



## **Dealing with major planning applications: handling environmental impact and habitat regulations issues**

# INTRODUCTION

This note sets out the technical processes for dealing with applications where environmental impact and habitats regulations issues arise.

The advice is specifically aimed at local authority planners, to help you work your way successfully through two complex matters that arise in relation to some major planning applications.

## ENVIRONMENTAL IMPACT ASSESSMENT REQUIREMENTS

### WHAT IS ENVIRONMENTAL IMPACT ASSESSMENT (EIA)?

The process of Environmental Impact Assessment (EIA) is governed by the [Town and Country Planning \(Environmental Impact Assessment\) Regulations 2011 as amended](#) (referred to as the 'EIA Regulations' below). These regulations apply the EU directive “on the assessment of the effects of certain public and private projects on the environment” (usually referred to as the [Environmental Impact Assessment Directive](#)) to the planning system in England. They cover a wide range of development and can apply to both the principal application and to subsequent applications such as reserved matters and conditions. A comprehensive list can be found in the [PPG](#), which also provides a [list](#) of relevant development consent mechanisms and controls.

The PPG identifies 5 [stages of Environmental Impact Assessment](#). In summary these are:

- Screening
- Scoping
- Preparing an Environmental Statement
- Making a planning application and consultation
- Decision making

### SCREENING - HOW DO YOU KNOW IF EIA IS REQUIRED?

The regulations differentiate between 'Schedule 1' and 'Schedule 2' development. Schedule 1 development always requires EIA. Schedule 2 development which meets one of the relevant criteria or exceeds one of the relevant thresholds listed in the second column of the table in Schedule 2, may require EIA, if it would be likely to have significant

environmental effects. Schedule 2 development which would be located in a 'sensitive area', as defined in regulation 2(1) may require assessment even if it is below the thresholds or do not meet the criteria. Development projects which are wholly outside of sensitive areas and do not exceed the screening thresholds are not Schedule 2 development and should not be screened by the local planning authority.

The [PPG](#) contains advice on when EIA is required and the procedure for deciding whether a Schedule 2 project is likely to have significant effects. It also sets out, in an [annex](#), the thresholds and criteria to be used to identify Schedule 2 development as well as indicative values for determining significant effects.

In each case it is up to the local planning authority to determine whether EIA is required. This process is known as 'screening'. Having completed the screening exercise, the local planning authority must provide a screening opinion. The Secretary of State can also use powers to direct that Environmental Impact Assessment is required.

In 2015 [amended EIA Regulations raised](#) some of the thresholds at which certain types of schedule 2 development projects will need to be screened in order to determine whether an environmental impact assessment is required. However the PPG cautions that in cases of environmental sensitivity, it may be that a screening opinion should be undertaken. The PPG gives [advice](#) on the implications for development projects which do not exceed the new thresholds but which were determined to be environmental impact assessment development before the 2015 Regulations came into force.

