIN3, MIN4 and MIN5 would still apply to any proposals which do come forward. Whilst, we understand that the related BCCS policies were not subject to HRA at the time of inquiry, we consider that the lack of certainty around the potential working of fire clay in the search area prior to the end of the Plan period means that a defined boundary or adequate HRA cannot be provided at this time.

In order to ensure that any likely impacts upon Cannock Extension Canal SAC are sufficiently identified and addressed, any fireclay working proposals which did emerge within the Plan period would be subject to SAD Policy M9 h (xi) requiring HRA. Furthermore, it is likely that any potential impacts upon the SAC from fireclay working within the area in question are likely to be capable of mitigation through the development management process.

In response to Resource UK's statement regarding HRA of the Cannock Extension Canal SAC, specifically, NE understands that the 'previously considered larger scale scheme' to which they refer is in fact the British Coal plan which has not been subject to HRA. The argument that the 'potential effects from a proposed clay working in Walsall are greatly diminished compared with the previously considered larger scale scheme' is therefore, unjustified as an assessment has not yet been undertaken.

We do not consider that the comments of Resource UK in respect of the SAC have any value with regard to your HRA screening report and should be omitted. We reiterate, however, that the HRA Screening Assessment of the SAD should include an evaluation of the potential risks to the integrity of the SAC.

Regards

[REDACTED]

[REDACTED]

Lead Adviser – Sustainable Development
North Mercia Area Team
Natural England
Parkside Court, Hall Park Way
Telford, TF3 4LR

T: [REDACTED]
[REDACTED]

[REDACTED]

Date: 27 May 2016
Our ref: 185427
Your ref: N/a

This correspondence is Natural England's response to a letter from Walsall Council dated 09/05/2016 – this letter is included below to provide the necessary context for the reader.



Walsall Council

For the attention of [REDACTED]

BY EMAIL ONLY

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



Dear [REDACTED]

Cannock Chase SAC and Walsall Council's SAD, AAP and CIL

Thank you for your letter on the above dated 09 May 2016 which Natural England received on the same day.

Further to your email of 17 May 2016 Natural England acknowledges the points you make and encourages Walsall Council to engage with the SAC Partnership in order to allow discussion to take place. We understand from your letter dated 9 May 2016 that Walsall Council intends to discuss the points raised ((i)–(iii)) with the Partnership, including Natural England. Without pre-judging the content of and outcomes from that dialogue we offer the following advice in response to the questions set out in your letter of 9.5.16:

Changes in the developer contribution tariff

The 'trigger' for such a change is most likely to be the 'monitoring loop' that oversees:

- (i) the grant of planning permissions for housing,
- (ii) housing delivery, and
- (iii) nature and scale of impacts arising from additional visitors

(i) and (ii) are under way. Preparatory work to monitor visitor numbers and impacts (iii) is planned to be carried out prior to the staff posts¹ being recruited.

In terms of potential causes that might bring about the need for review of the mitigation arrangements the Birmingham City housing growth issue is one possible example. The SAC Partnership is currently considering this issue and making arrangements to assess how the Strategic Access Management and Monitoring Measures (SAMMM) might need to be amended if a proportion of the additional housing was to fall within the zone of influence.

¹ Project Manager and Visitor Engagement Officer

Windfall housing and the 8-15Km zone

Net increases in housing in the 8-15 km zone do not pay under the current SAMMM arrangements. The partner LPAs have drawn up an 'HRA Addendum' for their respective local plans explaining their approach to the 8-15km zone. If further information is still needed on the definition of 'windfall' housing then we would encourage Walsall Council to discuss this with the SAC Partner local planning authorities at a future SAC Partnership meeting.

Visitor impacts

The Footprint Ecology reports commissioned by the SAC Partnership refer². In practical terms there is no difference in the type and nature of effects arising from new visitors (associated with new homes) as compared with existing visitors. The evidence shows the nature of impacts and the number of visitors at the time of the surveys. This allows us to decide what access management measures would mitigate an increase in these types of impact in proportion to the expected additional visitors. It is important to emphasise that access management focus on mitigation rather than avoidance. The planned repeat visitor surveys and monitoring of impacts will ensure that the SAC Partners are able to base mitigation on the most up to date available information.

If you have any immediate questions please contact me on [REDACTED] and I look forward to seeing you at the forthcoming SAC Partnership meetings.

