



Walsall Council Site Allocation Document & Town Centre Area Action Plan Habitats Regulations Assessment

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1 Introduction

The objective of this report is to provide a high level assessment of the potential for likely significant effects to European protected sites, either alone or in combination with other plans and projects, as a result of implementing the Walsall Site Allocation Document (SAD), and Walsall Town Centre Area Action Plan (AAP).

The requirement for this assessment is set out within Article 6 of the EC Habitats Directive 1992, and transposed into British law by the Conservation of Habitats & Species Regulations 2010. The aim of the Directive is to “maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest” (Habitats Directive, Article 2(2)).

The Habitats Directive prescribes a precautionary principle to protected European sites. This requires that plans and projects can only be permitted after it has been ascertained that there will be no adverse effect on the integrity of the site(s) in question. Plans or projects may still be permitted if there are no alternatives and there are Imperative Reasons of Overriding Public Interest as to why they should go ahead. Under these circumstances compensation would be required to maintain the overall integrity of the network of European sites.

As the SAD and AAP are seeking to deliver the Black Country Core Strategy (BCCS), the scope of this report is informed by the HRA screening exercise undertaken in preparation of the BCCS¹. The findings of which provided the basis for the assessment of all other subsequent Local Plan documents associated with the BCCS. Therefore the sites requiring assessment were identified according to the impact pathways identified from the HRA screening exercise undertaken for the BCCS.

The HRA work for the BCCS identified three European sites that might be affected by the plan. It could not rule out the possibility of likely significant effects to Cannock Chase SAC, and Humber Estuary SAC/SPA/Ramsar. Although the Severn Estuary SAC/SPA/Ramsar also could not be ruled out there is no hydrological impact pathway linking the Severn Catchment with activities that might take place in Walsall. Despite the BCCS HRA screening out likely significant effects to the Cannock Extension Canal SAC this report also details the approach taken in respect of this site and the allocations and policies of the SAD capable of impacting upon it.

The quantum of development proposed through the Site Allocation Document (SAD) and Walsall Town Centre Area Action Plan (AAP) is less than or in accordance with the targets of the BCCS. Therefore the HRA screening assessment of the BCCS is considered relevant to the screening of the SAD and AAP.

¹ UE Associates (2010) – Habitats Regulations Assessment of the Black Country Joint Core Strategy

This report considers the allocations and policies contained within the post publication modification version of both plans on Cannock Chase SAC, Cannock Extension Canal SAC and the Humber Estuary SAC/SPA/Ramsar. If necessary, this screening statement will establish the requirement to progress to the Appropriate Assessment HRA stage.

2 Methodology

The Department for Communities and Local Government (DCLG) produced a paper for consultation on Appropriate Assessment of Plans in 2006². To date, no further guidance has emerged, although there is other more general guidance on HRA³. European guidance describes a four stage process to HRA, summarised below⁴.

The DCLG guidance details 4 stages of the HRA process, these are:

Stage 1 - Screening

Stage 2 - Appropriate Assessment

Stage 3 - Assessment of Alternatives

Stage 4 – Assessment of imperative reasons of overriding public interest

Depending on the findings and conclusions of the screening process will determine whether or not there is a need to progress to stage 2 – appropriate assessment.

Stage 1 – Screening of Walsall Site Allocation Document and Town Centre Area Action Plan. The European sites assessed in this report were selected from the HRA work of the BCCS and the impact pathways that were identified as potentially linking activities in the area with European protected sites. Impact pathways are the means by which a change in activity within an area might lead to an effect on a European site. Whilst the report focuses on sites that could not be screened out as the BCCS emerged it also discusses the Cannock Extension Canal SAC, the only European protected site in the borough, for which likely significant effects were screened out previously by the BCCS.

² [DCLG \(2006\) Planning for the Protection of European Sites: Appropriate Assessment](#)

³ Guidance on competent authority coordination under the Habitats Regulations July 2012
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69580/pb13809-habitats-guidance.pdf

⁴ [The Planning Inspectorate \(2013\) Habitat Regulations Assessment - advice note](#)

3 European Sites Assessed

3.1 Cannock Chase SAC

3.1.1 Background

Cannock Chase SAC is situated approximately 8km north of Walsall's administrative boundary. The SAC was designated in 2005 under the provisions of the European Habitats Directive. Its qualifying features for designation are European Dry heaths and Northern Atlantic wet heaths with *Erica tetralix*; Wet Heathland with cross-leaved heath. The AONB, in which the SAC is positioned, is open access land that is popular for a variety of recreational activities.

An HRA Appropriate Assessment undertaken by UE Associates, June 2010 to accompany the BCCS screened in the possibility of likely significant effects due to uncertainty associated with air quality and increased recreational pressure associated with new housing development proposed by the BCCS. Subsequently, at the examination of the BCCS, Walsall Council and Wolverhampton City Council were advised to work in partnership with a number of other local authorities to investigate the matter of recreational pressure from the Black Country on the site and the potential for likely significant effects, specifically as a result of the combined residential development proposed by the Local Plans and Strategies of the local authorities. The resulting visitor survey evidence⁵ was intended to inform the HRA of Site Allocation Documents and Area Action Plans.