## SCOPING AND PREPARING AN ENVIRONMENTAL STATEMENT

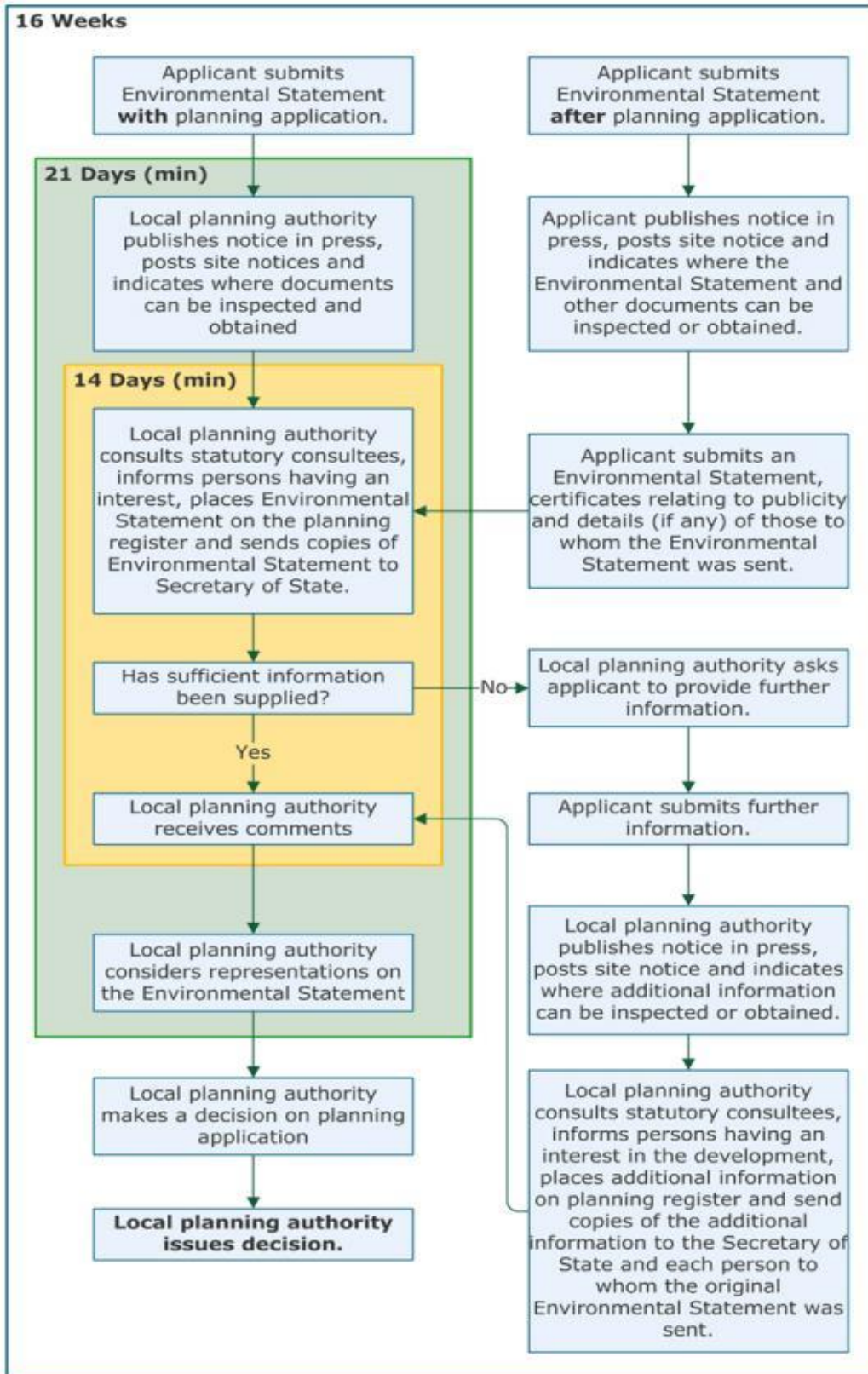
The applicant is responsible for preparing the environmental statement in a "single and accessible compilation of the relevant environmental information and the summary in non-technical language" (Berkeley v SSETR [2000] 3 All ER 897, 908). The applicant has no requirement to consult in the preparation of the environmental statement. But as both the Council and the consultation bodies may have information and can give preliminary advice as to matters which will be important to consider, it is always good to encourage early discussions. The applicant may ask the local planning authority for its formal opinion on the information to be supplied in the Environmental Statement (a "[scoping opinion](#)"). There is no right to seek a formal scoping opinion once a planning application has been submitted. The local planning authority must consult the [statutory](#) consultees and the applicant before providing a scoping opinion ([regulation 13\(4\)](#)). It should provide its opinion within five weeks (or longer period if agreed in writing with applicant) of receiving a request.

## PROCEDURES FOR SUBMITTING AND EVALUATING ENVIRONMENTAL IMPACT ASSESSMENT APPLICATIONS

The PPG has a useful flow chart that illustrates the submission and evaluation procedures.

