

Tendring *District Council*



**Independent Examination of Section 2 of the
Tendring District Local Plan '2013-2033 and
Beyond'**

**SUPPLEMENTARY STATEMENT FROM THE
LOCAL PLANNING AUTHORITY
Update on cooperation between Tendring
District Council and Natural England.**

February 2021

1. Tendring District Council has been working in consultation with colleagues from Natural England (NE) throughout the plan preparation process on relevant policies and supporting text. NE has also key statutory consultee on the Local Plan, the Sustainability Appraisal (SA) and the Habitat Regulations Assessment (HRA).
2. A number of amendments to the Section 2 Local Plan have been suggested by the Council in Document SM1 that respond directly to representations and suggestions made by Natural England at publication draft stage. To confirm that NE were in agreement with the Council's suggested modifications in the run up to the Section 2 examination, the Council have had recent discussions with NE colleagues. The Council and NE had hoped to enter into a Statement of Common Ground in the run up to the examination hearings, but due to resource pressures and staff availability within the tight timescales, this has not been possible.
3. However, NE colleagues have confirmed to the Council that they are happy with the responses to their comments but have put forward three additional modifications for consideration listed below. The Council supports these additional suggestions for change.
4. Policy HP5 (Open Space, Sports and Recreation Facilities). In response to NE's comments in 2017, the proposed modification to the wording of this policy does now make specific reference to the role of open space in providing alternative opportunities for recreational to sensitive internationally important wildlife sites and provides details of what such open space provision might encompass. NE colleagues have suggested that further reference to the way in which such areas of open space will be managed in the long term is required. The parties agree that the following wording could be added at the end of the modified policy to address this issue:

“The arrangements for the appropriate management of such space will need to be agreed and secured to ensure that it remains fit for purpose in the long term.”

5. Policy PPL3 (The rural landscape). At publication stage, NE recommended the inclusion of a 'soils policy' within the plan to reflect the approach of the National Planning Policy Framework NPPF (2012) at paragraph 112 in particular. The Council's initial response to this suggestion was not to have a specific policy on the basis that there was sufficient coverage within the NPPF. NE's latest advice on this matter is as follows:

“It is noted that that there has been some change to the text of the NPPF in relation to the protection of best and most versatile agricultural land and paragraph 112 is no longer the correct reference in the revised NPPF. However, paragraph 170 of the revised NPPF states that planning policies should recognise the wider economic and other benefits of the best and most versatile agricultural land. Accordingly, NE consider that it would be reasonable to require developers, where appropriate, to provide site specific agricultural land classification survey data to inform decision making.”

6. The Council maintains that the NPPF provides suitable coverage of this issue and that a specific Local Plan policy is not required – however, the Council is open to the possibility of such a policy being included in the plan if the Inspector is of the view that it would be required for soundness.
7. Policy SAE1 (Carless extension Harwich) NE commented at publication stage that the recommendations of the HRA (specifically a requirement for mitigation for the potential that this site includes habitat suitable to support the Fisher’s estuarine Moth) should be reflected in the text of this site allocation policy. Whilst the Council’s response refers to Policies PPL5 and DI1, NE notes that these do not directly address the issue of physical loss/damage to “offsite” habitats (i.e. in this case land outside the boundaries of Hamford Water SAC with the potential to support the Fisher’s estuarine moth).
8. This omission could be remedied by the addition of “, Hamford Water SAC” after each reference to “Stour and Orwell Estuaries SPA and Ramsar” in point “a” of the policy.
9. In relation to the Habitats Regulation Assessment (HRA), NE has kindly provided a copy of their letter dated 26 November 2018 that the Council was struggling to locate within its records in the run up to the examination hearings. The letter helpfully confirms the following:

“Based on the information provided in the AA, and provided each of the recommended safeguards are fully incorporated into the relevant policies, Natural England agrees that the Plan is unlikely to have an adverse effect on the integrity (AEOI) of Abberton Reservoir Special Protection Area (SPA) and Ramsar site¹, the Blackwater Estuary SPA and Ramsar site, Colne Estuary (Mid-Essex Coast Phase 2) SPA and Ramsar site, the Essex Estuaries Special Area of Conservation (SAC), Hamford Water SAC, SPA and Ramsar site or the Stour and Orwell Estuaries SPA and Ramsar site.”