The visitor survey evidence and HRA work that has been undertaken in the period between the adoption of the BCCS in 2011 and the present day is discussed in the following section of the report as there are matters with which the council has been unable to agree. Consequently, this report proceeds as an assessment of 'likely significant effect' - stage 1 of the HRA process. The approach of the report is also informed by questions surrounding the legality of delivering some of the recommendations made, and the requirement to have regard to SEA regulation 12.(2)(b) - for the council to have considered reasonable alternatives towards mitigating potential effects, in light of a recent High Court Judgment⁶.

⁵ 'Cannock Chase SAC Visitor Survey' Footprint Ecology/Durwyn Liley, February 2013

⁶ [2015] EWCA Civ 681 Case No: C1/2014/1148

3.1.2 Recreational Pressure and the Zone of influence

Footprint Ecology (Ecological Consultancy) was appointed by the original members of the SAC Partnership⁷ to undertake further work to investigate the effect of recreational pressure and the potential for mitigation measures. The Cannock Chase Visitor Survey Report⁸ (referred to as ‘the report’ from this point on) analysed visitor survey data collated in 2010/11 from across the Cannock Chase SAC, and the Area of Outstanding Natural Beauty (AONB). The report states in paragraph 3.46, in respect to how far visitors are prepared to travel to the area, that whilst 50% of all visitors live within a radius of 6.24km of the point where they were interviewed, the distance from which 75% of all visitors live is 15.13km.

The area from which 75% visitors live (15km) was recommended by Footprint Ecology as being the area from which developer contributions should be sought⁹. A strategic mitigation package has been developed in relation to this area (and this has already been brought into effect by the other local authorities) for developer contributions to be used to help fund the management of the SAC area and the rest of the AONB.

However, Footprint Ecology also proposed that a differential rate for housing development within 400m - 8km of the SAC could be applied as development within this zone has a significantly greater impact compared with that within 8-15km⁹. This is the approach that has been opted for by the SAC Partnership under the advisement of Natural England, identifying a 15km zone of influence from the perimeter of Cannock Chase SAC. The approach opted for is based on a method adopted in relation to securing developer contributions to fund appropriate measures to mitigate the effects of residential development near other European sites in England¹⁰. The council is not aware of any statistical or causal evidence to support the application of such an approach other than that it has been applied elsewhere in the country in respect of other European sites. However, it is pertinent to note that each of the European protected sites are designated for a variety of reasons, managed for different purposes and to differing degrees, and are situated in areas of England with contrasting socio-economic, geographic characteristics, and land values to those found within areas of the West Midlands.

In order to accommodate additional housing development within the ZOI the SAC Partnership (Staffordshire County Council, East Staffordshire Borough Council, Stafford Borough Council, South Staffordshire Council, Cannock District Council, Lichfield District Council, and Wolverhampton City Council) has developed a

⁷ Cannock Chase District Council, East Staffordshire Borough Council, Lichfield District Council, South Staffordshire District Council, Stafford Borough Council, Wolverhampton City Council, Staffordshire County Council & Walsall Council

⁸ Footprint Ecology (2013) Cannock Chase SAC Visitor Survey Report

⁹ Footprint Ecology (2012) Cannock Chase SAC Visitor Impacts Mitigation Report (Page 5)

¹⁰ Zone of Influence - Ashdown Forest 7km, Thames Heath Basin 5km and Dorset Heaths 5km

strategic mitigation package of Strategic Access Management and Monitoring Measures (SAMMM). At present, applicants proposing residential development within an 8km Zone of Payment (ZOP) are able to make financial contributions towards a £1.97 million package of measures in order to mitigate likely significant effects to the SAC, or, alternatively, they can opt to provide appropriate information to the Local Planning Authority to allow a bespoke Habitat Regulations Assessment.

It is the council's view that the visitor survey in respect of the effects from visitors within 8km of the SAC, in the absence of other evidence, is conclusive and provides reasoned justification for the collection of developer contributions from this area. However, the council considers that the ZOI is not supported by evidence that provides a similar degree of certainty with respect to where 'likely significant effects' emerge from.

The remaining paragraphs within this section of the report discuss the elements of the existing evidence base that the council believes to require further investigation, factors which are of fundamental importance to the identification of a ZOI that could be taken into account in future visitor survey analysis to improve the accuracy when defining a ZOI, and the potential implications for the regeneration of Walsall as a result of the current ZOI.

Although the report confirms the draw / popularity of Cannock Chase AONB for leisure and recreation generally, it is particularly popular as a destination for specialised activities; such as cycling, mountain biking and horse riding. The AONB's draw for mountain biking is evident from paragraph 3.54 of the report which states: the median distance from which mountain bikers' travel is 11.20km (distance from postcode to survey point). The implications of this are discussed later in the report under the sub-heading 'Socioeconomic and other factors'.

