

# Landmark Ruling on Screening under the Habitats Directive

## Briefing Note

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### Introduction

The European Court of Justice issued a landmark judgement relating to the reading of the Habitats Directive on 12 April 2018 in the case C-323/17 (People over Wind, Peter Sweetman v Coillte Teoranta).

### Habitats Regulations Assessment

The Habitats Directive 92/43/EEC and Birds Directive 79/409/EEC are transposed into English law through the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). In accordance with the Habitats Regulations, a formal assessment of the implications of any new plans or projects must be undertaken where they are capable of affecting a protected site (Special Areas of Conservation (SAC), Special Protection Areas (SPA) or Ramsar Site).

This assessment comprises of several distinct stages: screening and appropriate assessment (AA). These are collectively described as a 'Habitats Regulations Assessment' (HRA).

The screening for any likely significant effects determines whether an AA is required on a plan or project. Where significant effects cannot be ruled an AA is needed to ascertain that an adverse effect on the integrity of the site can be avoided. Where such an adverse effect cannot be ruled out, and no alternative solutions can be identified, then the project can only then proceed if there are imperative reasons of over-riding public interest and if the necessary compensatory measures can be secured.

### The C-323/17 Judgement on Screening

This ruling concluded that Article 6(3) of the Habitats Directive must be interpreted as meaning that mitigation measures should be assessed at the AA stage and that it is not lawful to factor in measures intended to avoid or reduce the harmful effects of a plan or project on a protected site at the screening stage.

Prior to the judgement, under case law, (Hart DC v SSCLG, Luckmore Limited & Barratt Homes Limited [2008] EWHC 1204) avoidance or reduction measures could be taken into account when considering whether a plan or project would be likely to have a significant effect on a protected site. An AA would not be required where the risk of significant effects could be eliminated through effective mitigation. Until now, this approach has been common practice.

As a result of the judgement competent authorities cannot take account of any integrated or additional avoidance or reduction measures when considering at the screening stage whether the plan or project is likely to have an adverse effect on a protected site.

### Planning Implications

This judgement carries significant planning implications. At the screening stage, you must establish that a plan or project will have 'no significant effect' upon a protected site on the basis of 'objective information'. To pass the AA test, this has to be demonstrated 'beyond reasonable scientific doubt' which is more stringent and difficult to prove. Local Planning Authorities and applicants are now in a position where they need to review the legal compliance of their HRAs and consider if they can meet the AA test, if this stage is now necessary.

The ruling could materially impact on housing delivery. Since the ECJ decision, Waverley Borough Council have temporarily suspended all planning decisions on schemes that could affect the Thames Basin Heaths SPA. Central Bedfordshire Council's Local Plan Examination has been put on hold to allow for their HRA to be reviewed and updated.

The Planning Inspectorate have published the Guidance Note (05/2018) in May 2018 which provides additional advice. For further information please contact the DLP Bedford office.

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