10. Natural England’s 2018 letter and an email containing their latest suggestions are attached to this statement for information.

Date: 26 November 2018
Our ref: 261989



William Fuller
Planning Officer
Tendring District Council

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BY EMAIL ONLY

Dear William,

Revised Habitats Regulations Assessment (HRA) of Tendring District Local Plan Publication Draft – Section 2

Thank you for your consultation on the above dated 15 November 2018 which was received by Natural England the same day.

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

Please find below our comments on the revised HRA (Land Use Consultants, dated October 2018) which has been undertaken following our advice on the previous iteration of the Local Plan HRA (Land Use Consultants, dated May 2017, our ref: 215796, letter dated 28th June 2017), the Publication Draft Consultation and Sustainability Appraisal (our ref: 226077, letter dated 18th October 2017) and our follow-up meeting and email correspondence with your authority (our ref: 260676, email dated 5th October 2018).

SUMMARY OF ADVICE

Based on the information provided in the AA, and provided each of the recommended safeguards are fully incorporated into the relevant policies, Natural England agrees that the Plan is unlikely to have an adverse effect on the integrity (AEOI) of Abberton Reservoir Special Protection Area (SPA) and Ramsar site¹, the Blackwater Estuary SPA and Ramsar site, Colne Estuary (Mid-Essex Coast Phase 2) SPA and Ramsar site, the Essex Estuaries Special Area of Conservation (SAC), Hamford Water SAC, SPA and Ramsar site or the Stour and Orwell Estuaries SPA and Ramsar site.

DETAILED ADVICE

As detailed in our formal response to the previous iteration of your Local Plan (Section 2) HRA, we were satisfied at that time that the Plan was unlikely to have an adverse effect on the integrity (AEOI) of any European designated sites, provided each of the recommended safeguards were fully incorporated into the relevant Plan policies. Please note that the advice given in that letter (our ref: 215796, dated 28th June 2017) still stands and we therefore advise that you ensure those recommended safeguards are adequately reflected in the Plan policy wording. However, we

¹ Listed or proposed Wetlands of International Importance under the Ramsar Convention (Ramsar) sites are protected as a matter of Government policy. Paragraph 118 of the National Planning Policy Framework applies the same protection measures as those in place for European sites.

understand that the HRA has now been updated following the addition of two new site allocations (SAE5: Development at Mistley Port and SAE6: Development at Mistley Marine) and the most recent Tendring Water Cycle Study (2017). Our advice on these updated aspects of the HRA is as follows :

1. General impacts to European sites from Policy SAE5 DEVELOPMENT AT MISTLEY PORT and Policy SAE6 DEVELOPMENT AT MISTLEY MARINE

We previously highlighted that these allocations were added into the Local Plan after the latest iteration of your Local Plan HRA (Land Use Consultants, dated May 2017) had been carried out. Consequently, potential impacts to designated sites from these allocations had not yet been assessed so we welcome that these sites have now been taken through the HRA process. The HRA recognises that these sites are located immediately adjacent to the Stour and Orwell Estuaries SPA and Ramsar site and so have the potential to impact on the site through encroachment during development works and through dredging activities which could result in loss of, or damage to habitats within the SPA and Ramsar, including those upon which qualifying bird species depend for roosting or feeding. It notes that dredging in particular has the potential to increase the rates of erosion and affect tidal range with possible reductions in the extent of available sediment habitats (mud flats and sand banks) of importance for feeding water birds. However, it acknowledges that the likelihood and magnitude of any impact upon the site would depend largely upon the design proposals, including the extent, layout, type and frequency of activities such as dredging.