The report also calculates a visitor rate with which to estimate the likely increase in visitors as a result of new housing development within the ZOI. Each visitor rate relates to a 500m concentric band emerging from the SAC boundary. The visitor rate is calculated by dividing the number of interviewee postcodes recorded within each 500m band with the number of residential properties within the same band.

The council has concerns regarding the application and interpretation of the survey data in this way to calculate the effect of new residential development, as the approach assumes all new homes built throughout each concentric circle of the ZOI – a diameter spanning up to 30km - will accommodate new residents with the means necessary and desire to access the Cannock Chase area. This approach has the potential to provide geographically inaccurate visitor rates as a result of combining the visitor profiles of residents who live in areas up to 30kms apart (e.g. residents of Uttoxeter, East Staffordshire, receive the same visitor rate as residents from Birchills, Walsall) that experience different social demographic and environmental characteristics. While the reason for attempting to do so is appreciated, by grouping

the visitor data in this way, the approach serves to over simplify the spatial distribution of visitors and their behaviours in order to apportion a degree of impact to the SAC according to the distance residents live from it.

However, the council's view is that this returns visitor rates that are not representative of the likely impact to the SAC from a specific area, or community. Also, it groups the visitor postcodes recorded within areas of relatively low housing density with those of areas that are generally more densely populated areas, such as the Black Country. The effect of this will be that areas with a relatively low number of residential properties but proportionately high numbers of visitors recorded as visiting the SAC will not be assigned an accurate visitor rate with which to predict the effect of new housing in that area. This is as a result of the visitor rate being diluted by the quantum of residential properties contained within other sections of the same concentric band, and this can result in higher visitor rates elsewhere.

This point can be substantiated by viewing Table 19 (page 47) of the visitor survey and further by focusing on the visitor survey information displayed within the table that relates specifically to Walsall. According to table 19; the subareas Walsall north, Walsall east and Walsall west collectively contain 109,844 residential properties – approximately 10% of the residential homes in the study area (1,178,722) – yet only 170 out of a total of 2832 postcodes recorded from the study area were recorded as being from the 3 Walsall subareas: meaning Walsall accounts for 6% of all postcodes recorded. Also, using the information presented in Table 19 it is possible to calculate the collective visitor rate for Walsall north, east and west (170 divided by 109,844) which is 0.001547, the visitor rate for the individual areas of Walsall north, east and west is; 0.00210, 0.00135 and 0.00057 respectively.

By comparing these rates with figure 8 of the visitor survey it can be seen that these are all relatively low visitor rates that are consistent with a rate to be expected from residents in excess of 13km from the SAC. Also, the 109,844 residential properties in the combined Walsall area contribute 5.3% of all visits made to the Cannock Chase area. Consequently, a hypothetical growth scenario of 1,000 net new homes across this area of Walsall would be likely to contribute a further 0.048% to the 5.3% figure, and according to the available evidence many of these new residents are likely to visit as infrequently as once a month or less. This is supported by the previous discussion which highlighted that while the Walsall area provides 10% of all homes within the study area, it contributes 6% of visitors to the Cannock Chase area, and the following section 3.1.3 which describes the available evidence in respect of visitor frequency. In addition, Walsall's residents have the opportunity to access a number of alternative natural open spaces closer to home in Walsall (Pelsall Nest Common and Brownhills Common), and in neighbouring authorities such as Birmingham's Sutton Park.

3.1.3 Visitor Frequency

The application and interpretation of evidence for the strategic mitigation approach at Cannock Chase SAC has been used to support a ZOI significantly larger than those that have been put in place for other European sites in England¹¹. Firstly, the findings of the report were interpreted and applied using a different standardised methodology to that which has been applied by other local authorities in respect of identifying a ZOI for European protected sites in other areas of the country. The fundamental difference between the methodology adopted here compared with elsewhere is that the profile of visitors (residents) contained within the other ZOIs can be reasonably described as being ‘regular visitors’ (visiting daily or weekly)¹². The ZOI proposed for Cannock Chase SAC, whilst noting the limitations of the frequency data analysis discussed in 4.20 and 4.21 of the report, does not take into account visitor frequency when informing the extent of the ZOI, as the available evidence relating to visitors throughout 8-15km of the ZOI does not support them as being categorised as ‘regular visitors’.

In relation to visitor frequency, from the data available, paragraph 3.58 of the report states that 8.12km is the distance from the SAC containing 75% of visitors to Cannock Chase that can be considered as regular, and similar to how paragraph 3.50 of the report states that “..*visitor rates decline with distance from the SAC boundary...*” it is the council’s view that it is reasonable to surmise that, in general, the frequency at which visitors visit the Cannock Chase area will decline as the distance increases. It follows that residential developments in areas that can statistically be expected to home residents of a type that are either unlikely to visit the Cannock Chase area at all, or perhaps only visit on a monthly basis or less frequently, perhaps should not fall within an area from which developer contributions can potentially be sought as their impact to the SAC is insignificant.