Yours sincerely

[REDACTED]
Lead Adviser – Sustainable Development and Wildlife Team – North Mercia Area

² 'Impacts of recreation to Cannock Chase SAC' (2012) and 'Cannock Chase SAC Visitor Impacts Mitigation Report' (2013)



Economy & Environment *Planning Policy*

Date: 09/05/2016

Please ask for: [REDACTED]

Direct Line: [REDACTED]

[REDACTED]
Parkside Court
Hall Park Way
Telford
TF3 4LR

Re: Cannock Chase SAC, Walsall's SAD, AAP and CIL

Dear [REDACTED]

On behalf of Walsall Council I thank you for attending the meeting held at Walsall Civic Centre 14th April 2016 to discuss Walsall Council's duties under the Habitat Regulations (2010) in respect of Cannock Chase Special Area of Conservation (SAC) and relating to the authority's emerging Site Allocation Document (SAD), Town Centre Area Action Plan (AAP), and Draft Community Infrastructure Levy Charging Schedule (CIL).

During the aforementioned meeting, having initially provided some context to the issues facing Walsall's emerging plans and CIL (a note of the meeting is attached to this letter), Walsall's officers raised points on which clarification, assurances and advice is sought from Natural England. These points relate specifically to the strategic mitigation approach as detailed in the Memorandum of Understanding of the Cannock Chase SAC Partnership (MOU) developed by the SAC Partnership authorities with the assistance of; Natural England, Cannock Chase AONB Partnership, and Forestry Commission.

The Council would like to take on board and work in a way that is consistent with the MOU. However, in order to be in a position to do so the Council requires clarification and assurances on the following points:

1. The 8km 'Zone of Payment' appears to be based on a separate interpretation of the evidence base to that which is relied upon to identify 15km as the 'Zone of Influence' (that being a significantly greater impact originates from existing housing development within 0-8km of the SAC when compared with housing development within 8-15km of the ZOI). As such, in order to extend the 'Zone of Payment' would further evidence be required, if so what would this be? If not, on what basis could the 'Zone of Payment' be extended beyond 8km?
2. Please clarify the definition of "windfall housing" as set out on page 4 of the MOU, and advise how the MOU would apply to Walsall given that windfalls form part of the authority's housing target? For example; would housing windfalls in Walsall, within 8-15km of the SAC, not require Appropriate Assessment on the basis that the effects of this development are mitigated for by the MOU and the strategic mitigation measures to be delivered (that is providing the quantum of windfall development would not exceed the 78,000 new homes on which the MOU and SAMMM have been designed to mitigate the effects of)?
3. What are the agreed effects of new housing developments to the SAC, and what is the agreed effect on the SAC from existing housing development?

The Council would like to explore these points with Natural England and the SAC Partnership over the coming weeks. Given the factors and circumstances affecting the viability and deliverability (i.e. land remediation costs and weak residential market areas) of regenerating brownfield land within the ZOI affected area of Walsall, seeking clarification and assurance on the above points is considered reasonable, proper and sensible given the potential implications for Walsall in terms of; demonstrating Local Plan(s) deliverability, and undermining the areas regeneration strategy.

Kind regards

[REDACTED]

Date: 08 June 2016
Our ref: 180793
Your ref: **SAD SA&HRA**



Walsall Council

For the attention of [REDACTED], Senior Planning Policy Officer

BY EMAIL ONLY

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

T 0300 060 3900

Dear [REDACTED]

Site Allocations Document (SAD) – Habitats Regulations Assessment (HRA) and Sustainability Appraisal (SA) with particular regard to the Cannock Chase Special Area of Conservation (SAC)

Further to our meeting on 14 April 2016 and Natural England's subsequent representation on the Council's SAD in respect of the Cannock Chase SAC we set out our comments below on the DTA Ecology (DTA) report's¹ reference to Defra guidance on competent authority co-ordination. Natural England would welcome the opportunity to meet in order to discuss the way forward in relation to the SAD's HRA and SA when you have considered this feedback.

Natural England notes the DTA advice regarding the use of the Defra guidance on competent authority co-ordination and the recommendation the report makes regarding the adoption of the HRA conclusions from the Cannock Chase Area of Outstanding Natural Beauty (AONB) Management Plan HRA together with that of the later Visitor Management Strategy.