As such, the HRA recommends that, in order to provide the necessary level of certainty that the Local Plan's aspirations for growth of Mistley Port can be accommodated without adverse effects on the Stour and Orwell Estuaries SPA and Ramsar site, the wording of Policies SAE5 and SAE6 must commit to the following prior to adoption of the Local Plan:

'Assessment of any impact on nature conservation, including on the Stour and Orwell Estuaries SPA and Ramsar site, should be undertaken. Development will only be permitted where a project level assessment, as informed by appropriate studies and targeted survey, has demonstrated in accordance with the Habitat Regulations, that any proposal will not adversely affect the integrity of the Stour and Orwell Estuaries SPA and Ramsar site, either alone or in-combination'

Provided this safeguard is fully incorporated into the relevant policy wording, Natural England is satisfied that, at the Plan level, these allocations will not to lead to adverse effect on the integrity (AEOI) of the aforementioned designated sites.

2. Potential water quality impacts to the Essex Estuaries SAC, Stour and Orwell Estuaries SPA and Ramsar site and the Colne Estuary SPA and Ramsar site

We note that, in this respect, the HRA concludes that an AEOI of European sites as a result of changes in water quality can be avoided, provided additional commitments and policy safeguards are included in the Local Plan prior to adoption. This includes a specific commitment to ensure that phasing of development does not exceed infrastructure capabilities and that the necessary upgrades are in place prior to development coming forward. It states that this conclusion is supported by the most recent Tendring Water Cycle Study (2017) which concluded that:

'the Load Standstill assessments for BOD show that improvements to Clacton-Holland Haven, Colchester, Jaywick New and Manningtree WRCs are possible using conventional wastewater treatment technologies currently available, demonstrating that an engineering solution is feasible and hence treatment capacity should not be seen as a barrier to growth', and that 'The WCS has concluded feasible solutions are possible to ensure environmental conditions and legislative objectives are met'.

Furthermore, the HRA states that The Tendring District Water Cycle Study recommends the following:

- *'The phasing of developments draining to the five WRCs will need to be discussed between Tendring District Council and Anglian Water to ensure no development occurs before the necessary upgrades are in place, and development is phased in line with Anglian Water's asset management plans. Development would need to be phased and potentially delayed until Anglian Water has accounted for the new development.*
- *The WCS has concluded feasible solutions are possible to ensure environmental conditions and legislative objectives are met. However, this WCS recommends that Tendring District Council, the Environment Agency, and Anglian Water should work together to determine when solutions will implemented and hence conclude when and how much development can be accommodated across the study area in the early phases of the Local Plan delivery period.*
- *To ensure that the planned level of development within the plan period does not result in a negative impact upon wildlife both inside and outside of designated sites, it is recommended that policy is included within the Local Plan to ensure that these matters are addressed at a strategic level'*

Provided these safeguards are fully incorporated into the relevant policy wording (general and/or site-specific), Natural England is satisfied that the Plan will not result in adverse effects on the integrity of the above listed European sites.

We also have the following general comments on the HRA:

- We welcome that the recreational disturbance 'zones of influence' (Zols) for each European site have been updated following the ongoing work to develop the Essex Coast Recreational disturbance Avoidance and Mitigation Strategy (RAMS). However, the relevant paragraphs of the HRA covering recreational impacts need updating as per the below table which reflects the latest Zols for the relevant sites:

Table 1:

European designated site	Underpinning SSSIs²	Zols (km)
Stour and Orwell Estuaries SPA and Ramsar	Orwell Estuary SSSI Stour Estuary SSSI Cattawade Marshes SSSI	13
Hamford Water SPA and Ramsar	Hamford Water SSSI	8
Colne Estuary SPA and Ramsar	Colne Estuary SSSI	9.7
Blackwater Estuary SPA and Ramsar	Blackwater Estuary SSSI	22
Dengie SPA and Ramsar	Dengie SSSI	20.8
Crouch and Roach Estuaries Ramsar and SPA	Crouch and Roach Estuaries SSSI	4.5
Foulness Estuary SPA and Ramsar	Foulness SSSI	13
Essex Estuaries SAC	Blackwater Estuary SSSI Colne Estuary SSSI Crouch and Roach Estuaries SSSI Dengie SSSI Foulness SSSI	-*
Benfleet and Southend Marshes SPA and Ramsar	Benfleet and Southend Marshes SSSI	4.1
Thames Estuary and Marshes SPA and Ramsar	Mucking Flats and Marshes SSSI	8.1