The council’s view is that it should not be assumed that all potential new visitors, as a result of all new housing development, will be of a type (visiting at least daily or weekly) that will definitively result in a degree of additional recreational pressure sufficient enough to equate to, or contribute to likely significant effects, either alone or in combination with other proposed housing development within 15km of the SAC boundary.

¹¹Natural England (2010), Ashdown Forest Visitor Survey Data Analysis - Paragraph 8.18

¹²Natural England (2014), Results of the 2012/13 visitor survey on the Thames Basin Heaths Special Protection Area – Paragraph 3.4

English Nature (2006), Urban Impacts on Dorset Heathlands: Analysis of the Urban Heath Life Project heathland visitor questionnaire survey 2004

Borough of Poole (2013), The Dorset Heathlands Development Plan Document Preferred Options Consultation page 29

3.1.4 Range of activities

The extent of the identified ZOI is influenced by the scope of the evidence applied in its identification. The approach which has been opted for takes into account the postcodes of individuals who specifically visit the area to partake in specialist activities; such as horse riding, cycling, and more importantly mountain bike riding - an activity for which the AONB is actively promoted as a destination for¹³. The site is managed for this purpose and hosts competitive mountain bike events¹⁴, in addition to being popular for informal use.

The inclusion of visitor survey information for people who are prepared to travel significant distances to partake in such activities when attempting to define a ZOI is at odds with the approach opted for to establish ZOIs elsewhere in the country. Elsewhere the postcodes of those partaking in activities such as walking and dog walking formed the evidence base / visitor profile used to calculate the extent of a ZOI. Whilst this was largely to do with the other European protected sites being SPAs, which are particularly sensitive to disturbance and predation from domestic animals, walking and dog walking are common activities which can reasonably be associated with most able bodied people. On the other hand, the effects of mountain biking, along with other specialised activities, on the SAC cannot reasonably be apportioned to each new or existing resident.

While the council appreciates the SAC should be afforded protection from the effects of increased recreational pressure, and that there is a hypothetically increase from the risks associated from all activities, the credible evidence of real risks from some activities is more compelling than others¹⁵. This is particularly relevant in light of the Boggis case¹⁶ in which the Court of Appeal ruled, in respect of what risks should be considered by a competent authority, that there should be “*credible evidence that there was a real, rather than hypothetical risk*”.

¹³ <http://www.forestry.gov.uk/forestry/INFD-8PYM6L>

¹⁴ <http://www.runandride.co.uk/run-and-ride-events.aspx>

¹⁵ DTA Ecology (2015) – P42 The duties of Walsall Council under the Habitats Regulations and the approach to recreational impacts from new development at Cannock Chase SAC

¹⁶ Boggis v Natural England and Waveney District Council 20th October 2009 [2009] EWCA Civ 1061

3.1.5 Socioeconomic and other factors

The Boggis case is specifically relevant to Walsall as it is reasonable to surmise that the ability and propensity for many Walsall residents to visit Cannock Chase, particularly in order to be categorised as ‘regular’ visitors, is influenced by the distance to the site and socioeconomic factors which might not apply, or possibly apply to a lesser extent to residents from other locations within 8-15km of the SAC.

The council has previously raised the issue of the contrasting socioeconomic circumstances that are experienced across the ZOI at the public examination of surrounding Local Authorities Local Plans, but has been unable to influence the approach taken to date. The council holds that this is an important factor, particularly as the ZOI encompasses settlements in excess of 30km apart which have differing social and economic characteristics. These are factors with the potential to impact upon visitor behaviour and the ability of residents to access Cannock Chase, a destination for which “*most visitors come by car*”¹⁶. There is added weight to this claim when consideration is had to accessibility to motor vehicles, as according to 2011 Census data the percentage of households without access to a car or van within the ZOI affected areas (within 15km of the SAC) of Walsall and Wolverhampton is between 28.2% and 40.5%, compared with 11.2% - 18.6% for the majority of the remaining areas within the ZOI, with the exception of Cannock and Burton-upon-Trent which have slightly more households without access to motor vehicles with between 18.6% and 28.2%¹⁷.

Many of the residential allocations proposed by the SAD (NB: the AAP proposes no residential development within 15km of the SAC boundary) are situated within some of the most deprived communities in the country¹⁸. Therefore it is not unreasonable to assume that those who visit the area from in excess of 8km, particularly for cycling, mountain bike and / or horse riding are more likely to be from less deprived areas with greater access to motor vehicles, and with the means to purchase or rent the necessary equipment¹⁹.

