London Borough of Tower Hamlets Local Plan
Habitats Regulations Assessment Summary and Conclusions

1. Introduction

The London Borough of Tower Hamlets (the Council) has been preparing its Local Plan 2031 (the Local Plan) since 2015. The Local Plan sets out the vision for the Borough up to 2031 and includes the following core components:

- a vision on how the borough will develop and grow over the period to 2031;
- a series of strategic objectives and priorities to meet current and future needs; and
- a planning policy framework to guide and manage development (in line with the requirements of the government and the Mayor of London).

To support the development of the Local Plan, the Council commissioned Wood Environment and Infrastructure Solutions Ltd (Wood; formerly Amec Foster Wheeler) to undertake an Integrated Impact Assessment (IIA) alongside the emerging Local Plan. The IIA incorporated Sustainability Appraisal (SA), Strategic Environmental Assessment (SEA), Health Impact Assessment (HIA), Equalities Impact Assessment (EqIA) and Habitats Regulations Assessment (HRA).

The Tower Hamlets Local Plan was submitted to the government in February 2018, in accordance with Regulation 22 of the Town and Country Planning (Local Planning) (England) Regulations 2012. It was subject to an Examination in Public (EiP) in September 2018, with consultation on the post-EiP Main Modifications taking place in spring 2019. The Council subsequently received the Inspector’s Report in September 2019, which identified a small number of additional MMs; this report concluded that the Tower Hamlets Local Plan satisfied the requirements of Section 20(5) of the 2004 Act and met the criteria for soundness in the National Planning Policy Framework, subject to incorporation of the additional MMs. LBTH has completed these amendments, and the Local Plan was subsequently adopted by the Council on 15th January 2020.

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2 “Main Modifications” are required to resolve issues in order to make the Local Plan sound or to ensure its legal compliance. They involve changes or insertions to policies and text that are essential to enable the plan to be adopted. Main Modifications are therefore changes that have an impact on the implementation of a policy.


Wood has been assisting the Council with its HRA of the new Local Plan since 2015. This technical note summarises:

- the review of the additional MMs proposed by the Inspector in September 2019, which was undertaken to ensure that the HRA conclusions remain robust; and
- the outcomes of the HRA process.

It does not repeat the baseline or assessments set out in the main HRA report (Appendix I to the IIA), and should therefore be read in conjunction with this.

2. **HRA Summary and Main Modifications Review**

2.1 **HRA Overview**

Regulation 105 of the *Conservation of Habitats and Species Regulations 2017* (the ‘Habitats Regulations’) states that if a land-use plan is ‘(a) is likely to have a significant effect on a European site\(^6\) or a European offshore marine site\(^7\) (either alone or in combination with other plans or projects); and (b) is not directly connected with or necessary to the management of the site’ then the plan-making authority must ‘...make an appropriate assessment of the implications for the site in view of that site’s conservation objectives’ before the plan is given effect.

The process by which Regulation 105 is met is known as Habitats Regulations Assessment (HRA)\(^8\). An HRA determines whether there will be any ‘likely significant effects’ (LSE) on any European site as a result of a plan’s implementation (either on its own or ‘in combination’ with other plans or projects) and, if so, whether these effects will result in any adverse effects on the site’s integrity. The Council has a statutory duty to prepare the Local Plan and is therefore the Competent Authority for an HRA.

Regulation 105 essentially provides a test that the final plan must pass; there is no statutory requirement for HRA to be undertaken on draft plans or similar developmental stages (e.g. issues and options; preferred options). However, as with Sustainability Appraisal (SA), it is accepted best-practice for the HRA of strategic planning documents to be run as an iterative process alongside plan development, with the emerging policies or options reviewed during development to ensure that potentially significant effects on European sites can be identified at an early stage, so providing time for the effects (and any mitigation) to be appropriately assessed. This is undertaken in consultation with Natural England (NE) and other appropriate consultees.

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\(^6\) Strictly, ‘European sites’ are: any Special Area of Conservation (SAC) from the point at which the European Commission and the UK Government agree the site as a ‘Site of Community Importance’ (SCI); any classified Special Protection Area (SPA); any candidate SAC (cSAC); and (exceptionally) any other site or area that the Commission believes should be considered as an SAC but which has not been identified by the Government. However, the term is also commonly used when referring to potential SPAs (pSPAs), to which the provisions of Article 4(4) of Directive 2009/147/EC (the ‘new wild birds directive’) apply; and to possible SACs (pSACs) and listed Ramsar Sites, to which the provisions of the Habitats Regulations are applied a matter of Government policy (NPPF para. 176) when considering development proposals that may affect them. “European site” is therefore used in this report in its broadest sense, as an umbrella term for all of the above designated sites.