There are specific arrangements for considering and determining planning applications that have been subject to an environmental impact assessment. It includes consideration of the adequacy of the information provided, consultation, publicity, and informing the public of the decision along with the main reasons for it. You should take into account the information in the environmental statement, the responses to consultations and any other relevant information when determining a planning application.

An applicant can submit a planning application for Schedule 2 development without an environmental statement and without having made a request for a screening opinion. If you consider that the development proposal is likely to fall within one of the categories listed in Schedule 2 of the EIA Regulations 2 you will need to screen the proposed development, to determine whether EIA is required. You will have 3 weeks to reach a decision and are not legally required to carry out consultation before reaching your opinion. The applicant can seek a Secretary of State [screening direction](#) if they disagree with your opinion.



SOURCE: PLANNING PRACTICE GUIDANCE

## THINGS YOU NEED TO DO - PROCESSING THE APPLICATION:

At the application processing stage, the following steps need to be followed:-

- The applicant should send the local planning authority all the documents which must normally accompany a planning application and also the additional information set out in [regulation 16](#) of the EIA Regulations:
- You need to check that the submitted Environmental Statement contains all the information specified in Part II of [Schedule 4](#) to the EIA Regulations and the relevant information set out in Part I of that Schedule.
- If you consider that further information is required, you should ask the applicant to provide it ([regulation 22](#) of the EIA Regulations). You will find the screening and scoping opinions helpful in determining any information requirements. Any request should be limited to the “main” or “significant” environmental effects to which a development is likely to give rise and must be on relevant matters set out in [Schedule 4](#) of the EIA Regulations.
- All information provided must be publicised, and consulted on – both the information required by the council and “any other information” voluntarily submitted by the applicant see [regulation 2\(1\)](#) of the EIA Regulations.
- You can also require an applicant or appellant to produce evidence to verify and/or clarify any information in the Environmental Statement.
- Where the procedure involves multi-stage consent, for example, an outline planning permission followed by a reserved matters application, the effects of a project on the environment should normally be identified and assessed when determining the outline planning permission. The PPG has more advice on dealing with [multi-stage consents](#).

## PUBLICITY REQUIREMENTS FOR ENVIRONMENTAL IMPACT ASSESSMENT APPLICATIONS

The planning application and the Environmental Statement publicity requirements are set out in [Article 15](#) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. [Schedule 3](#) to the Order contains the appropriate form for the notices to be published in the local press and posted on site.

### WHO NEEDS TO BE CONSULTED?

[Regulation 2\(1\)](#) of the EIA Regulations defines certain public bodies as ‘consultation bodies’ for the purpose of the regulations. These include:

- any body which would 'normally' be consulted on the application, as required by article 16 (consultations before the grant of permission) of the Town and Country Planning (Development Management Procedure) (England) Order 2015,
- Natural England,
- Environment Agency,; and
- Marine Management Organisation.

It can also include other bodies designated by statutory provision as having specific environmental responsibilities and which the relevant local planning authority or the Secretary of State consider likely to have an interest in the application.

### HOW SHOULD THEY BE CONSULTED?

Guidance on consultation procedures is set out in the PPG. Important points to note are:

- Consultation bodies that have not received copies of the Environmental Statement and the application direct from the applicant should receive them from the LPA.
- Any other persons or bodies (including non-governmental organisations promoting environmental protection) who are likely to be affected by, or have an interest in, the application, but are unlikely to become aware of it through other publicity should be notified.
- A copy of the Environmental Statement and planning application must be sent to the Secretary of State within 14 days of receipt.
- The Environmental Statement must be placed on Part I of the planning register, as should any related screening or scoping opinion or direction as soon as possible after publication it has been issued.
- If the Environmental Statement is submitted after the planning application has been submitted, the applicant is responsible for publicising the Environmental Statement ([regulation 17](#)). When the copies of the Environmental Statement are submitted to the local planning authority, they should be accompanied by certificates stating that the publicity arrangements have been met. It is still the council's responsibility to send copies of the Environmental Statement to any of the [consultation bodies](#) that have not received one direct from the applicant.