¹⁷ Office for National Statistics web site - <http://webarchive.nationalarchives.gov.uk/20160105160709/http://www.ons.gov.uk/ons/interactive/census-map-2-1---car-ownership/index.html>

¹⁸ Deprivation in Walsall Summary Report: <http://www.walsallintelligence.org.uk/WI/navigation/download.asp?ID=403>

¹⁹ 2010 Deprivation Mapper - <http://apps.opendatacommunities.org/showcase/deprivation>

3.1.6 Residential Development Viability

To provide some context in respect of the potential implications to residential development in Walsall were the ZOP to be extended into the ZOI, the council's approach to CIL takes into account the findings of a viability study undertaken by DTZ²⁰. The viability study identified that economic viability in some areas of Walsall was such that the council's Draft CIL Charging Schedule is restricted to proposing only a nominal £5 per square metre (sqm) charge for residential development in order to not affect economic viability of sites to the point that they become undeliverable²¹. However, notwithstanding the implications of CIL being limited to such a low amount for infrastructure provision in Walsall generally, the council cannot be certain that this nominal charge will be accepted at examination of its CIL Charging Schedule.

This view is taken on the basis that the council is aware of two relevant cases that highlight uncertainty surrounding this issue. In Leeds a nominal charge of £5 per sqm for residential development was accepted²², however, in Dudley, an Inspector did not accept a nominal charge referring to Planning Practice Guidance²³ and concluding that the proposed charges in low, very low or zero viability areas were not consistent with the Guidance²⁴. Despite the present strategic mitigation approach (MOU as drafted at the time of writing) having no effect on the deliverability of sites allocated for residential development in the SAD, it is considered appropriate to have regard to the potential for the zone from which contributions are currently sought (ZOP) being extended in the future. This is particularly so as, were this scenario to emerge, the council would potentially find itself in a position where it could not guarantee it would be able to contribute to the strategic mitigation approach as described in the MOU of the SAC Partnership, potentially in respect of applications for residential planning permission received that are within, or are affected by the nominal charging zone: HO27 (327 developable housing capacity), HO28 (19), HO29 (395), HO41a (6) HO41b (12), HO61 (15), HO62 (95), HO150 (60), HO147 (20), HO160 (12), HO181 (310), HO210 (18).

Also, while the financial contributions sought from residential development within 8km of the SAC are currently < £200 per net additional dwelling, the contribution amount which could be sought in the future is unknown. The council considers it prudent to consider the possibility of the contribution amount sought per net additional dwelling changing as future measures required to mitigate the effects of new housing development are dependent on the future condition of the SAC, which is influenced by several factors including; the effectiveness of the areas land management plans / strategies and mitigation measures proposed, climate change,

²⁰ DTZ Viability Study (2015) - http://cms.walsall.gov.uk/sad_cil_study_september_2015__full_version_.pdf

²¹ CIL Charging Schedule - http://cms.walsall.gov.uk/cil_draft_charging_schedule-2.pdf

²² Leeds CIL - http://www.leeds.gov.uk/docs/CIL_Adt_01%20Adopted%20Charging%20Schedule%20April.pdf

²³ Planning Practice Guidance - ID 25-038-20140612; ID 25-019-20140612; ID 25-021-20140612

²⁴ Inspector's Report Dudley CIL: <http://www.dudley.gov.uk/EasySiteWeb/GatewayLink.aspx?allId=268940>

the future dispersal pattern of residential development surrounding the SAC along with future visitor numbers and visitor behaviour.

It is the council's understanding that no developer contributions are currently required from within 8-15km of the SAC on the basis that charges levied on the 0-8km ZOP (an area from which visitors visit 5 times as frequently as those from within 8-15km of the SAC²⁵) will fund a package of measures to mitigate any effects from within the entire ZOI. However, as discussed in previous sections of the report, the council has reservations regarding the existence of likely significant effects from residential development beyond 8km of the SAC, and were the council to accept the ZOI and become a signatory of the MOU on the basis that it does not currently affect its residential site allocations this would prejudice its options were the ZOP to be extended in the future. This is considered an important issue as extending the ZOP could impose further costs to brownfield sites allocated for housing in areas of the borough with a well documented set of constraints that significantly affect viability²⁶. In addition, were the ZOP to be extended (e.g. 12km) imposing financial contributions on residential development, such a requirement would not be subject to viability considerations as the contributions would be deemed necessary in order to comply with the requirements of European legislation²⁷. Although the option is available for developers to opt out of the strategic mitigation approach, this would place the burden onto developers to provide the necessary information to allow the council, as the competent authority, to undertake a bespoke Habitat Regulations Assessment and then for the developer to fund any mitigation measures found to be necessary.