² Underpinning SSSIs are listed here as these are what the IRZs are aligned to

** **Note 1:** The Essex Estuaries comprise the Colne Estuary, Blackwater Estuary, Dengie, Crouch and Roach Estuaries and Foulness Estuary and so follow the respective Zols throughout.*

This concludes Natural England's advice at this stage which I hope you will find helpful.

For any queries relating to the specific advice in this letter only please contact Jack Haynes using the details given below . For any new consultations, or to provide further information on this consultation, please send your correspondences to consultations@naturalengland.org.uk.

Yours sincerely

Jack Haynes

Land Use Operations Norfolk & Suffolk Team

Email: [REDACTED]

Tel: [REDACTED]

From: Lambert, Tessa

Sent: 18 February 2021 15:56

To: Eleanor Storey; William Fuller

Subject: Tendring Section 2 Local Plan Examination further comments from Natural England

Dear William and Eleanor,

Following on from our call last week I set out below the few remaining issues concerning your Authority's proposed modifications to specific policies in the emerging Section 2 Local Plan in response to comments made by Natural England.

Policy HP5 (Open Space, Sports and Recreation Facilities). The proposed modification to the wording of this policy does now make specific reference to the role of open space in providing alternatives to European sites and provides details of what such open space provision might encompass. However, there is no specific reference to the way in which such areas of open space will be managed. The following wording could be added at the end of the modified policy to cover this point: "The arrangements for the appropriate management of such space will need to be agreed and secured to ensure that it remains fit for purpose in the long term."

Policy PPL3 (The rural landscape). In summary, Natural England (NE) recommended the inclusion of a soils policy within the plan to reflect the approach of the NPPF (2012) at paragraph 112 in particular. NE considered that such a policy would fit well within this particular policy. It is noted that that there has been some change to the text of the NPPF in relation to the protection of best and most versatile agricultural land and paragraph 112 is no longer the correct reference in the revised NPPF. However, paragraph 170 of the revised NPPF states that planning policies should recognise the wider economic and other benefits of the best and most versatile agricultural land. Accordingly, NE consider that it would be reasonable to require developers, where appropriate, to provide site specific agricultural land classification survey data to inform decision making.

Policy SAE1 (Carless extension Harwich) NE commented that the recommendations of the HRA (specifically a requirement for mitigation for the potential that this site includes habitat suitable to support the Fisher's estuarine Moth) should be reflected in the text of this site allocation policy. The Council's response refers to Policies PPL5 and DI1 which do not address the issue of physical loss/damage to "offsite" habitats (i.e. in this case land outside the boundaries of Hamford Water SAC with the potential to support the Fisher's estuarine moth). This omission could be remedied by the addition of ", Hamford Water SAC" after each reference to "Stour and Orwell Estuaries SPA and Ramsar" in point "a" of the policy.

Regards

Tessa Lambert

Lead Adviser,

Essex Local Delivery Team

Cambridgeshire, Northamptonshire, Bedfordshire, Essex and Hertfordshire Area Team

Natural England

www.gov.uk/natural-england

During the current coronavirus situation, Natural England staff are working remotely to provide our services and support our customers and stakeholders. All offices and our Mail Hub are closed, so please send any documents by email or contact us by phone or email to let us know how we can help you. See the latest news on the coronavirus at <http://www.gov.uk/coronavirus> and Natural England's regularly updated operational update at <https://www.gov.uk/government/news/operational-update-covid-19>.

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