### THINGS YOU NEED TO KNOW -CONSIDERING AND DECIDING THE APPLICATION

- When a planning application involves an Environmental Impact Assessment it should be determined within 16 weeks beginning with the day immediately following receipt of the application and Environmental Statement ([regulation 61\(2\)](#)).
- The decision period may be extended by written agreement between the LPA and the applicant.

- The 16 weeks time limit for determination of the Environmental Impact Assessment application continues to run while any correspondence about the adequacy of the information in an Environmental Statement is taking place.
- Where an Environmental Statement has not been submitted with a planning application but the applicant indicates that they propose to provide one, you should suspend consideration of the application until the Environmental Statement has been received.

## THINGS YOU NEED TO KNOW - AFTER THE DECISION

- After the application has been determined, there are various notification and publicity requirements you need to follow. They are set out in [regulation 24](#). You will need to do the following:
  - inform the Secretary of State of the decision in writing,
  - inform the public of the decision, by local advertisement, or by such other means as are reasonable in the circumstances, and
  - make available for public inspection—
    - (i) the decision and any conditions attached to it,
    - (ii) the main reasons and considerations on which the decision is based including, if relevant, information about the participation of the public,
    - (iii) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development, and
    - (iv) information regarding the right to challenge the validity of the decision and the procedures for doing so.

Requirements (ii) and (iii) could be satisfied by making a copy of the officer report available.



# HABITATS REGULATIONS ASSESSMENT (HRA)

## WHAT IS HABITATS REGULATIONS ASSESSMENT (HRA)?

The UK is bound by the terms of the EC Conservation of Habitats and Species Regulations 2010, as well as the EC Birds Directive and the Ramsar Convention. These are contained in the [Habitats Regulations of 2010 \(as amended\)](#).

The aim of the Directive is to conserve natural habitats and wild species across Europe by establishing a network of sites known as Natura 2000 sites. For the purpose of this advice note, and to be consistent with the Habitats Regulations, these are referred to as European sites. The Habitats Regulations contain a detailed schedule of protected sites and species. Within the UK protected sites are known as Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) and RAMSAR sites.

It is important to remember that any development potentially affecting a protected site or species, is also very likely to require other licensing or permitting approval e.g. from the Environment Agency or Natural England. Environmental Impact Assessments (EIA) may feature for the same project. Whilst some impacts of developments or projects may be significant and feature in both processes, these are separate legal processes which have different approaches and implications for decision making.

**Good practice dictates that the planning application, permitting, EIA and HRA processes are run in tandem wherever possible in order to deliver better, more coherent outcomes and to avoid duplication, cost and delay.**

## WHAT IS THE PROCESS FOR CARRYING OUT AN HRA?

Habitats Regulation Assessment (HRA) is a process which helps to determine the likely significant effects of plans or projects and, where appropriate, assess adverse impacts on the integrity of European sites, examine alternative solutions and provide justification for imperative reasons for over-riding public interest (IROPI).

The 2010 Habitats Regulations do not specify the methodology for carrying out a HRA but they do specify the obligations of both the competent authority (for definition see below) and the developer. This guide will bring key information together to help planners understand and navigate the HRA process.

Article 6(3) of the Habitats Directive requires an ‘appropriate assessment’ to be undertaken when a plan or development project is likely to have a significant effect upon a European site. This effect might be from an individual project or from a project in combination with others.

“Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the sites conservation objectives”. Habitats Regulations, Article 6(3)

Article 6(4) also requires that where an appropriate assessment has been carried out and results in a negative assessment, i.e., any proposed avoidance or mitigation are unable to reduce the potential significant impacts, or if uncertainty remains over the significant effects, then consent will only be granted if:

- there are no alternative solutions and
- there are no imperative reasons of overriding public interest (IROPI) for the development and
- compensatory measures have been secured.