While the council is aware that the Community Infrastructure Levy could provide the option to top slice from the funds it might collect via the Levy to contribute towards SAC mitigation measures, it considers it inappropriate to do so. This is on the basis that the area affected by the nominal or nil charge zone (CIL charging zone 5) provides capacity for 2,306 of the 3,791 homes that feature under the allocations of SAD Policy HC1, so, in order to provide effectively for this option the council would potentially be required to grant planning permission for a number of allocated and / or non-allocated residential schemes in areas which are within CIL charging zones 1-4 rather than in zone 5. Depending on where in zones 1 to 4 the permissions might be granted the sums raised might mean that such permissions might have to be granted in greater numbers and/or at a faster rate than in zone 5. This cannot be guaranteed. In addition, many of the lower CIL charging zones cover areas that are in less sustainable locations for development compared to charging zone 5, and development on unallocated sites in these areas would potentially be to the

²⁵ Further analysis of Cannock Chase Visitor Survey Data to Consider Apportioning Costs between Zones, Durwyn Liley (2013)

²⁶ DTZ Viability Study (2015) - http://cms.walsall.gov.uk/sad_cil_study_september_2015__full_version_.pdf

²⁷ [Appeal Decision APP/G1250/A/13/2203504](https://www.walsall.gov.uk/decision-appeals/2015/2203504)

detriment of the natural environment, and not in accordance with the vision and sustainability principles of the BCCS.

3.1.7 Conclusion

The council is currently unwilling to become a signatory of the strategic mitigation approach as drafted at the time of writing for the reasons discussed, and particularly as a result of the potential for adverse implications towards the delivery of a sustainable pattern of development. As a result, the council is of the view that in order for it to become a signatory to a MOU containing reference to 15km as the ZOI it must first be satisfied that the evidence base, and its interpretation, provides sufficient reasoned justification for which to require developer contributions to be sought throughout the northern half of the borough, beyond 8km of the SAC, for all residential development proposed that results in a net increase of homes. The council's view is that the ZOI incursion into Walsall (8-15km) represents a highly precautionary approach considering the available evidence, and does not take into account important factors which affect both the ability and propensity of Walsall residents to visit the Cannock Chase area. Notwithstanding this, the council concludes that in implementing the SAD and AAP there will be no likely significant effects to Cannock Chase SAC on the basis that neither the SAD nor Walsall Town Centre AAP proposes residential allocations within 8km of the SAC.

3.1.8 Way Forward

The council's interpretation of legal advice it has received on the matter has resulted in the identification of a new Sustainability Appraisal (SA) option (option 2a) to those which featured within the SA at SAD 'Draft Plan' stage²⁸. Option 2(a) proposes the council enters into a side agreement to the MOU confirming that Walsall Council, as the 'Competent Authority' under the Habitat Regulations (2010), will operate similarly or in accordance with the SAC Partnership's MOU. In doing so, the council would ensure that, were windfall residential development to come forward within 8km of the SAC (that is, developments on small or other sites not identified in the SAD), these developments would be subject to the terms set out in the SAC Partnership's MOU, and where appropriate contributions would be sought and passed onto the collecting authority. However, the council's interpretation of the advice received is also that the feasibility of this option is subject to first obtaining clarification from the Cannock Chase SAC Partnership in respect of the terms and definitions contained within the MOU. This clarification was requested from the SAC Partnership 11/08/16, and, at

²⁸ Sustainability Appraisal of Walsall Site Allocation Document (SAD): Appraisal of Options for Mitigation of Potential Effects of Walsall SAD on Cannock Chase SAC - http://cms.walsall.gov.uk/sa_report_-_appendix_n_-_sa_of_options_for_cannock_chase_sac_mitigation__jan_2016_.pdf

the time of writing, no response has been received. It is envisaged that a response will be provided, if not before, as part of the SAC Partnership's representation to the Council's SAD and Walsall Town Centre AAP consultation on pre-submission modifications.

Providing the clarification sought from the SAC Partnership does not preclude this option, a side agreement to the MOU is acceptable to the SAC Partnership, and receives the support of Natural England; the council considers this approach will facilitate discussions with the SAC Partnership towards resolving the matters it considers to require further investigation. This could be achieved through the commissioning of updated visitor survey work, and evidence that is required for Local Plan reviews of all those authorities involved. In the meantime, the SAC will continue to be afforded a package of measures that is sufficient to mitigate the impacts of recreational pressure from new residential development.

3.2 Humber Estuary SAC/SPA/Ramsar

The site is approximately 140km from Walsall and the allocations and policies of the SAD will not affect the site physically. The River Tame and River Trent watercourses provide an impact pathway connecting activities in Walsall with the Humber Estuary. The Humber Estuary is subject to processes associated with sea level change, climate change and impacts from human activities. In order to address the impacts to the site management intervention is required to ensure the habitat can recover and increase its resilience to both effects from natural processes and human activity. The potential for impacts to the site can be screened out on the basis that both Severn Trent and South Staffordshire Water having been consulted at the Issues & Options and Preferred Options stages raised no concerns about accommodating the proposed level of growth. In addition, the Water Cycle Study²⁹ undertaken in support of the BCCS concluded that there was sufficient water resources and wastewater treatment headroom to accommodate the proposed level of growth in Walsall. Correspondence from Natural England (received 17/05/16) concurs with this conclusion.