\(^7\) ‘European offshore marine sites’ are defined by Regulation 15 of *The Offshore Marine Conservation (Natural Habitats, &c.) Regulations 2007* (as amended); these regulations cover waters (and hence sites) over 12 nautical miles from the coast.

\(^8\) The term ‘Appropriate Assessment’ has been historically used to describe the process of assessment; however, the process is now more accurately termed ‘Habitats Regulations Assessment’ (HRA), with the term ‘Appropriate Assessment’ limited to a specific stage within the process.
European Commission guidance\(^9\) suggests a four-stage process for HRA, although not all stages will necessarily be required (see Box 1). HRAs of local planning documents rarely proceed beyond Stage 2, as alternatives to ‘adverse effect’ policies or allocations are almost always available.

**Box 1 – Stages of HRA**

**Stage 1 – Screening**
This stage identifies the likely impacts upon a European site of a project or plan, either alone or ‘in combination’ with other projects or plans, and considers whether these impacts are likely to be significant. The screening test is a ‘low bar’ test and mitigation measures should not be considered at this point.

**Stage 2 – Appropriate Assessment**
Where there are likely significant effects, or where this is uncertain, this stage considers the effects of the plan or project on the integrity of the relevant European Sites, either alone or ‘in combination’ with other projects or plans, with respect to the sites’ structure and function and their conservation objectives. Where it cannot be concluded that there will be no adverse effects on sites’ integrity, it is necessary to consider potential mitigation for these effects. If mitigation is not available then the assessment may need to proceed Stage 3.

**Stage 3 – Assessment of Alternative Solutions**
Where adverse effects remain after the inclusion of mitigation, this stage examines alternative ways of achieving the objectives of the project or plan that avoid adverse impacts on the integrity of European sites.

**Stage 4 – Assessment Where No Alternative Solutions Exist and Where Adverse Impacts Remain**
This stage assesses compensatory measures where it is deemed that there are no alternatives that have no or lesser adverse effects on European sites, and the project or plan should proceed for imperative reasons of overriding public interest (IROPI). The EC guidance does not deal with the assessment of IROPI.

The ‘screening’ test or ‘test of significance’ is a low bar, intended as a trigger rather than a threshold test: a plan should be considered ‘likely’ to have an effect if the competent authority (in this case the Council) is unable (on the basis of objective information) to exclude the possibility that the plan could have significant effects on any European site, either alone or in combination with other plans or projects; an effect will be ‘significant’ simply if it could undermine the site’s conservation objectives.

An ‘appropriate assessment’ stage (if required) allows for a closer examination of the plan (or its components) where the effects are significant or uncertain\(^10\) to determine whether any European sites will be subject to ‘adverse effects on integrity’ as a result of the plan’s implementation. The scope of any ‘appropriate assessment’ stage is not set, however, and such assessments need not be extremely detailed: they must simply be ‘appropriate’ to the effects and proposal being considered, and sufficient to ensure that there is no reasonable doubt that adverse effects on site integrity will not occur (or sufficient for adverse effects to be appropriately quantified should Stages 3 and 4 be required).

It is important to recognise that the process of strategic HRA is as much about guiding the development of the plan and demonstrating that effects on European sites have been considered appropriately, as it is about (ultimately) assessing its effects. The HRA therefore contributes to the plan evidence-base, so assisting with the development of sustainable policies from the beginning of the plan-making process rather than being a purely retrospective ‘test’ applied towards the end.

As a result, whilst the HRA reports that accompany the formal consultation stages of the plan development (Issues and Options, Preferred Options, Submission, etc.) necessarily reflect and assess the plan at that stage in its evolution, they also document the broader process of data gathering and assessment that occurs concurrently with the plan evolution and which ultimately demonstrates how the plan safeguards European sites.

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\(^9\) Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC 2002).