The regulations make reference to ‘competent authorities’. These are relevant public bodies, government ministers, statutory undertakers etc who are able to carry out the ‘appropriate assessment’ of impacts in relation to the Habitats regulations. In the case of most planning applications, the local planning authority (LPA) is likely to be the competent authority. [Regulation 65](#) sets out the necessary stages that apply where more than one competent authority is involved in decision making.

## DEALING WITH PLANNING APPLICATIONS WITH HRA IMPLICATIONS

Under [Regulation 68](#) the requirement for assessment applies to applications for planning permission. A planning application will need to be accompanied by adequate information to inform your assessment. Set out below is a summary of the

four stage HRA process. Following through these processes in a logical and precise way will help you ensure that your decision making is robust.

### ASSISTING YOUR ASSESSMENT – THE FOUR STAGES OF THE HRA PROCESS

There are four stages to the process of HRA.

Stage 1	Screening	Process for identifying impacts of a plan or project on a European site, either individually or in combination, and consideration of whether likely effects will be significant
Stage 2	Appropriate Assessment	Consideration of impacts on integrity of the site, either individually or in combination with other plans and projects, having regard to the site's structure, function and conservation objectives. Where adverse impacts are identified, assess mitigation options to identify impacts on the integrity of the site. This stage should involve consultation. If mitigation options do not result in avoidance of adverse effects permission can only be granted if the remaining 2 stages are followed.
Stage 3	Assessment of alternative solutions	Review and examine alternatives to achieve objectives; would these alternative solutions avoid or have less adverse effects on the European sites?
Stage 4	Assessment of any 'imperative reasons of overriding public interest' (IROPI)	Where no suitable alternative solution exists and adverse impacts still remain then assess whether the development is necessary for IROPI. If so then identify potential compensatory measures to maintain integrity and coherence of the protected site.

## Stage 1 Screening

EC Directive 92/43/EEC requires that a screening assessment is undertaken by the local planning authority as the competent authority. The LPA should consider the following matters:

- assessment of the project including its objectives
- assessment of relevant plans, policies and projects
- assessment of relevant European sites that could potentially be affected – including their specific characteristics and conservation objectives

A screening assessment, both alone and in combination, with other identified plans and projects will identify if any significant environmental affects will result affecting the site and conclude whether significant affects are likely or not.

When undertaking this assessment you are required to use a precautionary approach to your decision making and assessment. This means that when the likelihood of significant affects cannot be ruled out on the evidence available, then you should assume that a risk of significant affects may exist. These will then need to be addressed through either changes to the scheme, avoidance or through securing mitigation measures.

If no potential significant affects are identified, the process ends at this stage.

## Stage 2 Appropriate Assessment

Following a decision that a plan or project would be likely to result in significant adverse impacts on a European site, an appropriate assessment must be undertaken.

The Regulations do not define 'significant impacts', so you will need make an informed decision on this issue. An applicant must provide the information you (reasonably) require to enable you to determine whether an appropriate assessment is required, and subsequently for your assessment. This could include:

- a detailed description of the European site, identifying any/all features potentially affected, highlighting the site's conservation objectives
- a detailed description of the proposed development(s), processes, construction, phases, methods of work etc

- details of alternatives considered, along with any mitigation measures proposed to reduce, remove or manage impacts
- provision of necessary data, evidence and reports – including interpretation of that information to aid decision making
- appraisal of any other plans or projects likely to have a significant effect, either individually or in combination with the proposed development.
- appraisal of whether there is potential for the scheme to require two or more appropriate assessments by different competent authorities.

There are clear benefits to frontloading of this process. Effective pre application discussion with the developer, addressing potential HRA issues, is recommended. It will be good to involve the appropriate nature conservation body (Natural England), at this stage. Where one or more competent authority is to be involved, there should be early agreement with the local authority, developer and those authorities to determine who will perform the lead competent authority role.