29 Scott Wilson (2009) - Black Country Water Cycle Study and Scoping Surface Water Management Plan

3.3 Cannock Extension Canal SAC

3.3.1 Background

Cannock Extension Canal spans the boundary of Walsall and Cannock. Its qualifying feature for designation as a Special Area of Conservation is floating water-plantain (*Luronium natans*). The following text is taken from the SSSI citation, dated 1993:

*“The Cannock Extension is a terminal side branch of the Wyrley and Essington Canal extending northwards for 2.5km towards Norton Canes..... The high water quality, uneven canal bottom and the low volume of boat traffic have allowed a diverse aquatic flora to develop without any extensive reedswamp incursion... Of major importance is a large population of the nationally scarce floating water-plantain *Luronium natans*, the best known colony in both Staffordshire and the West Midlands. This plant, recognised as endangered in Europe, is found throughout the length of the Cannock Extension.”*

Impact pathways to the site which could result in deterioration or loss of the qualifying feature include:

- Agricultural run-off
- Boat traffic (too much or too little)
- Bottom feeding fish
- Direct loss of habitat supporting floating water-plantain
- Invasive animal species e.g. Signal Crayfish
- Invasive plants
- Management of vegetation e.g. clearance for fishing platforms
- Management of water levels
- Routine canal maintenance
- Silt removal / dredging
- Water quality from point sources e.g. road drains

Although effects to the SAC were screened out in relation to the proposals of the BCCS there are allocations and proposals in the SAD that are within proximity of the SAC with the potential to link to the site through the impact pathways identified above taken from the HRA work of the BCCS³⁰.

³⁰ Habitats Regulations Assessment for the Black Country JCS: Screening Statement, June 2010

3.3.2 Safeguarding the Indicative Route of the Hatherton Canal Project

SAD policy EN4 proposes to safeguard the indicative line of the Hatherton Branch Canal Restoration project however it does not allocate land specifically for this purpose. The safeguarding of the land is to protect the potential line from being affected by other development proposals. The inclusion of the safeguarded line is in recognition of the project featuring within the BCCS (paragraph 6.19) and the development plans of adjoining Local Authorities, and the potential benefits associated with the expansion / restoration of the canal network.

Natural England, in its representation in relation to the Draft Plan consultation stage of the SAD did not agree with reference being made to the project in the policy text on the basis that there had been no Appropriate Assessment undertaken to support the projects inclusion in the SAD. Natural England expected an Appropriate Assessment to have been completed at SAD stage. Also, as part of their objection, Natural England brought to the councils attention the possible existence of new evidence relating to water availability for which a negative conclusion might undermine the deliverability of the project. Following this response the council facilitated discussions between the Lichfield and Hatherton Canal Restoration Trust, Environment Agency and Natural England with a view to obtaining the latest evidence and developing an agreed position on water availability, and as a result obtaining a better understanding of the deliverability of the project within the plan period and beyond. However, at the time of writing, the outcome of these discussions has not resulted in any new technical evidence relating to water supply being made available, or a conclusive collective view being reached on the deliverability of the project.

Although Natural England anticipated that the project would be subject to Appropriate Assessment at SAD stage this was on the expectation that a detailed alignment for the project would have been established by the time Walsall's Site Allocation Document was prepared. However, at the time of writing and throughout the preparation of the SAD, it remains the case that no detailed alignment for the project exists. As a result, the SAD applies a similar approach to that opted for at the time of the BCCS – safeguarding a protected indicative route. On this basis, no Appropriate Assessment of the project is provided with the SAD.

While there are gaps in the technical evidence, which raise questions regarding the deliverability of the project, reference to the project features within Cannock District Council Local Plan Part 1, and representations have been received from Cannock District Council, Canal & River Trust, Lichfield and Hatherton Canal Restoration Trust, and Lichfield District Council supporting the identification of the safeguarded indicative route. So, while there remains a possibility that it could be delivered within the plan period the council considers it appropriate to carry the project forward from the BCCS into the SAD.

That being said, as a result of Natural England's representation amendments have been made to SAD Policy EN4 to clarify that the SAD proposes only to safeguard the land for the indicative line of the Hatherton Branch Canal Restoration from other forms of development, and that no development could occur as a result of safeguarding the land alone. In addition, in the event that a planning application for the project comes forward, to ensure the SAC is taken account of and afforded appropriate protection, SAD Policy EN4b) requires applicants to provide the appropriate technical information with which to undertake a detailed HRA to ascertain whether or not the project might have an adverse effect on the integrity of the SAC.

Therefore, any proposal in order to obtain planning application permission, must first meet the requirements of SAD Policy EN4b), and be capable of satisfying Natural England that there will be no likely significant effects to the SAC, or any effects that cannot be ruled out can be avoided through mitigation measures and arrangements that can be relied upon in perpetuity. If these requirements cannot be met, support will be possible for alternatives to safeguard the land from other forms of development which will not impact on the SAC (e.g. proposals for a greenway or heritage trail - providing this would not preclude future canal restoration proposals). The approach to defer consideration of detailed effects on the SAC until the project stage is considered acceptable as there remains no definitive proposal for the scheme, and there is insufficient information with which to make an Appropriate Assessment of the project in relation to its potential for likely significant effects to the SAC at this time.