We have considered DTA's advice in terms of the scope for 2 approaches to competent authority (CA) co-operation:

- (i) Regulation 65 of the Habitats Regulations as a matter of law.
- (ii) A broader interpretation of the Defra guidance where CA co-operation represents desirable good practice.

Regulation 65

Natural England believes that the 2 CAs in question (Walsall Council and the Cannock Chase AONB) were assessing different plans. While we acknowledge the commonality between the plans in terms of the recreation management theme we would draw the council's attention to the fact that the Defra guidance focuses on multiple CA situations involving *one and the same plan*. Closer inspection of paras 5-7 of the Defra guidance also suggest that a number of caveats or safeguards are intended to operate in order to ensure that where 'co-operation' leads to the adoption of another CA's logic and reasoning and/or HRA conclusion that the adopting CA has actively checked these points to ensure their 'adoption' is sound.

¹ 'The duties of Walsall Council under the Habitats Regulations and the approach to recreational impacts from new development at Cannock Chase SAC – Advice to Walsall Council by DTA Ecology' – 15.10.2015

CA co-operation as desirable good practice

Natural England agrees that CA co-operation is sensible and desirable.

In terms of the AONB HRA reports' conclusions Natural England believes that adopting the logic and reasoning from the SAC project (in the form of the Strategic Access, Management and Monitoring Measures or SAMMM) supports the AONB HRA reports' conclusions. Natural England acknowledges that the AONB document HRA conclusions could have been more explicit regarding the role of the SAMMM as a part of the reasoning in order to reach the 'no likely significant effect' conclusion. Nonetheless the SAMMM form an integral part of the management plan and visitor management strategy. For the avoidance of any doubt we have confirmed this through dialogue with the AONB unit. If Walsall Council needs any further clarification on this point we would encourage you to do likewise. The fact that 5 other LPA partners have been through local plan 'examination in public' and are now using the SAMMM approach also provides a wider context for Walsall Council's consideration of relevant issues and evidence.

Natural England would therefore caution against adopting the reasoning and conclusions from another CA without a narrative to describe how these conclusions apply to the Walsall authority area. If Walsall Council believed that the AONB had concluded 'no likely significant effect' in the absence of SAMMM then the Council would need to describe how this outcome could be achieved. The DTA report and subsequent HRA and SA for the SAD do not offer such a narrative.

Way forward

Notwithstanding the points we have made above Natural England believes that the conclusions set out in your HRA of the SAD and AAP documents may well be correct albeit not for the reasons stated in the HRA report. The above observations reinforce our view that the approach set out in Walsall's preferred Sustainability Appraisal (SA) option (based on adoption of the Cannock Chase AONB management plan and Visitor Management Strategy HRA report conclusions) is unsound. As the SAD's HRA conclusion and supporting narrative rely on this SA option these too need to be reviewed. We would welcome the opportunity to meet with you to discuss an alternative SA/HRA narrative and how to progress the SAD accordingly.

For any queries relating to the specific advice in this letter please contact me on [REDACTED]. For any new consultations, or to provide further information on this consultation please email [REDACTED].

We really value your feedback to help us improve the service we offer. We have attached a feedback form to this letter and welcome any comments you might have about our service.

Yours sincerely

[REDACTED]
Lead Adviser – Sustainable Development and Wildlife Team – North Mercia Area

Cc [REDACTED] – Cannock Chase AONB unit

Date: 08 June 2016
Our ref: 180799 SM 080616 TCAAP
Your ref: [Click here to enter text.](#)



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

T [REDACTED]

[REDACTED]
[REDACTED]

BY EMAIL ONLY

Dear [REDACTED]

Walsall Town Centre Area Action Plan (AAP) Publication Draft

Further to our response dated 4 May 2016, and as a result of the discussions at our subsequent meeting 24 May 2016, I can confirm Natural England does not have concerns with regard to Policy AAPLE4 Walsall Canal.

Our previous hesitation in respect of AAPLE4 was a result of our lack of clear understanding, at the time, with regard to the policy and its potential relationship with the Hatherden Canal Restoration Project. This has since been clarified and concerns removed.

I hope that this provides you with what you need to progress with the plan in a timely fashion.

Kind regards

Yours sincerely

[REDACTED]
Lead Adviser – Sustainable Development
[REDACTED]
[REDACTED]