Before deciding to give any consent you must undertake an appropriate assessment which includes these stages:

- consult Natural England and have regard to any representations made by them.
- if you consider it appropriate, take the opinion of the general public
- In the light of the conclusions of the assessment, and subject to regulation 62 (considerations of overriding public interest) of the regulations, you may agree to the plan only after having determined that it will not adversely affect the integrity of the European site or the European offshore marine site (as the case may be).

When considering whether a plan or project will adversely affect the integrity of the European site, you must have regard to the manner in which the project is proposed to be carried out or to any conditions or restrictions you intend to include in any permission.

### Stage 3 Alternative Solutions

Your assessment will also include consideration of alternatives, including how mitigation measures may help to reduce or avoid these affects. The opportunities for alternatives will vary depending upon the project being considered.

You will need to review the submitted information to determine and assess any adverse effects on the integrity of the site and its conservation objectives.

Alternative solutions could include proposals of a different scale, location, phasing, a different scheme or no scheme at all. It is necessary that this stage is properly completed as you cannot move onto the next stage, until it has been shown there are no alternatives to the proposal.

Where it has been demonstrated there are no alternative solutions with lesser effects, the project can still be carried out if 'imperative reasons of overriding public interest' apply. These can be social or economic in nature and are considered below.

#### **Stage 4 Considerations of overriding public interest**

If you are satisfied that there are no alternative solutions, and the plan or project must be carried out for imperative reasons of overriding public interest (IROPI) then you may agree to the project.

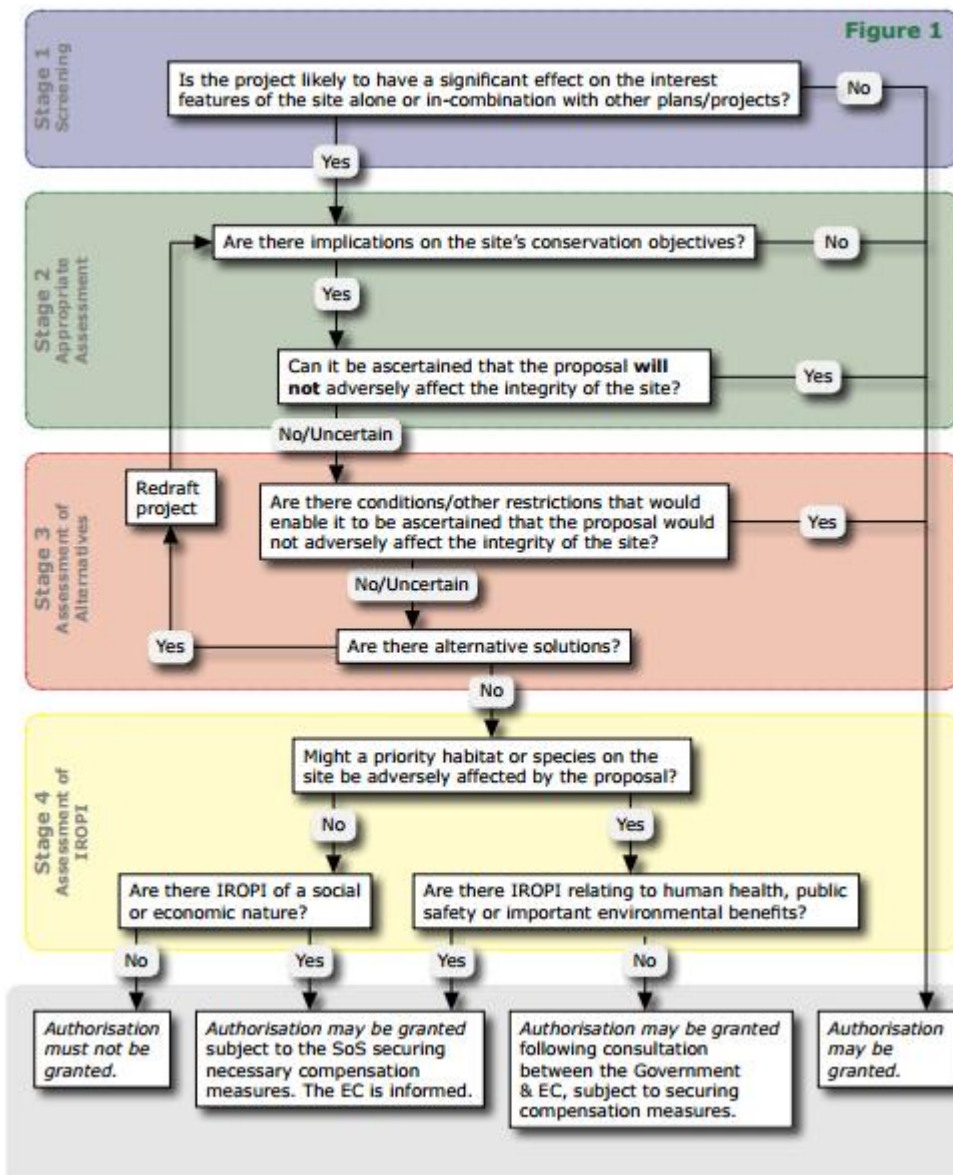
Where the site hosts a priority natural habitat type or a priority species, the reasons for justifying the scheme must relate to either:

- reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
- any other reasons which the competent authority, having due regard to the opinion of the European Commission, consider to be imperative reasons of overriding public interest.

To assist with this determination, you can obtain the opinion of the European Commission.

#### **A decision tree diagram from PINS guidance**

The diagram below explains the four stage process relating to applications for Nationally Significant Infrastructure Projects. The decision tree can be adapted for use and has been included here as a succinct summary of the considerations at each stage.



## Planning Inspectorate: Habitat Regulations Assessment

### GRANTING PLANNING PERMISSION

[Section 68](#) requires that where these assessment provisions apply, you may, grant planning permission or, take action which results in planning permission being granted or deemed to be granted subject to necessary conditions or limitations.

However outline planning permission must not be granted unless you are satisfied (whether through the use of conditions and limitations to which the outline planning permission is to be made) that no development likely adversely to affect the integrity of a European site or a European offshore marine site could be carried out

under the permission, whether before or after obtaining approval of any reserved matters.

Section 70 requires the competent authority to consider whether any adverse effects of the project could be overcome by the use of planning obligations under section 106 of the TCPA 1990

#### SOME TIPS ON GOOD PRACTICE

- We cannot over stress the benefit of pre application discussions to help effective HRA assessment.
- You need to consider how to best record your assessment and decisions relating to HRA. You need to demonstrate that you have followed the full legal process and that you have fully considered and properly recorded the factors that have featured in your decision making
- Use a table or matrix to assist your consideration and to record your decision making process.
- Developers will need to provide adequate and robust evidence and data to enable you to make an effective appropriate assessment. You should make information about this process accessible to developers, taking opportunity to inform developers of the need to provide necessary information and flagging relevant issues such as the need to ensure necessary ecological and other surveys are undertaken at the correct time of the year. If this is not programmed properly there will be delays in the decision making processes.
- For many applications there are likely to be other legislative processes overlapping with the HRA. In particular Environmental Impact Assessments (EIA) may feature for the same project. Whilst some impacts of developments or projects may be significant and feature in both processes, these are two separate legal processes which have different approaches and implications for decision making. The process of EIA is covered elsewhere in this advice note.
- Other bodies are likely to be undertaking parallel HRA processes. Early consultation and co-operation is highly recommended.
- Effective communication with the developer will help ensure that your assessment is robust.



This advice note has been prepared for PAS by

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