3.3.3 Mineral Extraction

SAD Policy M9 identifies potential fireclay extraction sites in Brownhills, including a site on part of Brownhills Common that is subject to a 'dormant' mineral permission, and a site at Yorks Bridge, an indicative Area of Search for fireclay extraction to the west of Brownhills Common, which does not feature as an allocation on the SAD Policies Map as there is no evidence that a fireclay extraction project will be deliverable within this area during the plan period. However, the site is shown on an indicative map within the Policy Justification to SAD Policy M9 together with a site at Brownhills Common, which is subject to a 'dormant' mineral permission, and another site at Birch Coppice where fireclay extraction took place in the 1950s under the same permission (EB233) where extracted fireclay is still being stockpiled. The map shows the location of these sites in relation to nature conservation designations, including the SAC, and the Justification explains the background to the sites.

The BCCS identifies an indicative Area of Search for fireclay at Yorks Bridge, in accordance with the recommendations in the Inspectors' Report, in response to representations by the Potters Clay & Coal Company Ltd and the Little Wyrley

Estate. The BCCS also identifies the ‘dormant’ planning permission for coal and clay extraction at Brownhills Common, and the Birch Coppice stockpile (BCCS Policies MIN3 and MIN4, Minerals Key Diagram).

Mineral extraction from these areas of Walsall has the potential to affect the SAC. However, the ability to do so is largely dependent on distance to both the site and the ability to influence the available impact pathways.

3.3.4 Coal and Fireclay Extraction

Coal and Fireclay extraction has the potential to affect the SAC by impacting on water quality and turbidity, particularly if surface water run-off were to enter the Wyrley and Essington Canal. Run-off could result directly from mineral extraction sites, or indirectly as a result of surrounding roads made muddy by quarry vehicles. However, such impacts are likely only occur over short distances, so developments / operations over 1km from the SAC should have no adverse effect³¹. For developments within shorter distances, impacts can be avoided if there are no direct or indirect discharges to the SAC, or measures can be put in place and maintained to ensure no discharges affect the SAC.

While it is possible for impacts to be mitigated from coal and fireclay extraction, it has not been possible to undertake a detailed screening assessment of the potential effects at this stage due to there being insufficient detail available to do so, particularly with regards to the sources and precise impacts that might require mitigation. This view has been reached as a result of Land at Brownhills Common (MP5) being in excess of 2km of the SAC and 0.5 km from the Wyrley & Essington Canal, and the location of the site potentially to be worked at Yorks Bridge being unknown (although a representation received from Resource UK on behalf of Potters Clay & Coal Company indicated that they would be looking to work a small site within the area but not the whole site). As a result it is the council’s view that the screening of proposals in either location would be more appropriate at the project stage when the site(s) proposed for extraction are known, along with the details of how the site(s) would be worked (e.g. method of working, phasing of working and restoration programme). To ensure that the appropriate level of HRA is undertaken at the project stage, SAD policies MP5 and M9 require that a detailed HRA is provided as part of proposals seeking planning permission for mineral extraction from either area.

The purpose of SAD Policy M9 and MP5 is to provide more detailed guidance than the BCCS on new or amended mineral development proposals at the two sites, and to provide flexibility. It also identifies the key issues that should be addressed in any

³¹ This is consistent with the approach taken in the HRA produced by Staffordshire County Council in respect of its Minerals Local Plan 2015-2030. Table 2 (page 13) considers possible impacts on Cannock Extension Canal SAC – The New Minerals Local Plan for Staffordshire 2015-2030 – Habitats Regulations Screening of Allocated Sites June 2015

planning applications for coal and fireclay working within the Yorks Bridge site that could come forward within or beyond the plan period.

3.3.5 Conclusion

This section of the report has discussed the results of an initial HRA screening stage in respect of implementing Walsall's SAD on Cannock Extension Canal SAC. For the reasons set out in this report the council has taken the view that the effects associated with SAD policies and allocations cannot be screened out for the purposes of HRA. It has come to this conclusion as there are insufficient details with which to make an assessment of the potential impacts of proposals and projects that feature in the SAD, therefore they cannot be excluded on the basis of an objective assessment of the available information, at the time of writing. However, in recognition of this, related SAD Policies are drafted to ensure compliance with the Habitats Regulations to assess proposals at the project stage where it has not been possible to do so at the time of preparing the SAD.

Although it has not been possible to screen out likely significant effects to the SAC as a result of implementing the plan, due to there being insufficient information at this stage with which to do so. With the exception of Brownhills Common MP5 (a site with planning permission), the SAD does not allocate land specifically for development that has the potential to result in adverse impacts to the SAC without making it explicitly clear that detailed HRA / Appropriate Assessment is required at the project stage, which takes into account the cumulative effects of the minerals extraction proposal and proposals for the Hatherton Canal restoration project on the SAC if they were to both go ahead, for assessment by the council and Natural England.