\(^10\) i.e. ‘likely significant effects’, where the possibility of significant effects cannot be excluded.
2.2 HRA Summary

The HRA considered the potential for the plan to affect five European sites within 15km of the LBTH area:

- Epping Forest SAC;
- Richmond Park SAC;
- Wimbledon Common SAC;
- Lee Valley SPA; and
- Lee Valley Ramsar.

The HRA concluded that the plan would not have any measurable effects on European sites over 15km from the LBTH area due to the absence of reasonable impact pathways. Natural England confirmed (email dated 5 May 2017) that the approach and scope of the HRA were acceptable.

With regard to the sites considered, an initial screening exercise excluded Richmond Park SAC and Wimbledon Common SAC from further consideration due to the distances from the LBTH zone of influence and the absence of impact pathways. The remaining sites were subject to further assessment to determine whether the LBTH Local Plan would have significant effects, alone or in combination, principally in relation to air quality and visitor pressure. This screening exercise concluded the following:

- Epping Forest SAC is currently affected by air pollution and visitor pressure; however, the LBTH Local Plan is considered unlikely to result in significant increases in visitor pressure or air pollution (alone, or in combination) due to the distances to the site and hence limited exposure of the interest features to the outcomes of the plan.
- Lee Valley SPA / Lee Valley Ramsar are mostly in favourable or ‘unfavourable recovering’ condition and no specific pressures are identified for the site; the LBTH Local Plan is considered unlikely to result in significant effects (alone, or in combination) on these sites due to the limited exposure and sensitivity of the interest features to the likely outcomes of the plan.

Whilst the HRA concluded that these sites would not be significantly affected it recognised that it was appropriate for the plan to minimise any residual risk through appropriate policy construction. The HRA therefore included recommendations for minor policy amendments designed to minimise the risk of exposure occurring (e.g. through air quality assessment requirements or policy controls on locally accessible public space for developments); these amendments were incorporated into the plan submitted for examination.

Following examination, the MMs were reviewed to determine whether the conclusions of the submission-draft HRA remained valid. This review determined that the MMs would not alter the HRA conclusions and that LBTH could, as the Competent Authority, reach a ‘no significant effects, alone or in combination’ conclusion when assessing the Local Plan against Regulation 105 of the Habitats Regulations (subject to a review of any future changes).
2.3 Review of Additional Main Modifications

Approach
The Inspector’s Report identified a small number of additional MMs; these have been reviewed to determine whether they would:

- lead to any new effects on any European sites (alone or in combination) that have not been considered by the HRA to date; or
- alter the magnitude (etc.) of any effects previously considered through the HRA, such that the proposed conclusions of the HRA (see Section 5 of the main report) are no longer valid.

The review also considered any new evidence that has become available since the EiP hearings took place.

Review of Additional Main Modifications
The Inspector’s Report included two additional MMs:

- MM33 – an amendment to the site boundary for the Reuters site allocation to omit the data centre; and
- MM34 – an amendment to Figure 7 of the Local Plan so that the skyline of strategic importance reflects the Canary Wharf Tall buildings zone only.

MM33 and MM34 reflect modifications to the policies map which were previously screened and not considered to be significant and consulted on during the MMs consultation. MM33 and MM34 make the written text in the Local Plan consistent with the policies map and do not affect the conclusions of the HRA.

The Inspector’s Report also modified two of the proposed MMs regarding MM6 (Policy D.DH6 criterion j) and MM29 (which related to an amendment to a site boundary). MM6 and MM29 have been reviewed by Wood, consistent with the approach set out in the assessment of the modifications. MM6 reverts some of the text in Policy D.DH6 to the original text in the Local Plan, which was previously assessed. The change at MM29 is presentational. Neither of the modifications was considered significant for the purposes of the HRA and no updates to previous reports was required.

In summary, these MMs do not affect the conclusions outlined in the main HRA report, and so additional assessment of the modifications against the Habitats Regulations is not required.

3. HRA Conclusions
The additional MMs made by the Inspector do not affect the HRA conclusions outlined in the main HRA report. LBTH, as the Competent Authority, can therefore reach a ‘no significant effects, alone or in combination’ conclusion when assessing the Local Plan against the provisions of Regulation 105 of the Conservation of Habitats and Species Regulations 2017 (the ‘Habitats Regulations’); this conclusion has been accepted by Natural England following formal consultation and Examination in Public and the Council can adopt the Local Plan on this basis.
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